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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

MICHAEL ANTHONY EDWIN CROWE
(the "Licensee")

and

ADVANTAGE BENEFITS PLUS INC.
(the "Agency")

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee and the Agency to dispute an intended decision of Council dated January 9, 2020 but only with respect to the intended fine against the Agency in the amount of $20,000. The Licensee and the Agency did not dispute the facts set out in the intended decision or the $10,000 fine against the Licensee.

The subject of the hearing was set out in a Notice of Hearing dated February 11, 2020.

A Hearing Committee heard the matter on February 27, 2020 and presented a Report of the Hearing Committee to Council at its April 15, 2020 meeting.

Council considered the report of the Hearing Committee and, as the Licensee and the Agency did not request a hearing of Council's intended decision with respect to the intended fine against the Licensee, made the following order pursuant to sections 231, 236 and 241.1 of the Act:

1. The Licensee is fined $10,000;

2. The Agency is fined $20,000;

3. The Licensee and the Agency are jointly and severally assessed Council's hearing costs in the amount of $3,402.50;

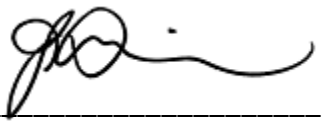
4. A condition is imposed on the Licensee's life and accident and sickness insurance licence that failure to pay the $10,000 fine by July 20, 2020 will result in automatic suspension of the Licensee's licence and the Licensee will not be permitted to complete his 2021 annual filing until such time as the fine is paid in full;

5. A condition is imposed on the Agency's corporate life and accident and sickness insurance licence that failure to pay the $20,000 fine by July 20, 2020 will result in automatic suspension of the Agency's licence and the Agency will not be permitted to complete its 2021 annual filing until such time as the fine is paid in full; and

6. A condition is imposed on the Licensee's life and accident and sickness insurance licence and the Agency's corporate life and accident and sickness insurance licence that failure to pay the hearing costs by July 20, 2020 will result in automatic suspension of both licences and neither the Licensee nor the Agency will be permitted to complete their 2021 annual filing until such time as the hearing costs are paid in full.

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 so the costs are not borne by other members of the industry in general, particularly when, as in this case, the licensees have been entirely unsuccessful and presented essentially no arguments with regard to costs other than they wanted to appeal without using the only available mechanism. Further, Council notes that the Licensee and the Agency accepted the finding of their deliberate actions which amounted to misconduct, requested the hearing knowing they may be subject to costs, and made no argument that the imposition of costs would create a hardship.

This order takes effect on the **21st day of April, 2020.**



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Janet Sinclair, Executive Director
Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

REPORT OF THE HEARING COMMITTEE

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(R.S.B.C. 1996, c. 141)
(the "Act")

and

MICHAEL ANTHONY EDWIN CROWE
(the "Licensee")

and

ADVANTAGE BENEFITS PLUS INC. dba PROVIDENT FIREFIGHTER BENEFIT SERVICES
(the "Agency")

Date:	February 27, 2020 9:00 a.m.	
Before:	Terence Ray Rhonda Spence Gary Barker	Chair Member Member
Location:	Suite 300, 1040 West Georgia Street Vancouver, British Columbia V6E 4H1	
Present:	David McKnight John J. McIntyre Michael Anthony Edwin Crowe Elizabeth J. Allan	Counsel for Council Counsel for the Licensee & Agency In Person Counsel for the Hearing Committee

BACKGROUND AND ISSUES

1. On January 9, 2020, Council issued an intended decision, pursuant to sections 231 and 236 of the Act, to impose discipline against the Licensee and the Agency (collectively, the "Licensees") with respect to allegations that they breached the requirements of Council's Rules and Code of Conduct by purchasing domain names in the name of a competitor in order to redirect consumers to the Agency's website.

2. In accordance with the Act, Council provided the Licensee and the Agency with written reasons and notice of its intended decision. The Licensee and the Agency requested a hearing before Council to dispute the intended decision, as provided for in section 237(3) of the Act, although the request was limited to whether or not the Agency should be fined the amount of $20,000. The Licensee and the Agency accepted all other aspects of the intended decision, specifically the findings of fact and the $10,000 fine to the Licensee and imposition of the related conditions.

3. As set out in the Notice of Hearing issued against the Licensee and the Agency, the purpose of the Hearing was to determine whether Council should do one or more of the following in accordance with sections 231, 236 and 241.1 of the Act:

   a) Fine the Agency an amount not more than $20,000;

   b) Impose conditions on the Agency's corporate life and accident and sickness insurance licence;

   c) Require the Agency and/or the Licensee to pay the costs of Council's investigation and/or of this hearing;

   d) Take any other measures that Council deems appropriate.

4. The Hearing Committee was constituted pursuant to section 223(1) of the Act. This is the written report of the Hearing Committee prepared in accordance with section 223(4).

EVIDENCE

Exhibits

5. The following exhibits were entered at the beginning of the hearing, by consent:

   Exhibit 1 Agreed Statement of Facts

   Exhibit 2 Council's Book of Documents

6. Council provided the Hearing Committee with a written argument and a book of authorities. The Licensees did not provide a written argument or any authorities.

Witnesses

7. Neither Council nor the Licensees called any witnesses in this matter.

Facts

8. The facts of this matter are set out in Exhibit 1 and are informed by Exhibit 2. The Licensee, who has been licensed with Council since 1981, and the Agency, which has been licensed since 1999 (with the Licensee as its nominee), promote a group accident and sickness insurance plan that caters to volunteer fire departments. This product competes with a product offered through another agency, CVIS Inc. doing business as VFIS Insurance Service (collectively, "VFIS"). The Agency and VFIS are competitors in a niche market. Since 2003, the principals of the Agency and VFIS have submitted complaints against each other to Council and have an acrimonious relationship.

9. The Licensee and/or Agency have a previous discipline history with Council with respect to dealings with VFIS:

    a) On September 12, 2012, Council disciplined the Licensee for creating and distributing misleading and inaccurate marketing materials in relation to VFIS products. This resulted in a fine to the Licensee of $10,000, a restriction that the Licensee is prohibited from using any marketing materials in solicitation unless the material is specifically provided to him by the insurance company whose product he is soliciting and investigative costs in the amount of $2,325.50; and

    b) On February 2, 2016, Council disciplined the Licensee and the Agency for using marketing materials that were not approved by the insurance company whose product the Licensee was soliciting. This resulted in a fine of $10,000 each to the Licensee and the Agency as well as investigative costs in the amount of $887.50.

10. There are two points of note in this second instance of discipline related to VFIS. First, Council's investigation of that matter commenced on or about July 14, 2015. Council asserted that this date would become important in the timeline of the matter at hand. Second, in the intended decision leading to the Order of February 2, 2016, Council stated the following, at page 4:

    > *Council found that the Licensee's failure to take the necessary steps to ensure he acted in accordance with his licence condition, particularly since Council's concerns had been made clear to the Licensee in the past, to be an aggravating factor.*
    >
    > *Council concluded that, in light of the Licensee's prior disciplinary history, a significant penalty was appropriate. Council considered whether the Licensee's actions warranted a decision that would find the Licensee either unsuitable to be licensed or, at the very least, licensed under direct supervision, but concluded that the Licensee should be granted one more opportunity to demonstrate that*

he can conduct insurance activities in accordance with his licence condition. However, Council determined the Licensee and the Agency needed to be sent a significant message that this type of conduct will not be accepted.

11. In addition to the above, while not technically discipline, by letter dated October 28, 2013, Council warned the Licensee and reminded him of the conditions on his licence in between the September 2012 and February 2016 penalties. It appears as though there was a breach by the Licensee although apparently it was rectified the following day.

12. In separate discipline, unrelated to marketing misconduct but still generally relevant in terms of progressive discipline, on November 19, 2013, Council fined the Agency $1,000 for acting contrary to Council's errors and omissions insurance requirement.

13. The circumstances which resulted in this hearing relate to the domain names associated with VFIS which it has long owned and operated: www.vfis.com and www.vfiscanada.com. On July 24, 2015, the Licensee purchased and registered to the Agency the domain name www.vfiscanada.ca, and on August 6, 2015, www.vfis.ca (together, the "Domain Names").[1] This was just weeks after Council commenced investigating the discipline which resulted in the order of February 2, 2016. Once purchased, the Licensee adjusted the website setting so that any visitors to those websites were automatically redirected to the Agency's website.

14. Evidently VFIS did not discover the Licensee/Agency's conduct until late 2017 or early January 2018, at which point it notified Council and filed a complaint with the Canadian Internet Registration Authority ("CIRA"). In British Columbia, CIRA uses the British Columbia International Commercial Arbitration Centre ("BCICAC") to resolve such disputes. The Licensee/Agency did not file a response to the complaint and did not participate in the CIRA/BCICAC dispute. On February 27, 2018, the BCICAC issued a decision which concluded that:

    a) The VFIS trademarks were marks in which VFIS has rights before the Licensee/Agency registered the Domain Names and VFIS still has those rights;

    b) The Domain Names were confusingly similar to the VFIS trademarks and internet users would probably conclude they were official domain names that would lead to websites of VFIS business conducted under its trademarks;

[1] As opposed to the .com domain names which were in use by VIFS. Note that Exhibit 1 has these dates reversed. Council pointed this out during the hearing and the source documents in Exhibit 2 confirmed this sequence of events.

c) On the available evidence and inferences that could be drawn from it, the Licensee has no legitimate interest in the Domain Names; and

d) The Licensee, as a competitor to VFIS, registered the Domain Names in bad faith in order to disrupt VFIS' business.

15. It appeared that the Agency took steps to transfer the Domain Names to VFIS following the BCICAC decision at some point in 2018, although it was not clear whether this actually occurred.

16. At some point after June 10, 2018, Council commenced an investigation into the Licensee and the Agency and their use of the Domain Names. On October 5, 2018, Council requested a response from the Licensee by October 26, 2018, which he provided on October 22, 2018. In his response, the Licensee made the following points:

- "The person who brought the complaint against me may be committing an abuse of process, and libel by bringing this to the Insurance Council";
- The meaning and legal significance of the BCICAC terms and findings are limited to the context of a private contractual arrangement;
- He thought that "there was a legitimate business opportunity" to purchase www.vfis.ca after its previous owner, Valley First Insurance Services, let it expire;
- He did not participate in the BCICAC proceedings for "business reasons" and the arbitration which took place was a "default" proceeding based on "a tiny amount of evidence and logical inferences"; and
- To use the BCICAC decision in this manner is unfair, unreasonable and an abuse of process.

17. The following year, on July 17, 2019, Council's Review Committee met with the Licensee and his legal counsel to ask him questions about his use of the Domain Names. Initially, the Licensee stated to the Review Committee that he considered using the Domain Names in general and had not thought specifically about using them against his competitor VFIS. The Licensee further stated to the Review Committee that he considered the possibility of creating a website called "Very Funny Insurance Stories". He stated that he had visitors to those websites directed to the Agency's website because he had not yet had a use for them and felt that they were being wasted. He stated that he did not intend to mislead users. The Licensee subsequently admitted that his intention was to purchase the Domain Names so that VFIS could not use them.

18. On January 9, 2020, Council issued an intended decision in which it determined that:

    a) In purchasing and using the Domain Names to redirect customers to the Agency's website, the Licensees failed to act in good faith and acted in contravention of section 4 of Council's Code of Conduct;

    b) As found in Council's September 2012 decision, the Licensee's actions were clouded by a personal dispute with competitor VFIS such that the Licensees failed to adhere to the requirements of section 9 of Council's Code of Conduct with regard to the usual practice of dealing with other licensees;

    c) The Licensees misled the public in contravention of section 10 of Council's Code of Conduct; and

    d) The Licensees breached Council's Rule 7(8) by failing to comply with the Code of Conduct.

19. In the result, Council made the intended decision noted above, finding that, at page 7:

> *In light of the Licensees' previous history and apparent inability to accept Council's prohibition on misleading marketing practices, Council determined that both the Agency and Licensee should be assessed the maximum fines. Council considered supervision, but did not see this matter as an issue of competency with the Licensee's insurance business and did not feel that imposing a supervisor would be useful in the circumstances.*

20. Again, the Licensee and Agency only dispute this intended decision in so far as it relates to the $20,000 fine assessed against the Agency (and the associated conditions on the Agency's licence).

SUBMISSIONS OF COUNCIL

21. As stated above, Council provided a written submission. As a preliminary point, Council noted that s. 231 of the Act was amended in November 2019 to increase the permissible fines against a licensee or former licensee to not more than $50,000 in the case of a corporation or a partnership, and not more than $25,000 in the case of an individual. As this misconduct took place prior to that time, the maximum possible fine against the Agency as a corporation was $20,000, and $10,000 against the Licensee as an individual (which were the amounts in the intended decision).

22. Council took the position that the Licensee's misconduct in the use of the Domain Names was not an isolated incident and was contrary to Council's direction that he cease and

desist from attempting to discredit his competitor VFIS. By purchasing and utilizing the Domain Names in the manner that they did, the Licensee and Agency failed to act in good faith contrary to the Code of Conduct, Rules and the usual practice of the business of insurance.

23. Council pointed out the timeline of events which was that when the Licensee purchased the Domain Names and registered them to the Agency they were already under investigation for misconduct which resulted in the February 2016 Order. Council submitted that in purchasing and using the Domain Names this was contrary to Council's direction to refrain from acting in a manner to discredit VFIS and deliberately flouted Council's authority.

24. Council provided an outline of sentencing guidelines as enunciated by James T. Casey in his oft-cited text *The Regulation of Professions in Canada*:

> *A number of factors are taken into account in determining how the public might best be protected, including specific deterrence of the member from engaging in further misconduct, general deterrence from other members of the profession, rehabilitation of the offender, punishment of the offender, isolation of the offender, the denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of a profession's ability to properly supervise the conduct of its members, and ensuring that the penalty imposed is not disparate with penalties imposed in other cases.*

25. Council submitted that specific aggravating factors here were that this was not isolated misconduct and was similar to other misconduct, i.e. the principle of progressive discipline. It was evidence that the Licensee and Agency had not responded to Council's previous discipline and demonstrated that they had been rehabilitated.

26. Council directed the Hearing Committee to three previous decisions which applied progressive discipline: In the matter of *Antony Ronald Fransen* (January 3, 2019); In the matter of *Wei Kai (Kevin) Liao* (April 19, 2017); and In the matter of *Pamela Peen Hong Yee* (June 25, 2019). Council noted that *Yee* is currently the subject of an appeal to the Financial Services Tribunal but that the Hearing Committee could still be guided by the decision which considered the licensee's past misconduct as an aggravating factor in determining penalty in the matter before it.

27. Council concluded its submissions by asking for costs of the hearing. As a self-funding regulator, the cost to prosecute the misconduct of a licensee should not be borne by innocent members of the insurance industry, and this is particularly so in the case of repeated misconduct as in the case at hand. While the Licensee and Agency are entitled to challenge the intended decision, there are risks and potential consequences associated

with that challenge, namely costs of the hearing if the Licensees are not ultimately successful.

SUBMISSIONS OF THE LICENSEES

28. The Licensees commenced their submissions by emphasizing the narrow issue at hand and pointing out the limitations of appealing a part of the intended decision under the Act. They stated that they attempted to appeal the $20,000 fine against the Agency by way of letter but as that was not possible they had no choice but to proceed by way of hearing.

29. The Licensees' position was that, based on the principles of progressive discipline, the Agency should be fined $10,000, not $20,000, for its misconduct. The Hearing Committee understood the Licensees to be saying that the misconduct at issue took place in late July and early August 2015, at which time the only prior discipline against the Agency was the $1,000 fine in 2013 for a failure to report to Council that its errors and omissions insurance had expired. The Licensees submitted that the Agency's previous $10,000 fine could not be considered as a basis to impose a higher fine in this case in accordance with the principles of progressive discipline as the conduct occurred concurrently with the conduct which was the subject of the February 2016 Order and $10,000 fine. The offence had already been committed before the Licensee, on behalf of the Agency, was asked to attend the Review Committee meeting in that matter. On that basis the fine against the Agency in this case should be the same as the fine against the Agency which was imposed in 2016.

30. The Licensees did not present any authorities on the principles of progressive discipline or in support of their position that, absent progressive discipline, a $10,000 fine to the Agency was supported in the circumstances.

31. The Licensees' submissions on costs echoed their opening submissions which was that they requested the hearing reluctantly and if there was another mechanism by which they could address this narrow issue they would have. On this basis they asked that no costs be awarded against them.

32. In reply Council stated that it was a finding of fact that the Licensees were not disputing that the Agency purchased the websites so that its competitor could not use them and that in terms of progressive discipline Council is entitled to take a retrospective view.

FINDINGS OF THE HEARING COMMITTEE

33. The Licensees made it clear that they are not disputing any of the facts or findings in the intended decision of January 9, 2020 and are only disputing the amount of the fine as against the Agency. Some of the significant facts and findings are as follows, at page 3:

The Licensee was unclear with respect to his intentions in purchasing the Domain Names. Initially he stated that he considered using the Domain Names generally and had not thought specifically about using them against his competitor. He mentioned the possibility of creating a website called "Very Funny Insurance Stories".

The Licensee subsequently admitted that his intention was to purchase the Domain Names so that his competitor could not use them…He stated that he subsequently forgot about them after purchase. He stated that he had the Domain Names redirect to the Agency website because he did not yet have a use for them and he felt that they were being wasted. The Licensee stated that he did not intend to mislead users…

34. At page 5:

Council considered the actions of the Licensees and the Licensee's submissions and determined that, in light of the significant discipline history, the Licensee should be aware that he and the Agency must not act in a way which may mislead the public. Council was concerned that the use of the Domain Names could cause members of the public to be misled…the Licensee again utilized misleading marketing practices, this time through the practice of deliberately redirecting consumers to the Agency.

…Council concluded that the Licensee's actions were clouded by a personal dispute with his competitor.

35. At page 6:

In consideration of all the circumstances, Council determined that the Licensees:

- *failed to act in good faith in contravention of section 4 of the Code of Conduct;*
- *failed to adhere to the requirements of section 9 of the Code of Conduct with regard to the usual practice of dealing with other licensees;*
- *misled the public in contravention of section 10 of the Code of Conduct; and*
- *breached Council Rule 7(8) by failing to comply with the Code of Conduct.*

Of note, pursuant to Council Rule 7(6), the Licensee was, and is, responsible to Council for all activities of the Agency.

36. The Hearing Committee is very troubled by the conduct of the Licensee and the Agency. Both have displayed a deliberate and flagrant disregard for Council's Rules, Code of Conduct and guidance on acceptable insurance practices. From the beginning of the complaint and through the meeting with the Review Committee, the Licensee and Agency have attempted to minimize their misconduct and, worst of all, were untruthful with their intent behind the purchase and use of the Domain Names. Their actions were in direct violation of Council's Rules and Code of Conduct and specific guidance given by Council with respect to marketing practices.

37. Before turning to the principles of progressive discipline as outlined by Council, the Hearing Committee considered whether there was a basis for penalizing the Agency with a fine of $20,000 without consideration of those aggravating factors. The Hearing Committee determined that there was such a basis. Like Council in the intended decision, the Hearing Committee concluded that a significant penalty against the Agency was appropriate given that the Agency did not dispute the factual finding that it misled the public. Further, it was aware of Council's guidance on acceptable marketing practices and made the deliberate decision to purchase the Domain Names and direct traffic to the Agency's website which it knew or ought to have known was in contravention of Council's Rules and Code of Conduct. This was not a case of misunderstanding or where there was a grey area in terms of right and wrong.

38. The Hearing Committee did not accept the submissions of the Licensees that this conduct is somehow less egregious than the Licensee and the Agency breaching conditions on the Licensee's licence that he not distribute marketing material without permission of the insurance company which product he is soliciting. The Hearing Committee found that this misconduct is more egregious than distributing marketing material to a specific person or categories of persons due to the potential to mislead any member of the public who was searching on the internet attempting to find information about the product. This conduct is not, as submitted by the Licensees, a simple act of registering a website. It was much more than that.

39. Applying the factors identified in *The Regulation of Professions in Canada*, the Hearing Committee found that the factors of specific and general deterrence, punishment of the offender, denunciation of the conduct and the need to maintain the public's confidence were the most applicable and could only be achieved in these circumstances with the imposition of the maximum available fine against the Agency.

40. Further, there were no apparent mitigating factors. The Agency has been licensed with Council for over 20 years. It received warnings about misconduct and guidance from Council on expected marketing practices so there was no room for miscommunication or misunderstanding of applicable standards. The Agency did not initially admit its misconduct. Indeed, the Licensee and Agency rejected the premise of the BCICAC decision

and, later still, spun a story, after receiving advice from legal counsel, that the Licensee was considering a website of "Very Funny Insurance Stories". This was not true and did not treat Council's investigative process with respect.

41. Even without considering the aggravating factor of progressive discipline, Council was confident that a $20,000 fine against the Agency was appropriate in the circumstances.

42. The Hearing Committee appreciated the case law provided by Council on the issue of progressive discipline. *Yee* in particular provided the following commentary which the Hearing Committee found apt, at page 24:

> *It is the view of the Hearing Committee that in addition to Council's over-arching mandate to ensure the protection of the public, the key factor in terms of assessing a disciplinary penalty in this matter is specific deterrence; that is, ensuring that the Licensee does not commit further misconduct in the future and that the public is protected from future misconduct by the Licensee.*
>
> *…*
>
> *Further, the Hearing Committee is particularly troubled by the fact that the Licensee has previously been subject to discipline on a number of occasions in the past. The Hearing Committee believes that the principles of progressive discipline are also important in this matter with respect to determining the appropriate penalty. This is the third occasion on which the Licensee has come before Council on disciplinary matters. In 2013, the Licensee was disciplined for failing to maintain errors and omissions insurance, as required by the Rules…*
>
> *…It would appear to the Hearing Committee that the Licensee had not taken the steps that one would have expected in order for her to avoid future disciplinary issues.*

43. The Licensee may or may not have been aware of the investigation leading to the February 2016 Order when he caused the Agency to register the Domain Names. This was unclear on the evidence presented and the Licensee was not sworn in to give further evidence on this matter; however, for the Hearing Committee, nothing turned on this. It appeared as though the Agency attempted to deliver ownership of the Domain Names to VFIS after the BCICAC decision, but again, the timeline and outcome of these steps were not clear. The important fact which was not in dispute was that the Agency continued to own the Domain Names and direct traffic away from VFIS long after February 2016. The Hearing Committee is of the view that the principle of progressive discipline clearly applies, if not because of the time of purchase of the Domain Names, because of the

ongoing misconduct which is subject to discipline after the February 2016 Order was made. There is also the consideration of the previous $1,000 fine against the Agency.

44. Council suggested that the Licensee and Agency ought to have come forward during the investigation that resulted in the February 2016 Order and put Council (and VFIS) on notice that the Agency had registered the Domain Names and directed traffic to the Agency's own website. That would have been the most prudent course of action but at the very least Council would expect the Agency to cease its misconduct in light of yet more discipline from Council on this issue. The Hearing Committee does not accept that the Licensees forgot that the Agency owned the Domain Names of a competitor against which it had waged a years-long campaign. The Agency had many opportunities to rectify the misconduct. It did not.

45. In short, the application of progressive discipline is justified on the basis of the condition on the Licensee's licence following the September 2012 Order (and the October 2013 warning), the November 2013 Order against the Agency, as well as the ongoing misconduct of the Agency from and after the February 2016 Order against the Agency.

46. The Hearing Committee could find no legal or factual basis to impose a penalty against the Agency for less than $20,000. Council must demand more from its licensees than the conduct exhibited by the Agency and needs to send a message to the industry that doing anything which has the potential to mislead the public, let alone actually misleads the public, and which disrespects the investigative and remedial authority of Council will not be tolerated. All licensees must follow the letter, and respect the spirit, of Council's orders and directions and treat all other licensees in accordance with Council's Code of Conduct.

47. Finally, although not addressed by either side, the Hearing Committee considered whether a fine of $20,000 against the Agency was punitive in light of the fact that the Licensee was the nominee and apparently the only representative of the Agency, and duplicative of the fine already imposed. The Hearing Committee was satisfied that it was not punitive or duplicative. It was the Agency which held registration to the Domain Names and directed traffic to the Agency's website. It was not the case where the misconduct of one actor was one and the same as the misconduct of another. The Act provides for a fine against the licensee and agency at the same time and the Hearing Committee finds that this is appropriate in these circumstances.

RECOMMENDATIONS OF THE HEARING COMMITTEE

Penalty

48. The Hearing Committee recommends that Council consider the following penalty:

a) Fine the Agency $20,000; and

b) Impose a condition on the Agency's corporate life and accident sickness insurance licence that failure to pay the fine within 90 days of Council's order will result in automatic suspension of the Agency's licence and the Agency will not be permitted to complete any annual filing until such time as the fine is paid in full.

49. The Hearing Committee understood the Agency to accept that with a fine of any amount to the Agency there should be the condition set out at (b) on the Agency's licence.

Costs

50. The Hearing Committee considered the Licensees' argument that there was no other mechanism by which it could pursue a narrow appeal and by the act of requesting a hearing the Licensee/Agency was subject to the minimum costs in accordance with the Schedule unless the Hearing Committee exercised its discretion not to award costs against it.

51. The Hearing Committee operates within a legislative scheme and from precedent where a potential award of costs is part of requesting a hearing of the issues of an intended decision. Section 241.1 of the Act states (as it was at the time of the misconduct)[2]:

Assessment of costs

241.1(1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, of either or both of the following in accordance with the regulations:
(a) an investigation;
(b) a hearing.

(2) Costs assessed under subsection (1)
(a) must not exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and
(b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing...

[2] Section 241.1 of the Act was amended in January 2020.

52. The Licensees were entirely unsuccessful in this hearing where the Licensee and Agency accepted the finding of their deliberate actions which amounted to misconduct. There are costs to Council in holding a hearing and the Licensees requested the hearing knowing that they may be subject to costs. The members of the industry should not have to bear the costs of this hearing, particularly when the Licensees have been entirely unsuccessful and presented essentially no arguments on the basis which the Hearing Committee should exercise its discretion other than the Licensees wanted to appeal without using the only available mechanism. There was no argument made that the imposition of costs would create a hardship and, indeed, due to the narrow scope of the hearing and the fact that it completed in under 2.5 hours, any costs would be at the lowest end of the scale. The Hearing Committee also noted that Council was not seeking its investigative costs, as it was also permitted to do.

53. The Hearing Committee is recommending that Council should receive its costs of the hearing, in an amount to be determined. While it is possible where there may be similar cases in the future where the Hearing Committee elects not to recommend costs, in this case the Hearing Committee is exercising its discretion in making such a recommendation. Costs should be joint and several against the Licensee and the Agency, payable by a date to be determined by Council.

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

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Terence Ray, Chair of Hearing Committee
Insurance Council of British Columbia