

In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

RICHARD (RICK) BEN TRIEMSTRA
(the “Licensee”)

ORDER

As Council made an intended decision on June 18, 2024, 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 June 27, 2024; 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 that:

- 1) The Licensee is reprimanded;
- 2) The Licensee is required to complete the following courses, or equivalent courses, as acceptable to Council, by October 16, 2024:
 - i. How to Complete Commercial Lines Applications available through the Insurance Brokers Association of British Columbia; and
 - ii. D&O for Private Companies available through the Insurance Institute (collectively, the “Courses”);
- 3) The Licensee is assessed Council’s investigation costs in the amount of \$1,437.50, to be paid by October 16, 2024; and

Order

Richard (Rick) Ben Triemstra

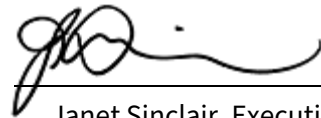
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- 4) A condition is imposed on the Licensee's general insurance licence that failure to pay the investigation costs in full and failure to complete the Courses by October 16, 2024, will result in the automatic suspension of the Licensee's licence, and that the Licensee will not be permitted to complete their 2026 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.

This order takes effect on the **18th day of July, 2024**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

RICHARD (RICK) BEN TRIEMSTRA

(the “Licensee”)

1. 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, Council Rules, and Code of Conduct relating to allegations that the Licensee failed to conduct an adequate fact-finding and assessment of a client’s insurance needs and failed to deal with a client according to the usual practice.
2. On April 17, 2024, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee and the Licensee prior to the meeting. A discussion of the investigation report took place at the meeting and the Licensee was given an opportunity to make submissions and provide further information. Having reviewed the investigation materials and after discussing 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 June 18, 2024, 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 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

5. The Licensee was licensed as a Level 1 general salesperson, from December 21, 1987, to March 20, 1990, with an authority to represent an Agency (the “Agency”). The Licensee has been a Level 3 general Insurance agent and the nominee of the Agency from March 20, 1990, to July 31, 2015, and from August 20, 2015, to the present. The Licensee was not licensed from July 31, 2015, to August 19, 2015.
6. On February 8, 2023, Council staff received a complaint from AW (the “Complainant”), the Director of ABC Company (“ABC”). ABC is an online marketing company that purchased a media professionals commercial general liability policy (“CGL”), and an errors and omissions policy (collectively the “Policy”) on March 9, 2022, from the Licensee. The Policy was placed with an insurer through a managing underwriting agency (“MGA”).
7. The Complainant claims that they did not have knowledge about the insurance coverage required for company directors and that the Licensee did not provide adequate advice regarding the necessary coverages for legal defence costs. ABC was subsequently involved in two wrongful termination civil claims, and the Complainant was unaware that the Policy purchased did not include coverage thereby leaving the Complainant to pay for the legal costs of defending the claims.
8. On February 16, 2022, the Complainant contacted the Licensee after receiving a referral from a third party. The Complainant requested the Licensee provide an insurance quote for a commercial lease premise as the Complainant intended to move into the office by February 19, 2022, and was required to have insurance in place.
9. On February 17, 2022, the Licensee advised the Complainant that he was unsure if he would be able to have a policy in place considering the short notice and inquired if the Complainant had received any quotes anywhere else.
10. The Licensee was in communication with the Complainant until early March 2022 to conduct fact finding of the Complainant’s needs. Various information was collected relating to the nature of ABC’s business, the number of employees, revenue expectations, property coverages, any revenues from other countries, and if ABC required subcontractors to carry their own insurance.
11. The Licensee stated that ABC was a small, new venture, and that he never met the Complainant face to face. As a result of COVID-19, all communication was done either by email or phone. The Complainant’s initial inquiry and request was for liability coverage as required by the landlord for their rented space, so the Licensee focused on the commercial general liability coverage. The Licensee

advised that he drove by the property location so that he would have a better sense of the coverage needed.

12. On March 8, 2022, the MGA emailed the Licensee a quotation for a Media Professionals Package for the Complainant, along with the quotation was a page from the MGA that listed additional coverages available which included Directors & Officers coverage and Employment Practices Liability coverage. That same day, an agent of the Agency sent the Complainant an email providing the quotation, however, the page relating to additional coverages was not included in the information sent to the Complainant. The Licensee advised he was out of the office when this correspondence was sent.
13. The Policy, providing CGL and E & O coverages, was issued in favour of ABC, effective March 9, 2022. The policy lapsed on March 9, 2023, as ABC did not provide any instructions for renewal.
14. ABC was involved in two wrongful dismissal civil claims, in which no coverage under the Policy was offered.
15. ABC was involved in a separate civil claim brought by ABC's former client for breach of contract and misrepresentation. The MGA determined through an external adjuster that the various claims made in the civil claim were not likely covered under the Policy due to the various exclusion clauses. However, it was acknowledged that there was a duty to defend the Complainant, as a defendant in the civil claim, as per the defence obligations in the Policy. As most of the claims would not be covered by the Policy, there was a proposal that the underwriters would agree to cover a portion of the Complainant's legal costs to defend the claim.
16. During Council's investigation, on June 16, 2023, the Licensee inquired with the MGA whether coverage for wrongful dismissal would have been available to the Complainant when the original quote was provided in March 2022. The MGA advised that wrongful dismissal coverage would have been available under employment practices liability coverage.
17. Council noted that employment practices liability coverage as well as directors' and officers' coverage were included in the additional coverages page sent to the Licensee on March 8, 2022, by the MGA. However, that page of additional coverages available, including the employment practices liability coverage, was not sent to the Complainant in the quotation provided on that same day, March 8, 2022.
18. The Licensee stated that, as a small agency, they have limited options for providing quotes from different sources for commercial policies. The Licensee provided and met the Complainant's requirements for insurance which was a commercial general liability policy as per ABC's lease.

ANALYSIS

19. Council determined that the Licensee in this transaction did not meet the level of skill consistent with the usual practice of the business of insurance. Council acknowledges that the Licensee admitted that he was not entirely familiar with commercial insurance and did not meet the insurance needs of the Complainant for the terms of the Complainant's lease. However, Council has concerns about the Licensee's conduct as the MGA had provided the Licensee with a page of additional coverage available, and Council questioned why the Licensee did not provide the Complainant with those additional coverages for the Complainant's consideration. Council determined that as the MGA provided additional coverage available to the Complainant's business, the Licensee had an obligation to disclose all material information to the Complainant including those additional coverages, for the Complainant to make a fully informed decision. Although each insurance transaction is unique, Council determined that the additional coverage was relevant to the Complainant's insurance needs and that a reasonable licensee would have disclosed that information in the same circumstances. The Licensee in this instance, did not meet the requirements of usual practice when dealing with clients or the level of knowledge required for this transaction. If a licensee does not feel they are able to meet the knowledge and skill required for an insurance transaction, they should be cautious of performing insurance services beyond their level of competence.
20. Council has concluded that the Licensee likely did not intend to act contrary to the usual practice and that the Licensee's inexperience in commercial insurance probably contributed to this incident. As a result, Council concluded that the Licensee's misconduct amounted to breaches of Code of Conduct section 5 ("Competence") and section 7 ("Usual Practice: Dealing with Clients").

PRECEDENTS

21. Council took into consideration the following precedent cases. While Council is not bound by precedent and each matter is decided on its own facts and merits, Council found that these decisions were instructive in providing a range of sanctions for similar types of misconduct.
22. [*Derrick Stephen Dar*](#) (March 2016) involved a level 2 general insurance agent who was approached by a realtor to provide insurance coverage on a rental dwelling owned by the realtor's clients. The licensee made a quote based on the information provided by the realtor. The policy was issued at the beginning of 2008, at the request of the realtor who was also the property manager for the dwelling. In 2012, the licensee moved the insurance coverage to a different insurer. About four months later a fire occurred at the dwelling. In the rental dwelling declaration, it was noted six people were living in the dwelling. The insurer voided the policy on the basis that the policy was misrepresented to them as a single-family occupancy. A lawsuit was commenced against the insurer, the agency and the licensee

which was settled through the agency's errors and omissions insurance. Council found that the licensee was unable to produce file notes, or that the licensee completed rental dwelling questions, or that the licensee did any meaningful follow up regarding the client's insurance needs. Council reprimanded the licensee and required the licensee to complete an errors and omissions course.

23. [*Cascade Insurance Agencies \(Burnaby\) Inc. and Gurbir Singh Puri*](#) (July 2017) involved a homeowner who purchased a homeowner's insurance policy through the agency. A loss occurred but the claim was denied by the insurer as it was determined that the homeowner did not disclose business operations were being conducted in the home. The homeowner stated she informed the representative of the agency of the business operations when the application for the policy was completed. The licensee advised that the usual process for collecting information for a homeowner's insurance policy application was that the salesperson would collect the required information by taking written notes. The licensee would then transcribe the information into the data management system. Information not specifically set out in the insurance application would be noted in the remarks section. No clear notes were made in the file. Council found the evidence from the complainant and the licensees regarding the discussions that led up to a homeowner's policy being bound, to be contradictory. Consequently, Council could not find that the agency, the salesperson, or the licensee had failed to act in a competent manner when they provided the Complainant with homeowner's insurance. Council determined that the agency failed to maintain proper records in the handling of the complainant's insurance, and found the agency and nominee failed to ensure that proper recording practices were maintained by agency staff. Council ordered the nominee be fined \$2500, and required to take a course, and the agency be fined \$5000 as well as assessed investigation costs.
24. [*Amrit Singh Sidhu, Daljit Singh Sidhu and S&S Insurance Services Ltd*](#) (August 2023): concerned a client who was provided with a binder with an insurer's logo, binder number and effective policy date by the Agency. However, the binder was not signed by the insurer and was not a valid document. A former employee of the agency had requested that the client's policy be renewed on December 11, 2020, however on December 14, 2020, the insurer replied advising additional information was required to renew the policy. In January 2021, the licensee became aware that the policy had not been renewed, however, the licensee did not take any further steps to ensure the policy was renewed or that the client was made aware there was no policy in place. In November 2021, the client suffered a loss and did not have insurance coverage in place. It was not until March 2022, after Council's investigation of the matter, that the client was refunded the premiums paid for the policy that had not been renewed in December 2020. Council concluded that the licensee and agency failed to properly place insurance coverage as instructed. Further, the nominee and agency failed to properly manage the business aspects of the agency by not properly handling and remitting the premium money to the insurer. Council further determined that the agency claimed to bind terms under a policy when it was not authorized by the insurer to do so. The agency as a licensed person or entity is responsible for the

actions of the staff and the agency, and ultimately, the proper management of the agency is the nominee's responsibility. Council ordered the licensee to be fined \$5,000, be required to complete courses, and downgraded the licensee's level 3 general insurance licence to a level 2 general insurance licence for a period of a year. The agency and nominee were both fined \$1,500, and the investigation costs were assessed against both the agency and the licensee.

25. [*Sherlock Hsu*](#) (September 2023): concerned a life agent licensee who was alleged to have submitted applications for insurance products without the client's full understanding and for failing to maintain proper and adequate books and records. The Licensee was unable to provide sufficient evidence in the form of documentation for summaries of the discussions that the licensee had with the Complainant, documentation of client instructions, client emails, notes or summaries related to the specific assessment of the client's needs or circumstances. Council determined that without documentation that illustrates the fact-finding or justification of the recommendations and/or strategy sent, it is very difficult for an outside party to assess the transaction in question and objectively verify if the products recommended were suitable or understood by the client. Additionally, Council concluded the Licensee failed to engage in the usual practice of the business of insurance by witnessing a signature on the application form when the Licensee had not, in fact, witnessed the signature. Council ordered that the licensee be fined \$2000, required to be supervised for 24 months, complete courses and be assessed Council's investigation costs.

MITIGATING AND AGGRAVATING FACTORS

26. Council considered relevant mitigating and aggravating factors in this matter. Council considered the Licensee's remorse and acknowledgment of his role as a mitigating factor. Additionally, the Licensee was fully cooperative throughout the investigation, which Council considers to be an additional mitigating factor. Council further concluded that the Licensee's misconduct was unintentional as the Licensee was not entirely familiar with commercial insurance and that the Licensee thought he was acting appropriately at the time. Council does not believe that the Licensee will be in a similar circumstance in the future.

CONCLUSIONS

27. After having considered the precedent cases, as well as mitigating and aggravating factors, Council has determined that it is appropriate for the Licensee to be issued a reprimand. Council notes that it is crucial that all licensees conduct their insurance business in a competent manner as clients rely on professional advice. Council noted several mitigating factors and similar to the *Dar* case, concluded

that a reprimand is an appropriate outcome, as well as a requirement that the Licensee complete courses related to commercial insurance.

28. With respect to investigation costs, Council has concluded that these costs should be assessed to the Licensee. 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

29. Pursuant to sections 231, 236 and 241.1(1) of the Act, Council made an intended decision that:

- a. The Licensee be reprimanded;
- b. The Licensee be required to complete the following courses, or equivalent courses as acceptable to Council, within 90 days of Council's order:
 - i. How to Complete Commercial Lines Applications available through the Insurance Brokers Association of British Columbia; and
 - ii. D&O for Private Companies available through the Insurance Institute (collectively, the "Courses");
- c. the Licensee be assessed Council's investigation costs in the amount of \$1,437.50, to be paid within 90 days of Council's order; and
- d. A condition be imposed on the Licensee's general insurance licence that failure to pay the investigation costs in full and failure to complete the Courses within 90 days will result in the automatic suspension of the Licensee's licence, and that the Licensee will not be permitted to complete their 2026 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.

30. Subject to the Licensee'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.

ADDITIONAL INFORMATION REGARDING FINES/COSTS

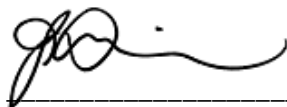
31. Council may take action or seek legal remedies against the Licensee to collect outstanding fines and/or costs, should these not be paid by the 90-day deadline.

RIGHT TO A HEARING

32. If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee 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 Licensee 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 Licensee does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.
33. Even if this decision is accepted by the Licensee, 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>.

Dated in Vancouver, British Columbia, on the **27th day of June, 2024.**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director