

## COUNCIL DECISIONS: GENERAL INSURANCE

### CONTINUING EDUCATION AUDIT

**Douglas Frank Butt**  
**("Licensee")**  
**Coquitlam, B.C.**

*(Level 3 General Insurance Nominee)*

An audit of the Licensee's continuing education for his 2001 licence renewal revealed the Licensee had knowingly provided a false and misleading statement when applying for the renewal of his licence so as to hide the fact that he did not meet the continuing education licence condition. Council found he had obtained only 16 of the required 24 hours of qualified education for his 2001 renewal, and ordered that:

- the Licensee be fined \$1,000; and,
- the Licensee be required to obtain the 8 outstanding continuing education credits required for the 2001 renewal.

Failure to either pay the fine or obtain the outstanding education credits within the stated time period will result in the immediate suspension of his licence.

### CONVICTIONS

**Cynthia Ann Duxbury**  
**("Former Licensee")**  
**Gibsons, B.C.**

*(Former Level 1 General Insurance Salesperson)*

On April 2, 2002, the Former Licensee pleaded guilty to a charge of theft over \$5,000, was sentenced to a 6 month suspended sentence, 2 years' probation, an order of restitution to her former employer, a 3 month curfew between the hours of 10:00 p.m. and 6:00 a.m., and 50 hours community service work. The Former Licensee was also ordered to send a letter of apology to her former employer.

**Ian Stuart-Smith**  
**(aka Ian Smith or Ian Stuart)**  
**Newmarket, Ontario**

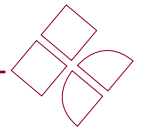
On June 13, 2002, Ian Stuart-Smith was convicted in the Saskatchewan Court of Queen's Bench of uttering a forged document contrary to section 368(1)(a) of the Criminal Code of Canada. In particular, knowing that a certificate of insurance was forged, Stuart-Smith caused a person to act upon it as if it were genuine. Stuart-Smith received a suspended sentence with the following conditions:

For the period of 2 years from June 13, 2002:

- keep the peace and be of good behavior;
- appear before the Court when required to do so by the Court;
- notify the probation officer (or Court) in advance of any change of the offender's name or address; and,
- promptly notify the probation officer (or Court) of any change of the offender's employment or occupation.

And in addition, Stuart-Smith shall:

- be prohibited from acting or holding himself out as an insurance agent, broker, general agent or wholesale insurance broker unless he holds such valid licence or licences as may be required in the jurisdiction in which he proposes to transact business. He is further prohibited from holding himself out as acting for any insurance company unless he has specific written authorization from such company to act on their behalf. For greater certainty, the above prohibitions apply to any corporation of which Ian Stuart-Smith is a directing mind;
- make restitution in the sum of \$770.41; and,
- pay a victim surcharge in the sum of \$100.



On January 6, 1999, Stuart-Smith and Heritage International Inc. were ordered by the British Columbia Superintendent of Financial Institutions to cease from either directly or indirectly carrying on insurance business in British Columbia. Council published the above-mentioned Order in a Notice to all licensed insurance agents in British Columbia on January 7, 1999, and advised that Stuart-Smith and Heritage International Inc. operated from an office in Ontario, purportedly offering markets for specialty coverages. The Superintendent's Order remains in effect.

Council takes this opportunity to remind all licensees of the importance of exercising proper diligence when dealing with intermediaries or other brokers to arrange insurance coverage. Council has twice published articles in its Bulletin dealing with this issue. Sub-brokered transactions have proven to be problematic as the producing and contracting brokers are often unclear on their respective duties to the insurer and the client. In some cases, the intermediary did not have access to the markets they purported to or did not place coverage as instructed. In any transaction where you are not able to place the insurance directly with an insurance company you are authorized to represent and must rely on another broker or intermediary, the likelihood of problems increases. Accordingly, you should exercise a correspondingly higher level of diligence in ensuring coverage is properly placed, including taking adequate steps to verify the insurance is in force as represented and following up for the policy within a reasonable period of time. The client should be informed of how the insurance is being brokered and kept apprised of any potential issues or problems with the coverage which may arise.

In June 1998, Council published a Notice setting out guidelines for sub-brokering general insurance and the respective duties of the producing and contracting brokers. If you currently sub-broker insurance or if you intend to enter into a sub-brokering arrangement in future, you should review Council's sub-brokering Notice which can be obtained through our Fax-on-Demand system, document number 66.

## LICENCE CONDITIONS

### **Carl Eugene Rae** **("Former Licensee")** **Kamloops, B.C.**

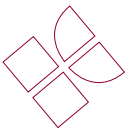
*(Former Level 3 General Insurance Agent)*

Council determined the Former Licensee, while licensed as a level 3 general insurance agent, failed to act in a competent manner and in accordance with the usual practice of the business of insurance, and ordered that:

- in the event the Former Licensee applies for a general insurance agent's licence in British Columbia, he be granted no higher than a level 2 licence, subject to the following conditions:
  - a) he must be under the direct supervision of a "named" nominee at the agency where he is licensed; and,
  - b) he be required to successfully complete an errors and omissions seminar offered through the Insurance Brokers Association of British Columbia or an equivalent course as determined by Council within 1 year from the reinstatement of his licence, and,
- he be assessed the costs of Council's investigation.

The Former Licensee did not:

- remit underwriting information to insurers in a timely manner;
- ensure that additional insurance coverage was endorsed on a client's commercial insurance policy as requested and that the policy was renewed prior to its expiry; and,
- ensure that a client's policy took effect immediately upon expiry of their previous coverage through a different agency.



## MATERIAL MISSTATEMENTS

### **Coast Claims Service (Nanaimo) Ltd.**

**(“Agency”)**

**Nanaimo, B.C.**

*(Corporate Adjuster)*

### **David Bedford Hart**

**(“Nominee”)**

**Nanaimo, B.C.**

*(Level 3 Adjuster Nominee)*

### **Douglas Allan Damberger**

**(“Licensee”)**

**Nanaimo, B.C.**

*(Level 2 Adjuster)*

Council determined the Agency, Nominee and Licensee each made a material misstatement on 2 licensing applications, and ordered that:

- the Agency be fined \$200 for each misstatement for a total of \$400;
- the Nominee be fined \$200 for each misstatement for a total of \$400;
- the Licensee be fined \$200 for each misstatement for a total of \$400; and
- the Agency be assessed the costs of Council’s investigation.

Pending legal proceedings were not disclosed on licensing applications submitted by the Agency, Nominee and Licensee.

Council found the Agency, Nominee and Licensee knew, or ought to have known, had they exercised reasonable diligence, that the information provided on their application was not true.

### **Robert Bruce Tucker**

**(“Licensee”)**

**Burnaby, B.C.**

*(Level 1 Adjuster)*

The Council determined the Licensee made a material misstatement on his application for an insurance licence, and ordered that:

- the Licensee be fined \$200; and,
- the Licensee be assessed the costs of Council’s investigation.

The Council found that the Licensee knew, or ought to have known, had he exercised reasonable diligence, that the information provided on his application was not true.

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## COUNCIL DECISIONS: LIFE INSURANCE

### LICENCE CONDITIONS

#### **Jagmohan Bhandari**

**(“Licensee”)**

**Vancouver, B.C.**

*(Level 1 Life Insurance Agent)*

Council determined the Licensee breached sections 177(a) and 231(1)(a)(c) and (e) of the Act by failing to act in a trustworthy, competent manner, in good faith and in accordance with the usual practice of the business of insurance; by making a material misstatement in reply to an inquiry from Council; and by failing to comply with the Insurance Contracts (Life Insurance Replacement) Regulation.

Specifically, the Licensee was found to have:

- failed to obtain an accurate statement from 7 applicants as to whether replacement was intended;
- failed to present and review with each applicant a completed Basic Disclosure Statement (“BDS”);
- failed to forward a completed BDS for each applicant to the respective insurers;
- misstated the applicants’ existing insurance on their insurance applications;
- improperly advised or assisted 3 clients to cancel their existing insurance prior to replacement insurance being issued;



- induced a client to replace an existing contract of life insurance that was detrimental to his interests; and,
- made a material misstatement in reply to an inquiry from Council.

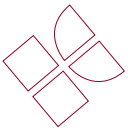
Council originally determined the Licensee to be unsuitable and made the following order, pursuant to section 238 of the Act, while the Licensee was given an opportunity to have a hearing before Council:

- as a condition of his licence, within 10 business days of the date of the Order, the Licensee is required to provide to Council the name of the level 2 life insurance agent who would directly supervise his insurance activities. The level 2 life insurance agent must meet the following criteria;
  - a) a level 2 life insurance agent with a minimum 5 years' experience as a level 2 life insurance agent;
  - b) the level 2 life insurance agent must be sponsored by the same insurer as the Licensee; and,
  - c) a condition would be attached to the level 2 insurance agent's licence making him/her accountable for the actions of the Licensee while under their supervision.
- as a condition of his licence, beginning 10 days after the date of the intended decision, the Licensee could not conduct insurance business except under the direct supervision of a level 2 life insurance agent who meets the criteria stated in condition above.

The Licensee did not meet the conditions ordered by Council and his licence was suspended effective August 26, 2001.

Given the length of time that the Licensee has been suspended and other factors, Council concluded it would not be contrary to the public interest to permit the Licensee an opportunity to become licensed, provided he obtains appropriate education and is properly supervised for a specified period of time. Council therefore made the following additional order:

- the Licensee be permitted to apply for a life insurance agent's licence;
- the Licensee pay the costs of the Council's investigation into this matter before receiving a life insurance licence; and,
- the following conditions will be attached to any life insurance licence issued to the Licensee:
  - (a) a named level 2 life insurance agent shall directly supervise his insurance activities for a period of 2 years. The named level 2 life insurance agent must meet the following criteria:
    - (i) a level 2 life insurance agent with a minimum 5 years' experience as a level 2 life insurance agent;
    - (ii) the level 2 life insurance agent must be sponsored by the same insurer as the Licensee; and,
    - (iii) a condition would be attached to the level 2 life insurance agent's licence making him/her accountable for the actions of the Licensee while under their supervision;
  - (b) the Licensee shall not conduct insurance business except under the direct supervision of the named level 2 life insurance agent who meets the criteria stated above for a period of 2 years;
  - (c) the Licensee shall enroll in and pass the Life Licensing Qualifying Program (LLQP) within 1 year of obtaining a life insurance agent's licence; and,
  - (d) failure to abide by or fulfill any of the above noted conditions will result in the immediate suspension of any life insurance agent's licence which is obtained by the Licensee.



## MATERIAL MISSTATEMENTS

### Troy Calvin Tunstall

("Licensee")

Vancouver, B.C.

(Level 1 Life Insurance Agent)

Council determined the Licensee made a material misstatement on his application for an insurance licence, and ordered that:

- the Licensee be fined \$200; and,
- the Licensee be assessed the costs of Council's investigation.

Council found the Licensee knew, or ought to have known, had he exercised reasonable diligence, that the information he provided on his application was not true.

## SUSPENSIONS

### Gwerfyl Richards

("Licensee")

Victoria, B.C.

(Life Agent Nominee 2)

Council determined the Licensee failed to act in a competent manner and in accordance with the usual practice of the business of insurance, and ordered that:

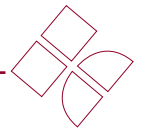
- the Licensee be suspended for 2 months;
- as a condition of his licence, the Licensee must successfully complete the Personal Financial Planning course under the Canadian Association of Insurance and Financial Advisors' ("CAIFA") Certified Financial Planner program, no later than December 31, 2002;
- as a condition of his licence, the Licensee must successfully complete the Wealth Accumulation course under CAIFA's Certified Financial Planner program, no later than December 31, 2003;

- as a condition of his licence, the Licensee must be supervised by an insurance agent who has been licensed as a level 2 life agent for the last 5 consecutive years, until he has successfully completed the aforementioned courses; and,
- the Licensee be assessed the costs of Council's investigation.

Council found that the Licensee sold a universal life insurance policy to a client that was inappropriate given her stated objectives and circumstances and that a reasonable, prudent and competent agent would not have recommended the policy.

Council reached this conclusion based on the following findings:

- the Licensee failed to conduct an adequate needs analysis and did not demonstrate sufficient knowledge about universal life insurance products sold within sophisticated leveraged investment plans, such as the Leveraged Deferred Compensation Plan;
- the Licensee sold the \$550,000 universal life policy to the client to provide a tax shelter for a death benefit payment she had received but was unable to demonstrate that the client had a need for sophisticated tax sheltering;
- the face amount of insurance coverage was increased to \$550,000 to keep the annual premium deposits of \$10,000 a year over a 10 year period tax exempt, even though the likelihood of the client making all of the proposed premium deposits was remote; and,
- the Licensee did not discuss any investment options with the client other than the universal life insurance policy and did not show her any policy funding illustrations other than the proposed annual premium deposits of \$10,000 over a 10 year period. Ultimately, the Licensee recommended a product to the client to fulfill an objective it was never intended to meet.



Council also found the Licensee did not accurately disclose to the client the income tax implications of arranging segregated funds “in trust” for her children. The segregated fund contracts were sold on the premise of transferring tax liability resulting from investment gains to the children. However, the client subsequently learned that investment gains generated by the fund, specifically interest income and dividends, were attributable back to her and would result in tax liabilities.

While the client’s income tax resulting from the fund investment gains was minimal, insurance agents must refrain from giving advice in areas beyond their expertise and are accountable for the accuracy of information they provide.

## SUSPENSION

### Randall Stephen Kerr “Licensee” Comox, B.C.

*(Life Agent Nominee Level 2)*

Council determined that the Licensee failed to act in accordance with the usual practice of the business of insurance, and ordered that:

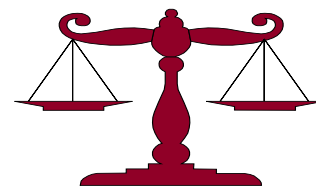
- the Licensee be suspended for 2 weeks, and,
- the Licensee pay the costs of Council’s investigation.

Council found the Licensee failed to fully assess his clients’ needs and objectives and failed to fully advise them of the significant changes to their insurance plan resulting from a rating.

Council reached this conclusion based on the following findings:

- the Licensee proposed a joint last-to-die universal life insurance plan with a face value of \$200,000, to the clients. The premium was set at an annual rate of \$8,400 and was projected to be fully funded in 6 years, with an assumed growth rate of 9%, based on standard issue;

- the clients wished to limit their total premium outlay to \$50,000;
- due to medical considerations, the insurer declined on one client’s life and offered a rated-up joint last-to-die policy on the other. The policy was issued March 5, 1997;
- the Licensee advised the clients that their policy had been medically rated, and that the face value had been reduced, but failed to advise them of the marked difference in the projected performance of the new policy;
- the Licensee did not meet with the clients to fully explain the ramifications of the rating, as they were out of town;
- the Licensee mailed the policy to the clients but did not fully explain, in his cover letter, the consequences of the rating on the insurance contract, including the fact that it was no longer projected to offset in 6 years; and,
- the Licensee did not conduct a needs analysis to establish the clients’ need for insurance or their ability to pay.



## CAUTION

*Warning: The use of any information in this Bulletin to discredit another licensee, or any other person, is not permitted and may result in disciplinary action against a licensee using the information in such a manner.*