

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c. 141)
(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

AMARPAL SINGH ATWAL
(the “Former Licensee”)

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Former Licensee to dispute an intended decision of Council dated September 10, 2019.

The subject of the hearing was set out in a Notice of Hearing dated November 8, 2019.

A Hearing Committee heard the matter on December 16, 2019 and presented a Report of the Hearing Committee to Council at its March 10, 2020 meeting. The Former Licensee did not attend the hearing.

Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236 and 241.1 of the Act:

1. The Former Licensee is prohibited from applying to the Council for any licence for a period of 24 months from the date of bankruptcy discharge or the date of this order, whichever is later;
2. If the Former Licensee applies for reinstatement of his licence after the conclusion of the prohibition period, a condition will be imposed on his licence that requires him to be supervised for a period of 24 months starting from the date of any reinstatement;
3. The Former Licensee is fined \$7,500, due and payable no later than June 29, 2020;
4. As a term and condition of seeking reinstatement, the Former Licensee is required to successfully complete the “Ethics for Insurance Brokers” course through the Insurance Brokers Association of British Columbia, or an equivalent course as acceptable to Council; and

5. The Former Licensee is assessed hearing costs in the amount of \$4,054.72, assessed in accordance with Council's costs schedule, due and payable no later than June 29, 2020.

With respect to the ordered hearing costs, as a self-funded regulatory body, Council looks to licensees who have engaged in misconduct to bear the costs of their disciplinary proceedings, at least in part, so the costs are not borne by other licensees in general. The hearing costs assessed to the Former Licensee were calculated in accordance with Council's applicable policy and schedule.

This order takes effect on the **31st day of March, 2020.**



Janet Sinclair
Executive Director, Insurance Council of British Columbia

Further, the Council determined that the Former Licensee had submitted three applications to the Council for licences in which he had also failed to disclose his bankruptcies.

The Former Licensee was provided with the Council's investigation report which outlined its material findings with respect to these issues and the Former Licensee was given an opportunity to attend a Review Committee meeting in March 2019 to address the Council's concerns. The Former Licensee did not attend that meeting.

On September 10, 2019, the Council released its intended decision, pursuant to section 237(2) of the Act. The Former Licensee requested a hearing on September 16, 2019 and the hearing subsequently occurred on December 16, 2019.

This is the written report of the Hearing Committee, which has been prepared in accordance with section 223(4) of the Act.

At the outset of the hearing, the Hearing Committee had to determine whether it was appropriate to proceed in the absence of the Former Licensee, who did not attend the hearing. The Council introduced evidence through the affidavit of Aisha Ahmad (an assistant at the office of legal counsel for the Council) that set out various communications with the Former Licensee dating back to September 16, 2019 when the Former Licensee requested the hearing. The Hearing Committee noted, in particular, that the Notice of Hearing had been personally served on the Former Licensee by a process server on November 14, 2019.

In light of the evidence outlined in the Ahmad affidavit, the Hearing Committee was satisfied that the Former Licensee had notice of the hearing and had intentionally chosen not to attend. Out of an abundance of caution, the matter was stood down for a period of time to ensure that the Former Licensee was not merely late for the hearing. Ultimately, the Former Licensee did not attend even with the additional time that was given and the Hearing Committee determined that it was appropriate and procedurally fair to proceed in his absence given the evidence introduced by the Council.

EVIDENCE

a. Witnesses

Jennifer Reid was the only witness called by the Council at the hearing. Ms. Reid is a Rules Officer employed by the Council and she was the individual at the Council who was primarily responsible for compiling the evidence and information relating to the Former Licensee's bankruptcies and prior insurance licence applications.

b. Exhibits

The following exhibits were entered during the course of the hearing:

- Exhibit 1** Affidavit of Aisha Ahmad sworn on December 16, 2019 attaching correspondence between the Former Licensee and legal counsel for the Council.
- Exhibit 2** Letter dated July 30, 2018 from the Council to the Former Licensee requesting documents and information relating to his bankruptcies.
- Exhibit 3** Print-out of federal government information relating to the Former Licensee's bankruptcies.
- Exhibit 4** Counsel's Book of Documents, which contained 11 tabs with various correspondence between the Former Licensee and the Council, along with the Former Licensee's licence applications and certain information relating to the bankruptcies.
- Exhibit 5** Email between Council employees setting out the licensing history for the Former Licensee.

c. Ms. Reid's evidence

As noted above, Ms. Reid was the Council's only witness. The evidence provided by Ms. Reid related primarily to the materials included in Exhibit 4, as well as certain discussions that she had with the Former Licensee during the course of her investigation.

In brief, Ms. Reid first became aware of potential issues relating to the Former Licensee when the Council received the email notice from the bankruptcy trustee on July 30, 2018 (Tab 7, Exhibit 4). It appeared to Ms. Reid at that time that the Former Licensee had failed to notify the Council about his bankruptcy when it had occurred in December 2017.

After this information came to the attention of the Council, Ms. Reid wrote to the Former Licensee and requested information about his 2017 bankruptcy (Exhibit 2). The Former Licensee replied to Ms. Reid by fax on August 15, 2018 and advised, in part, that he "was not aware" that he was obliged to inform the Council about his bankruptcy. The Former Licensee also confirmed in that same fax that he had previously filed for bankruptcy in 1993 (Tab 9, Exhibit 4).

After that exchange, Ms. Reid set about trying to find information about both of the Former Licensee's bankruptcies. During this time, she communicated further with the Former Licensee and asked him to explain what had led to his bankruptcies and also to provide additional information about the events in question (Tab 10, Exhibit 4).

The Former Licensee sent a one page fax to the Council on November 27, 2018 in which he indicated that he was trying to locate materials relating to his 1993 bankruptcy and suggested that his trustee would provide information about his 2017 bankruptcy. Other than that response, the Former Licensee has not provided any further information to the Council.

The remainder of Ms. Reid's evidence related to the other aspects of her investigation when she examined the Former Licensee's various licence applications and determined that he had not disclosed his bankruptcies to the Council on three occasions in the past when the applications had specifically required such disclosure (Tabs 1, 3 and 6, Exhibit 4).

Finally, Ms. Reid also testified about the information that she was able to obtain from the federal government which revealed that when the Former Licensee had filed for bankruptcy in 2017, he had declared assets of only \$2,102, with liabilities exceeding \$2.7 million. In 1993, the Former Licensee had declared assets of \$260,000 and liabilities of \$710,000. These amounts are outlined in the documents found in Exhibit 3.

SUBMISSIONS OF THE COUNCIL

The Council submitted that the evidence in this matter was clear that the Former Licensee had failed on two occasions to disclose bankruptcies to the Council as expressly required by Rule 7(3)(a)(iii), which states:

Licence Conditions

Applicable to All Classes of Licences

...

(3) A licensee must notify Council within 5 business days:

(a) where the licensee or any business the licensee owns or has participated in as a director, officer or partner:

...

(iii) declares bankruptcy; or

(iv) is charged or convicted of any criminal offence or any offence under any law of any jurisdiction, excluding traffic offences resulting in monetary fines only;

...

[emphasis added]

Further, the Council submitted that the Former Licensee had made serious material misstatements to the Council on three licence applications in the past, when he answered “no” in responding to the following question:

8. BANKRUPTCY, JUDGMENTS, CRIMINAL OR CIVIL PROCEEDINGS

...

(b) Have you personally, or has any business of which you are or were an officer, director, or partner, ever been subject to bankruptcy proceedings?

The three licence applications where the Former Licensee failed to disclose his bankruptcies to the Council in response to this question were: *July 2016 - application for Level 2 general insurance licence; December 2008 - application for life agent application; and April 1995 - application for reinstatement of Level 2 general insurance licence.*

On all three occasions, the Former Licensee also signed a declaration confirming that the information provided in the applications was true and complete.

The Council submitted that the Former Licensee’s actions were breaches of not only the Rules, but also many important provisions of the Council’s *Code of Conduct*, including the sections relating to trustworthiness (section 3); good faith (section 4); competence (section 5); financial reliability (section 6); and dealing with the Council (section 12).

Of note, the Council also referred the Hearing Committee to two occasions in 2009 and 2012 when the Former Licensee received reminder letters from the Council in circumstances where he had failed to notify the Council about an issue the Former Licensee was facing with the Real Estate Council, as well as certain civil judgments that had been obtained against the Former Licensee. The Council submitted that the Former Licensee’s pattern of failing to make required disclosures to the Council mandated in favor of a more significant penalty for the issues addressed at this hearing.

The Council took the position that the Former Licensee’s repeated and serious misstatements to the Council in the licence applications noted above revealed a licensee with no regard for his professional obligations. When that misconduct is considered together with the Former Licensee’s failure to advise the Council about his two bankruptcies, the Council submitted that a significant disciplinary action was appropriate in these circumstances.

The Council also submitted that the Former Licensee’s lack of financial responsibility, as evidenced by his repeated financial issues, combined with his efforts to conceal these matters from the Council, are demonstrative of a licensee who is an ongoing risk to the public. The Council took the position that the issues raised in this matter relate directly to the Former Licensee’s honesty, trustworthiness and competence and the Council asked

the Hearing Committee to recommend a penalty that includes a fine of \$10,000, along with an order prohibiting the Former Licensee from applying to the Council for a further licence for a period of three years from the date of the order.

In support of its position, the Council referred the Hearing Committee to the principles often cited in terms of trying to fashion an appropriate disciplinary penalty as outlined by James T. Casey in his leading text, *Regulation of Professionals in Canada*, along with the comments made by the Financial Services Tribunal in *Financial Services Commission v. Pavicic* (November 22, 2005).

In terms of precedent decisions, the Council relied on two earlier decisions from the Council, *R. Carreno* (March 2019) and *N. Smith* (February 2015). The Council submitted that both decisions could assist the Hearing Committee in terms of setting the penalty, but noted that the allegations against the Former Licensee are much more serious than those in *Smith*, where the licensee received only a \$5,000 fine.

Finally, the Council also asked that the Hearing Committee recommend that the Former Licensee also be required to pay the Council's costs in an amount to be determined in accordance with the Council's Hearing Costs Assessment Schedule.

FINDINGS AND RECOMMENDATIONS OF THE HEARING COMMITTEE

The Hearing Committee has no hesitation in concluding that the Council has met its burden to establish the allegations in the Notice of Hearing against the Former Licensee. The evidence is clear that the Former Licensee failed to notify the Council about his two personal bankruptcies (2017 and 1993). Further, and even more troubling to the Hearing Committee, the Former Licensee, on three different occasions, filed applications with the Council in which he falsely stated that he had never been subject to a bankruptcy proceeding.

The applications submitted to the Council by the Former Licensee expressly required him to declare that the information provided in the applications was *true and complete*. It was also made clear in the applications that the information was to be used by the Council to investigate the Former Licensee's suitability for licensing.

These breaches of the Rules and *Code* by the Former Licensee are very concerning to the Hearing Committee and should be regarded as serious misconduct. It would be very challenging for the Council to carry out its public interest mandate without being able to rely on licensees and applicants to provide truthful and complete information to the Council during the license application process. Further, the Former Licensee was an experienced agent and had been licensed with the Council off and on for almost 35 years. As an experienced licensee, he would certainly have known that he was required to be careful and honest in his applications with the Council as he pursued additional licences.

The Hearing Committee is also troubled by the Former Licensee's conduct during the course of the Council's investigation and this hearing process. Despite being asked to provide information to the Council about his bankruptcies, the Former Licensee has refused to respond to the Council's requests. In the result, the Council has been unable to determine why the Former Licensee most recently filed for bankruptcy in 2017. All that is known to the Council about those events is that the Former Licensee declared over \$2.7 million in liabilities with only \$2,102 of assets. It is the Hearing Committee's view that these facts should raise serious concerns for the Council about the Former Licensee's financial responsibility and reliability.

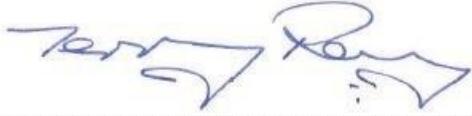
Further, the Hearing Committee also highlights the manner in which the Former Licensee failed to participate in the hearing process *after requesting the hearing* last September. Although the Hearing Committee does not see this as an aggravating factor in terms of the penalty being recommended, it certainly mandates in favour of the Former Licensee being required to pay for the costs of the hearing and it may even cause concerns for the Council about the overall governability of the Former Licensee.

Having reviewed all of the evidence and the authorities that the Council referred us to at the hearing, the Hearing Committee agrees that the *N. Smith* decision is the most helpful in terms of establishing a range of penalty for misconduct of this nature. The Hearing Committee is somewhat reluctant to endorse an approach where a licensee faces a "set penalty amount" for each act of misrepresentation or failure to disclose to the Council, but recommends that the Council consider the totality of a licensee's lack of disclosure and candour in order to establish a penalty that reflects and addresses the global nature of the misconduct. In this instance, even though the Hearing Committee agrees with the Council that the Former Licensee's misconduct is serious, we do not see this as being a case where the maximum fine is necessary to ensure that the Council is fulfilling its public interest mandate. Instead, the Hearing Committee recommends that the Council consider the following penalty:

- a) the Former Licensee be prohibited from applying to the Council for any licence for a period of 24 months from the date of the order;
- b) if the Former Licensee applies for reinstatement after 24 months, there be a period of a further 24 months of supervision from the date of any reinstatement;
- c) the Former Licensee pay a fine in the amount of \$7,500 within 90 days of this order;
- d) as a term and condition of seeking reinstatement, the Former Licensee successfully complete an "Ethics for Insurance Brokers" course through the Insurance Brokers Association of British Columbia, or an equivalent course as acceptable to the Council; and

- e) The Former Licensee pay the reasonable costs of the hearing, as assessed in accordance with the applicable schedule, also payable prior to being reinstated.

Dated in Vancouver, British Columbia, on the **27th day of February, 2020.**

A handwritten signature in blue ink, appearing to read "Terence Ray", written over a horizontal line.

Terence Ray
Chair of Hearing Committee