

In the Matter of

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

and

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

and

**A C & D INSURANCE SERVICES LTD.
(the “Agency”)**

and

**JOSEPH EDWARD STONEHOUSE
(the “Nominee”)**

ORDER

As Council made an intended decision on February 9, 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 Agency and the Nominee with written reasons and notice of the intended decision dated March 11, 2016; and

As the Agency and the Nominee 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:

1. The Nominee is reprimanded.
2. The Agency is fined \$5,000.00.
3. The Agency is assessed Council’s investigative costs of \$1,900.00.

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4. A condition is imposed on the Agency's general insurance licence that requires it to pay the above-ordered fine and investigative costs no later than **June 30, 2016**. If the Agency does not pay the ordered fine and investigative costs in full by this date, the Agency's general insurance licence is suspended as of **July 4, 2016**, without further action from Council and the Agency 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 **30th day of March, 2016**.



Brett Thibault
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

A C & D INSURANCE SERVICES LTD.
(the “Agency”)

and

JOSEPH EDWARD STONEHOUSE
(the “Nominee”)

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

As part of Council’s investigation, on December 7, 2015, a Review Committee (the “Committee”) met with the Nominee and an administrator for the Agency (the “Administrator”) to discuss allegations that the Agency improperly shared client information, and failed to notify clients of its intent to withdraw services, contrary to the usual practice of the business of insurance.

The Committee was comprised of one voting member and two non-voting members of Council. Prior to the Committee’s meeting with the Nominee and the Administrator, an investigation report was distributed to the Committee and the Nominee for review. A discussion of this report took place at the meeting, and the Nominee was provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Nominee, 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 February 9, 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 Agency and the Nominee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Agency and the Nominee 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 Agency and the Nominee.

FACTS

The Agency has held a general insurance licence in British Columbia since January 2003. The Nominee has been licensed in British Columbia since 1982; he currently holds a Level 3 general insurance agent licence, and is the nominee for the Agency.

In 2013, three licensees of the Agency, all of whom were Level 2 general insurance agents (the “Producers”), departed the Agency and began working at a new agency (the “New Agency”).

In July 2013, two of the Producers gave the Agency written notices of resignation, and, by October 21, 2013, the two began working at the New Agency. After resigning from the Agency, the two Producers were permitted to maintain their authority to represent (“ATR”) the Agency until December 23, 2014.

In September 2013, the third Producer gave his resignation notice to the Agency, and by December 19, 2013, he began representing the New Agency. The third Producer maintained an ATR with the Agency until March 25, 2014.

The Producers were permitted to maintain an ATR with the Agency in order to assist in the transitioning of certain Agency clients to the New Agency, which included being able to speak with insurers and underwriters on behalf of the Agency.

The Agency had entered into employment contracts with the Producers. The employment contracts included a provision that permitted the Producers to attempt to transition certain Agency clients to another agency, while prohibiting the Agency from contacting the same clients to inform them that the Producers were no longer acting on behalf of the Agency. This “no communication” provision was intended to prohibit the Agency from soliciting what were considered to be the Producers’ clients.

The Agency has used a similar contractual provision with other producers but, in the past, in similar situations, it has sent letters to clients in order to advise them of the departure of a producer. In this instance, the Producers were adamant that “their” clients should not be advised of their departure from the Agency, or be contacted by the Agency in any way. The Producers advised the Agency that they would contact the affected clients and provide them with a letter of administration (“LOA”) to facilitate moving their insurance business to the New Agency. The LOA would also allow the Producers to notify the insurer.

To abide by the terms of the contract with its Producers, the Agency chose not to contact the Producers’ clients, which resulted in some clients not being notified of the upcoming renewal of their insurance, or the Agency’s intention to not facilitate renewal of their insurance coverage, in a timely manner.

Prior to leaving the Agency, the Producers were provided with renewal lists. Throughout the process of transitioning Agency clients, the Agency also permitted the Producers to copy client records in order to take client information to the New Agency. In all cases, the Agency failed to request or obtain the clients' consent. In total, approximately 2,000 Agency client files were involved.

During this process, the Producers left some client renewals to the last minute, requiring the Agency to retain the existing policy to ensure the client had continuous coverage. Eventually, the Agency recognized that the transition of its clients to the New Agency was creating liability exposure for the Agency. By December 2014, the Agency concluded it could no longer abide by the "no communication" provision, and started contacting clients within 30 days of the expiration of their policy to tell them that the Producers were now handling their insurance, not the Agency. Despite the late notification, no clients were left uninsured.

ANALYSIS

Council found that the Agency and the Nominee failed to recognize that their foremost obligation was to their clients. Council determined that the "no communication" clause that the Agency entered into with its Producers was inappropriate. Council found that the clients were the responsibility of the Agency, not the Producers, and the Agency cannot contract out of its statutory obligations to its clients in such a manner.

The Agency was obligated, as long as it was the agent of record, to ensure that its clients' insurance needs were being properly addressed, including providing proper and timely notification of the expiration of insurance coverage. Council found that the Agency and the Nominee failed to ensure the clients' best interests were addressed.

Council found the Agency and the Nominee failed to take appropriate steps to ensure their clients were provided adequate notification that their insurance business was being moved to the New Agency. Instead, the Agency left all procedural aspects to the Producers. As the Producers still retained an ATR with the Agency, even after giving their notices of resignation, the Agency and the Nominee had a responsibility to ensure the Producers were acting in a competent manner, and in accordance with the usual practice of the business of insurance. Council found the Agency and the Nominee failed to do this.

Council was cognizant that the Agency and the Nominee were attempting to abide by a contractual provision with the Producers, but concluded that this did not mitigate their responsibilities to their clients.

Council also found that the Agency and the Nominee failed to properly recognize the issue of client confidentiality. The Agency and the Nominee allowed for the transfer of client information to the New Agency without the clients' consent. Council found no evidence to suggest the Agency or the Nominee gave any consideration to ensuring their clients' confidentiality was properly protected.

Council determined that the Agency's actions breached the confidentiality of the clients whose information was taken by the Producers to the New Agency. Council also found the Agency failed to act in a competent manner and in accordance with the usual practice by ensuring the clients' insurance needs were properly addressed.

As the Nominee is ultimately responsible for the Agency's operations, Council determined that the Nominee was also at fault for the breach of client confidentiality, and the Agency's failure to act in accordance with the usual practice of the business of insurance.

INTENDED DECISION

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

1. Reprimand the Nominee.
2. Fine the Agency \$5,000.00.
3. Assess the Agency Council's investigative costs of \$1,900.00.

The Agency 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 agency's general insurance licence and the Agency 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 **March 30, 2016**, subject to the Agency's and the Nominee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Agency and/or the Nominee wishes to dispute Council's findings or its intended decision, the Agency and/or the Nominee 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 Agency and/or the Nominee must give notice to Council by delivering to its office written notice of this intention by **March 29, 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 Agency and/or the Nominee does not request a hearing by **March 29, 2016**, the intended decision of Council will take effect.

Intended Decision

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Even if this decision is accepted by the Agency and the Nominee, 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

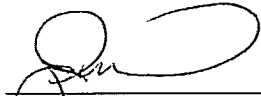
Reception: 250-387-3464

Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **11th day of March, 2016.**

For the Insurance Council of British Columbia



Gerald Matier

Executive Director

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