


In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141
(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and


(the “Nominee”)

and


(the “Agency”)

ORDER

As Council made an intended decision on August 1, 2023, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Nominee and Agency with written reasons and notice of the intended decision dated August 9, 2023; and

As the Nominee and Agency have not requested a hearing of Council’s intended decision within the time period provided by the Act;

Under authority of sections 231, 236, and 241.1 of the Act, Council orders that:

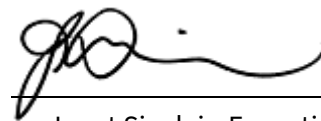
- 1) The Agency be reprimanded;
- 2) The Nominee is required to complete the following courses, or equivalent courses, as acceptable to Council, by April 9, 2024:
 - i. the Council Rules Course for general insurance and adjusters;

- ii. Nominee Responsibilities and Best Practice Course for General Insurance and Adjuster Nominees and Applicants;
- iii. Privacy Compliance: How to Protect Your Brokerage, Part 1 available through the Insurance Brokers Association of BC; and
- iv. Privacy Compliance: How to Protect Your Brokerage, Part 2 available through the Insurance Brokers Association of BC

(collectively, the “Courses”);

- 3) The Agency be assessed Council’s investigation costs in the amount of \$2,500, to be paid by January 10, 2024;
- 4) A condition be imposed on the Nominee’s general insurance agent licence that failure to complete the Courses by April 9, 2024 will result in the automatic suspension of the Nominee’s general insurance agent licence, and the Nominee will not be permitted to complete the Nominee’s 2025 annual licence renewal until such time as the Nominee has complied with the conditions listed herein; and
- 5) A condition be imposed on the Agency’s general insurance licence that failure to pay the investigation costs in full by January 10, 2024 will result in the automatic suspension of the Agency’s general insurance licence, and the Agency will not be permitted to complete the Agency’s 2025 annual licence renewal until such time as the Agency has complied with the conditions listed herein.

This order takes effect on the **12th day of October, 2023**



Janet Sinclair, Executive Director
Insurance Council of British Columbia


INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

("Council")

respecting


("the Nominee")

and


("the Agency")

1. Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Nominee and Agency acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct, and in particular to determine whether the Nominee and Agency breached section 5 ("Competence"), section 7 ("Usual Practice: Dealing with Clients") and section 13 ("Compliance with Governing Legislation and Council Rules") of the Code of Conduct by the Nominee and Agency failing to ensure the proper safekeeping of client files and/or failing to have proper policies or procedures in place regarding proper documentation safekeeping, and for failing to properly supervise the Agency. The Nominee is responsible to Council for all activities of the insurance agency.
2. On May 31, 2023, as part of Council's investigation, a Review Committee (the "Committee") comprised of Council members met via video conference with the Nominee, Agency, and their legal counsel to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee and the Nominee, and legal counsel representing the Nominee and Agency prior to the meeting. A discussion of the investigation report took place at the meeting and the Nominee and their legal counsel were given an opportunity to make submissions and provide further information. Having reviewed the investigation materials and discussed the matter, the Committee prepared a report for Council.
3. The Committee's report, along with the aforementioned investigation report, were reviewed by Council at its August 1, 2023, meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

4. Pursuant to section 237 of the Act, Council must provide written notice to the Nominee and Agency of the action it intends to take under sections 231, 236 and 241.1 of the Act before taking any such action. The Nominee and/or Agency may then accept Council's decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Nominee and Agency.
5. Council has considered the unique circumstances surrounding this matter which have raised protection of privacy issues with respect to anonymizing an Intended Decision and Order. Specifically, Council took into consideration the Act and its purposes, including the Council's public interest mandate and goal of public protection, which is achieved in part through enforcement, informing the public, and educating licensees. Council has also considered the privacy interests of individuals who may be affected by the publication of the Intended Decision, its obligations under the *Freedom of Information and Protection of Privacy Act*, and that this decision is being issued to the relevant party prior to any hearing. Given these factors, the Council has considered it appropriate to anonymize this Intended Decision, and the Order which will result should the Nominee and Agency not request a formal hearing.

FACTS

6. The Agency has held a corporate general insurance licence with the Insurance Council since 1996. The Nominee has maintained an active general insurance licence since 1994 and has been a level 3 general insurance agent since 1996. The Nominee has been the nominee of the Agency from October 12, 1998, to November 5, 1998; January 1, 1999, to July 18, 2001; and from November 26, 2008, to present.
7. On January 17, 2019, Council staff received information from a manager at an insurance company stating that insurance documents ("Insurance Documents") containing personal information from various insurance transactions which belonged to the Agency were discovered by a third party and returned to the insurer.
8. The Insurance Documents were traced back to the Agency by the Agency's broker number which was stamped on the Insurance Documents. The Insurance Documents included photocopies of various insurance forms, credit card payment printouts, and policy declaration documents that contained partial credit card numbers along with the expiry dates and clients' names.

9. The Nominee advised that the Agency does not conduct insurance business outside the Agency and that they are “strictly a walk up business.” The Nominee further clarified that there would be no need for an employee to take photocopies of insurance transactions outside of the office. The Nominee was unsure why the Insurance Documents were taken outside of the Agency.
10. The Nominee stated that the Agency’s documents for the insurer’s transactions are stored in an alarmed, offsite, secure warehouse and the Nominee brings those documents there from the Agency himself. The Nominee reiterated that all the Insurance Documents found by the third party had original copies that were secure in the Agency’s possession and that no documents from this event were missing from the Agency.
11. It is unclear if the insurer notified the Agency directly regarding the discovery of the Insurance Documents. The insurer conducted an investigation of the individual who took the documents outside of the Agency but there was no investigation of the Agency. The Nominee could not recall when he became aware of or first saw the Insurance Documents that were located by a third party.
12. The Nominee did recall providing the insurer with the original paperwork of the transactions found in the Insurance Documents. The Nominee advised that this particular insurer routinely asks the Agency for document retrieval, in which they will request the documents related to a transaction, and the Nominee did not find the request for the documents for these transactions unusual or to be a cause of concern.
13. The Nominee confirmed that he did at some point become aware that the Insurance Documents were found by a third party and given to the insurer. Further, the Nominee confirmed that the Agency did not take any steps to notify any of the clients identified in the Insurance Documents of a potential privacy breach. The Agency did not report the incident to the Agency’s privacy officer or the Office of the Information & Privacy Commissioner (“OIPC”). The Nominee was unable to provide details regarding Agency policies related to handling Agency documents and relating to privacy breaches.

ANALYSIS

14. Council concluded that based on the responses of the Nominee and Agency that there was no evidence provided to demonstrate there were sufficient procedures and policies in the Agency regarding the handling of Agency documents. Council is concerned by the inability of the Nominee to advise of any of the procedures and policies the Agency has regarding privacy

matters and safeguarding client information. The Agency and Nominee have a responsibility to ensure that the client's privacy is protected and that staff at the Agency are aware of the policies for the safekeeping of documents, especially when they contain confidential client information. Council concluded there was insufficient evidence provided to demonstrate that the Agency had any such procedures in place. A nominee of an agency is responsible to Council for the activities of the insurance agency, and in this instance, Council found that the Nominee was responsible for the failure of the Agency in implementing proper procedures regarding the storage of client information.

15. Council was further troubled that the Agency did not take any steps to notify any of the clients that there may have been a potential privacy breach, including failing to advise the OIPC. The Nominee should, as a best practice, be aware of the Agency's obligations under the Personal Information Protection Act and should have known to seek guidance or consult with the OIPC about the potential privacy breach. Council concluded that the Agency did not take any proactive steps to rectify the situation. However, Council is satisfied that the Insurance Documents were returned to the insurer by the third party shortly after the discovery so that there was a low risk of client harm. There did not appear to be any direct client harm as no individuals came forward advising of any issues.
16. The Agency, as a licensed person or entity, is responsible for the actions of its staff and the proper management of the Agency is ultimately the Nominee's responsibility.
17. Council considered the impact of Council Rules 7(6), 7(7), 7(8) and Council's Code of Conduct guidelines on the Nominee and Agency's conduct, including section 5 ("Competence"), section 7 ("Usual Practice: Dealing with Clients") and section 13 ("Compliance with Governing Legislation and Council Rules"). Council concluded that the Nominee and Agency's conduct amounted to breaches of the above Rules and Code of Conduct sections and the professional standards set by the Code.

PRECEDENTS

18. Prior to making its recommendation, Council took into consideration the following precedent cases. While Council recognizes that Council is not bound by precedent and that each matter is decided on its own facts and merits, Council found that these decisions were instructive in terms of providing a range of sanctions for similar types of misconduct.

19. [*Prestige Insurance Services Ltd. DBA Perpetual Insurance Services and Alexander Hamilton Cheung Hin Nam*](#) (May 2020): concerned an agency and its nominee who were investigated following an incident whereby three boxes of insurance business documents were accidentally left behind in a temporary office that the agency had occupied while its usual office was being renovated. The agency and the manager in charge of responding to the incident reacted promptly and responsibly by making immediate efforts to retrieve the documents, cooperating with ICBC, reporting the incident to the Office of the Information and Privacy Commissioner, posting a notice for clients on the agency website, and implementing new procedures to prevent a similar incident in the future. Nevertheless, Council concluded that the mistake had put client information at risk and warranted a reprimand of the agency. Additionally, the nominee was required to complete the Council Rules Course and a privacy course, and the agency was assessed investigative costs.

20. [*Pelling & Associates Insurance Brokers Consultants Inc. and Robert Bradley Pelling*](#) (March 2011): involved an agency where there was insufficient supervision or monitoring of the agency that resulted in a third party being able to obtain confidential information from ICBC's database in an unauthorized manner. Council determined that the nominee had failed to monitor the activities of the agency, particularly as there was a practice within the agency that user IDs and passwords were on sticky notes which could be accessible to anyone. Council determined that there was a breach of the nominee and agency's duty to protect the privacy of clients. Council ordered a fine of \$5,000 against the agency, a fine of \$5,000 against the nominee and assessed investigation costs against the Agency.

MITIGATING AND AGGRAVATING FACTORS

21. Council considered the relevant mitigating and aggravating factors in this matter. The primary mitigating factor was that the Nominee and Agency cooperated with Council's investigation. In terms of aggravating factors, the Nominee did not appear to understand the significance of the potential privacy breach or understand the importance of the Agency's role in creating policies to ensure the safekeeping of Agency records. Additionally, Council determined the Agency failed to take any action once they became aware of the existence of the Insurance Documents and did not remedy the situation by notifying the appropriate individuals or the OIPC, which was considered an aggravating factor.

CONCLUSIONS

22. After weighing all the relevant considerations, Council has determined the Nominee and Agency to be in breach of the Council's Rules and the Code of Conduct and concludes that it is appropriate for the Nominee to complete courses to ensure the Nominee's understanding of their obligations as a nominee of the Agency under the Act and Council Rules and Code. Council concludes that it is appropriate that the Agency be reprimanded. Council noted that the situation in which the documents were obtained was unusual, and further determined that there did not appear to be any client harm, as it appeared there was an unbroken chain of custody for the Insurance Documents. It did not appear that the third party provided the documents to any other parties or used the information in any way that exposed the client information other than returning the documents to the insurer. Council found the [Prestige](#) case to be the most instructive precedent, however, Council noted that there were significantly fewer documents in the Insurance Documents found in this instance than in the [Prestige](#) case which supported the determination in this matter.
23. With respect to investigation costs, Council has determined that these costs should be assessed against the Agency. As a self-funded regulatory body, Council looks to licensees who have engaged in misconduct to bear the costs of their discipline proceedings, so that those costs are not otherwise borne by British Columbia's licensees in general. Council has not identified any reason for not applying this principle in the circumstances.

INTENDED DECISION

24. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision that:
- a. the Agency be reprimanded;
 - b. The Nominee be required to complete the following courses, or equivalent courses as acceptable to Council, within 180 days of Council's order:
 - i. the Council Rules Course for general insurance and adjusters;
 - ii. Nominee Responsibilities and Best Practice Course for General Insurance and Adjuster Nominees and Applicants;
 - iii. Privacy Compliance: How to Protect Your Brokerage, Part 1 available through the Insurance Brokers Association of BC; and
 - iv. Privacy Compliance: How to Protect Your Brokerage, Part 2 available through the Insurance Brokers Association of BC

(collectively, the “Courses”);

- c. The Agency be assessed Council’s investigation costs in the amount of \$2,500, to be paid within 90 days of Council’s order;
 - d. A condition be imposed on the Nominee’s general insurance agent licence that failure to complete the Courses within 180 days will result in the automatic suspension of the Nominee’s general insurance agent licence, and the Nominee will not be permitted to complete the Nominee’s 2025 annual licence renewal until such time as the Nominee has complied with the conditions listed herein; and
 - e. A condition be imposed on the Agency’s general insurance licence that failure to pay the investigation costs in full within 90 days will result in the automatic suspension of the Agency’s general insurance licence, and the Agency will not be permitted to complete the Agency’s 2025 annual licence renewal until such time as the Agency has complied with the conditions listed herein.
25. Subject to the Nominee and/or Agency’s right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

RIGHT TO A HEARING

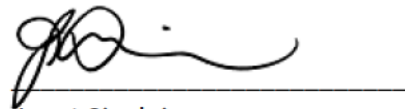
26. If the Nominee and/or Agency wishes to dispute Council’s findings or its intended decision, the Nominee and/or Agency may have legal representation and present a case in a hearing before Council. **Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Nominee and/or Agency must give notice to Council by delivering to its office written notice of this intention within fourteen (14) days of receiving this intended decision.** A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director. If the Nominee and/or Agency does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.
27. Even if this decision is accepted by the Nominee and Agency, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority (“BCFSA”) still has a right of appeal to the Financial Services Tribunal (“FST”). The BCFSA has thirty (30) days to file a Notice of Appeal once Council’s decision takes effect. For more information respecting appeals to the FST, please visit their website at www.bcfst.ca or visit the guide to appeals published on their website at <https://www.bcfst.ca/app/uploads/sites/832/2021/06/guidelines.pdf>.

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August 9, 2023

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Dated in Vancouver, British Columbia, on the **9th day of August, 2023**

For the Insurance Council of British Columbia

A handwritten signature in black ink, appearing to read 'Janet Sinclair', written over a horizontal line.

Janet Sinclair

Executive Director