

In the Matter of

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

and

The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
(“Council”)

and

MIODRAG SUBIN
(the “Licensee”)

ORDER

As Council made an intended decision on March 8, 2016, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated March 31, 2016; and

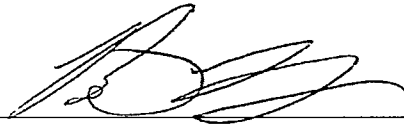
As the Licensee has not requested a hearing of Council’s intended decision within the time period provided by the Act;

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

1. A condition is imposed on the Licensee’s general insurance licence that, without the express knowledge and consent of the nominee of any insurance agency the Licensee is authorized to represent, the Licensee must not remove from the agency’s office any information about the agency’s clients.
2. The Licensee is fined \$2,500.00.
3. The Licensee is assessed Council’s investigative costs of \$1,000.00.

4. A condition is imposed on the Licensee's general insurance licence that requires him to pay the above-ordered fine and investigative costs no later than **July 19, 2016**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's general insurance licence is suspended as of **July 20, 2016**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

This order takes effect on the **19th day of April, 2016**.



Brett Thibault
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA (“Council”)

respecting

MIODRAG SUBIN (the “Licensee”)

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee acted in compliance with the requirements of the Act.

As part of Council’s investigation, on February 10, 2016, a Review Committee (the “Committee”) met with the Licensee via teleconference to discuss allegations that the Licensee had taken confidential information related to clients from an insurance agency he had formerly been authorized to represent, and kept the information in his possession on a flash drive.

The Committee was comprised of one voting member and two non-voting members of Council. Prior to the Committee’s meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting, and the Licensee was provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Committee prepared a report of its meeting for Council.

The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its March 8, 2016 meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Licensee 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 Licensee.

FACTS

The Licensee has been licensed as a Level 2 general insurance agent for more than 12 years. He held an authority to represent an agency (the "Agency") from May 2015 to September 2015. Previously, he was authorized to represent a different agency (the "Previous Agency") as a Level 3 general insurance agent from 2010 to 2013.

While working at the Agency, the Licensee had in his possession a flash drive containing confidential information related to insurance transactions for 136 customers he had serviced when he was employed at the Previous Agency. The Licensee retained the customers' information after his departure from the Previous Agency.

Previous Agency Dispute

The Previous Agency office was in an isolated location. The Licensee met with clients in various locations, and needed to take client files, or portions of files, with him to these meetings. The Licensee kept this client information on his laptop, which was password-protected.

The Licensee advised that his contract with the Previous Agency provided that he would become an owner following a two-year probation period. The contract also included a non-compete clause. When things did not go as planned with the Previous Agency after he completed his probation period, the Licensee considered legal action to retain the book of business he had developed. In preparation for this, the Licensee compiled a list of clients, along with their personal information, from information stored on his laptop, and put it all onto the flash drive. The client information included banking details, policies, and notes related to client files.

The Licensee stated that he stored the flash drive in a safe at his home. The Licensee submitted that he subsequently decided not to proceed with the lawsuit, and forgot about the flash drive. Once the information was copied from the laptop it was wiped clean, and subsequently destroyed.

The Licensee acknowledged that he did not obtain consent from the Previous Agency, or the clients whose information was stored on the flash drive, to copy and retain the information.

The Agency

After leaving the Previous Agency, the Licensee left the insurance industry for a period of time. After the Licensee returned to the insurance industry and began representing the Agency, he remembered the flash drive with the client information from the Previous Agency.

The Licensee brought the flash drive into the Agency on a Friday, and left it in a computer at the Agency. He stated that he had intended to talk to the Agency's legal department regarding the use of or proper disposal of the information. He did not work again until the following Tuesday. In the intervening period, the Agency found the flash drive and notified Council.

ANALYSIS

Council determined that the Licensee's compilation, retention, and storage of confidential client information, without the knowledge and consent of either the Previous Agency or the clients, was contrary to the usual practice of the business of insurance.

While the Licensee's intention in copying the clients' information may have been to pursue litigation against the Previous Agency, Council found that this did not justify the Licensee's actions. Council found that the Licensee's actions were made worse by the fact that he stored the clients' information on a memory stick that was not password-protected.

Council found that the Licensee's belief that he was entitled to the book of business under his contract of employment with the Previous Agency did not justify his actions. Council determined that the Licensee was not acting at the request or with the knowledge of the clients, and he failed to consider the need for their consent or that of the Previous Agency. Council held that the Licensee's behavior was extremely inappropriate, particularly for a licensee with his amount of experience.

Council determined that the initial retention of the Previous Agency's client information was in itself troubling. The Licensee's actions were aggravated by the fact that the information was kept on an unsecured memory stick and then subsequently left unsecured at the Agency, where it was discovered and copied. Although the Licensee is experienced, his behavior suggested that he failed to appreciate the importance of proper practices, particularly regarding the retention and storage of client information.

Council considered two prior cases involving the unauthorized transfer of client information between agencies, as well as one case involving the negligent storage and disposal of client information.

In *T. Cantin*, a licensee released client information to a former supervisor at the supervisor's request. Council accepted that the licensee had mistakenly assumed that the required authorization from the client had been secured. The licensee was restricted to holding a Level 1 general insurance salesperson licence for 12 months, fined \$1,000.00, and assessed Council's investigative costs. Although this was not a case involving access of the Insurance Corporation of British Columbia ("ICBC") database, Council required the licensee to complete the ICBC Privacy Please course, as this was this licensee's primary area of business.

In *S. Egan*, Council found that a licensee had intentionally requested that a former colleague provide her with confidential renewal premium and insurer information on a client's insurance coverage that had been placed by the licensee's former agency. Council determined that the licensee's reason for requesting the information was to impress her new employer and secure new business. Council held that in the course of requesting this information, the licensee unintentionally disclosed private information about the client's insurance risk to the former colleague. The licensee was restricted to representing her current employer, who was also addressing her conduct; was fined \$2,500.00; and was assessed Council's investigative costs.

In *G. Yeung*, the licensee was fined \$1,000.00 after he mistakenly placed insurance records containing confidential client information in the recycling bin of his residential condominium building. Council accepted that the licensee did not intentionally dispose of the documents in an inappropriate manner. Nonetheless, he acted negligently, and failed to demonstrate sufficient competence.

Council determined that a fine should be imposed to address deterrence principles, and send a message to the industry regarding the importance of protecting the privacy of client information. Council took into consideration the fact that the client information does not appear to have been used for any purpose, and was accessed only by the Agency for the purpose of providing evidence of its existence to Council. Council determined that a fine of \$2,500.00 and the assessment of investigative costs was appropriate to address the Licensee's improper retention and storage of confidential client information.

Council determined that the Licensee's lack of appreciation regarding the proper handling of client information brought into question his competency, and concluded that he ought to be subject to oversight regarding his handling of client information. Council found that a condition should be placed on his licence, prohibiting the Licensee from removing client information from any agency he represents without first obtaining the consent of the nominee.

INTENDED DECISION

Pursuant to sections 231, 236, and 241.1 of the Act, Council made an intended decision to:

1. Impose a condition on the Licensee's general insurance licence that prohibits him from removing client information from an agency he has the authority to represent without the express knowledge and consent of the nominee.
2. Fine the Licensee \$2,500.00.
3. Assess the Licensee Council's investigative costs of \$1,000.00.

The Licensee is advised that should the intended decision become final, the fine and investigative costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the fine and investigative costs within the 90 days will result in the automatic suspension of the Licensee's general insurance licence, and the Licensee will not be permitted to complete any annual filing until such time as the fine and investigative costs are paid in full.

The intended decision will take effect on **April 19, 2016**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention by **April 18, 2016**. 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 Licensee does not request a hearing by **April 18, 2016**, the intended decision of Council will take effect.

Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 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 fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464

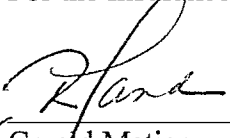
Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

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Dated in Vancouver, British Columbia, on the **31st day of March, 2016.**

For the Insurance Council of British Columbia

per 

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GM/gh