

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

DONALD GORDON SHINDELKA
(the “Licensee”)

ORDER

As Council made an intended decision on March 10, 2015, 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 26, 2015; and

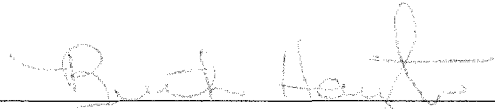
As the Licensee has not requested a hearing of Council’s intended decision within the time period provided by the Act;

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

1. The Licensee is reprimanded.
2. The Licensee is assessed Council’s investigative costs of \$1,800.00.
3. A condition is imposed on the Licensee’s general insurance licence that requires him to pay the above-ordered investigative costs no later than **July 14, 2015**. If the Licensee does not pay the ordered investigative costs in full by this date, the Licensee’s general insurance licence is suspended as of **July 15, 2015**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered investigative costs are paid in full.

Order
Donald Gordon Shindelka
173738-I1588
April 14, 2015
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This order takes effect on the **14th day of April, 2015.**

A handwritten signature in cursive script, appearing to read "Ruth Hoyte", written over a horizontal line.

Ruth Hoyte
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

DONALD GORDON SHINDELKA
(the “Licensee”)

INTRODUCTION

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 16, 2015, a Review Committee (the “Committee”) met with the Licensee, by telephone, to discuss an allegation that the Licensee failed to ensure that adequate insurance coverage was in place for a client (the “Client”).

The Committee was comprised of one voting member and three 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.

The Committee prepared a report on its meeting with the Licensee and it, along with the aforementioned investigation report, were reviewed by Council at its March 10, 2015 meeting, where it 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 holds a Level 3 general insurance agent licence and has been licensed for approximately six years in British Columbia. Prior to that, he was licensed as an insurance agent in Saskatchewan.

Council received a complaint from his former employer (the "Former Agency"), alleging the Licensee sold a commercial insurance policy that excluded critical coverages required by the Client.

The Client operated a marina, gas bar, and personal watercraft and boat rental business. According to the Licensee, the Client advised him that he did not require liability insurance for the jet ski rentals as it was covered under another policy. The Licensee asked the Client to provide him with a copy of the other policy, but this never occurred. The Licensee did not make any notes in the Client's file or have the Client confirm in writing that coverage was not required as it was insured under a separate policy.

The policy sold to the Client by the Licensee excluded liability coverage for the jet ski operation.

Subsequent to the sale of the policy, the Former Agency contacted the Client, who advised the Former Agency that he had understood liability insurance was in place. When the Client learned it was not, he purchased the additional liability insurance.

The Client did not respond to Council's inquiries regarding the Licensee's submissions that the Client had informed him that he was covered under another policy.

ANALYSIS

In reviewing the facts in this matter, Council noted that without a submission from the Client it was difficult to determine how the insurance transaction in question actually transpired. Council concluded, however, that the liability risk posed by a jet ski rental operation was significant, and a prudent and competent licensee had an obligation to ensure that the proper insurance coverage was provided. While Council was unable to determine if the Licensee's account of the transaction was accurate, his failure to properly document the transaction, particularly his discussions with the Client about liability coverage for the jet ski rental operation, fell outside the usual practice of the business of insurance.

The lack of agreement on what the Client's insurance needs were, as well as what the Client understood the insurance coverage to be, highlights the importance of proper documentation in such transactions. Council concluded that the Licensee's failure to properly document his discussion with the Client, along with a written disclosure at the time the policy was delivered highlighting that there was no liability insurance for the jet ski rental operation, fell short of what would be considered the usual practice of the business of insurance.

As the Licensee has not been subject to disciplinary action in the past and Council did not establish the Licensee had mishandled other client files, Council determined that a reprimand was an appropriate penalty.

INTENDED DECISION

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

1. Reprimand the Licensee.
2. Assess the Licensee Council's investigative costs of \$1,800.00.

The Licensee is advised that should the intended decision become final, the investigative costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the 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 investigative costs are paid in full.

The intended decision will take effect on **April 14, 2015**, 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 13, 2015**. 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 13, 2015**, the intended decision of Council will take effect.

Intended Decision
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173738-11588
March 26, 2015
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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

Dated in Vancouver, British Columbia, on the **26th day of March, 2015.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director
604-695-2001
gmatier@insurancecouncilofbc.com

GM/bk