

**In the Matter of**

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

**and**

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

**and**

**N.G. WILLIAMS & ASSOCIATES LTD.**  
**(the “Former Agency”)**

**and**

**NIGEL GORDON WILLIAMS**  
**(the “Former Nominee”)**

## **ORDER**

As Council made an intended decision on March 11, 2014, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Former Agency and the Former Nominee with written reasons and notice of the intended decision dated April 11, 2014; and

As the Former Agency and the Former Nominee requested a hearing of Council’s intended decision in accordance with the Act, but no longer wish to proceed with the hearing;

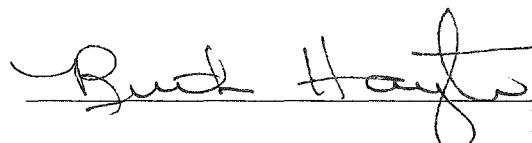
Under authority of sections 231, 236, and 241.1 of the Act, Council orders:

1. The Former Nominee is prohibited from holding a Level 3 general insurance agent licence until such time as he has satisfied Council he is competent to hold a Level 3 general insurance agent licence.
2. The Former Nominee is fined \$5,000.00.
3. The Former Agency is fined \$10,000.00.
4. The Former Agency is assessed Council’s investigative costs of \$1,343.75.

Order  
N.G. Williams & Associates Ltd. and Nigel Gordon Williams  
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5. As a condition of this order, the Former Nominee is required to pay the above-ordered fine in full, no later than **November 1, 2014**.
6. As a condition of this order, the Former Agency is jointly and severally liable for the fine against the Former Nominee, and the Former Agency is required to pay the above-ordered fine and investigative costs in full, no later than **November 1, 2014**.

This order takes effect on the **1<sup>st</sup> day of August, 2014**.

  
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Ruth Hotye  
Chairperson, Insurance Council of British Columbia

## **INTENDED DECISION**

of the

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

**respecting**

**N.G. WILLIAMS & ASSOCIATES LTD.**  
(the “Agency”)

**and**

**NIGEL GORDON WILLIAMS**  
(the “Former Nominee”)

### **INTRODUCTION**

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

As part of Council’s investigation, on February 12, 2014, a Review Committee (the “Committee”) met with the President of the Agency, Glen Lockitt Williams (“Williams”), and Alexandre T. Maltas (“Maltas”), legal counsel representing the Agency, to discuss allegations that, contrary to Council Rule 7(8), the Agency and the Former Nominee failed to ensure Agency staff were properly licensed while acting as insurance agents or salespersons at the Agency; and, the Agency and the Former Nominee failed to act in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance. The Former Nominee did not attend the Committee meeting.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with Williams and Maltas, an investigation report was distributed to the Committee, Williams, and the Former Nominee for review. A discussion of this report took place at the meeting and Williams and Maltas were provided an opportunity to clarify the information contained therein and make further submissions. Having reviewed the investigation materials and after discussing this matter with Williams and Maltas, the Committee made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee’s findings and recommended disposition, along with the aforementioned investigation report, were reviewed by Council at its March 11, 2014 meeting and Council 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 Former 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 Former 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 Former Nominee.

## **FACTS**

The Agency has held a general insurance licence in British Columbia since 1986. The directors of the Agency are the Former Nominee, Williams, and Diana Elizabeth Williams. The officers are Williams and Noel James Dodd ("Dodd"). The Former Nominee was the Agency's nominee from 1986 until March 2014 when he stepped down as the Agency's nominee.

The Former Nominee has been licensed as a general insurance agent since 1981. He is also licensed as a Level 3 general insurance agent ("Level 3 agent") in Alberta, Saskatchewan, and Manitoba.

The Former Nominee's son, Williams, has worked at the Agency since 1989 and Gloria Fehr ("Fehr") has worked at the Agency since 1995. Williams obtained his Canadian Accredited Insurance Broker designation in December 2001.

On February 8, 2013, Council received a first application for a Level 3 agent licence from Williams. He was subsequently issued a Level 2 general insurance agent ("Level 2 agent") licence on June 26, 2013. Williams remains licensed as a Level 2 agent.

Fehr has worked in the insurance industry since 1971. Fehr was originally licensed in British Columbia in 1981. In 1994, she obtained a Level 2 agent licence while employed at a different general insurance agency and held that licence until she terminated it in 1996. Fehr began working at the Agency in 1995 as a personal lines and underwriter assistant, and was never licensed to represent the Agency until she applied for and was issued a Level 1 general insurance salesperson ("Salesperson") licence in November 2013.

Dodd has been with the Agency since 2005, and was recently made a partner with 5% interest. Dodd has been licensed with Council as a Level 2 agent since November 15, 2006. Dodd is currently the Agency's nominee.

As a result of Williams' licence application in February 2013, it came to light that Williams and Fehr had been engaging in unlicensed insurance activities contrary to the *Financial Institutions Act* (the "Act"). Williams claimed the issue of licensing first arose at the Agency following an audit of the Agency by Lloyd's of London ("Lloyd's"). He claimed that the Agency submits to audits by Lloyd's on a regular basis, once or twice per year. Williams claimed that, in 2012, a Lloyd's auditor, who had previously been to the Agency for the purpose of conducting an audit, indicated that she believed wholesale managing general agents required a licence.

The Agency characterizes itself as a wholesale broker or intermediary, with an active network of approximately 150 brokers. Williams claimed that he and the Former Nominee believed that as the Agency was an intermediary, Agency staff were not required to hold general insurance licences. The Agency argued that the Agency's non-compliance with the Act was based on this honestly held, but mistaken, belief.

While arguing that it believed its staff did not require a licence, if acting as an intermediary, the Agency and Former Nominee also allowed Williams and Fehr to engage in insurance activities directly with the public. Both Williams and Fehr directly brokered insurance business on behalf of the Agency for members of the public.

As an example, on June 18, 2013 and June 19, 2013, Williams engaged in insurance activity with a member of the public, which was after the Agency and Former Nominee were aware that Williams required an insurance licence, and prior to the issuance of Williams' Level 2 agent licence on June 26, 2013. On June 19, 2013, Williams was permitted to issue and sign insurance certificates on behalf of the Agency. Fehr was involved in procuring professional liability insurance for this same client on May 28, 2013. Fehr had previously conducted unlicensed insurance business for this client in 2006, as did Williams in 2005 and 2006.

During the period of unlicensed activity by Williams and Fehr, other individuals came to work for the Agency and, in all cases, maintained a licence while acting on behalf of the Agency.

While acknowledging that it was the Former Nominee's responsibility to ensure the Agency was operating in accordance with the Act and Council Rules, the Agency argued that this is not the kind of case where discipline is appropriate. The Agency argued that Council never expressly directed Williams and Fehr to stop conducting unlicensed insurance business once it learned they were unlicensed. Further, the Agency stated the unlicensed activities were technical in nature considering that the unlicensed activity was performed by qualified individuals.

## ANALYSIS

Council determined that the Former Nominee and the Agency failed to ensure the Agency's staff were properly licensed as insurance agents or salespersons while engaging in activities at the Agency consistent with those of an "insurance agent" as defined in the Act. There is an obligation on an agency nominee and an agency to ensure and enforce compliance with all responsibilities under the Act and Council Rules.

Council considered the submission that the Former Nominee and the Agency held a mistaken belief regarding the requirements of licensing respecting its staff and that the Former Nominee and the Agency have now taken steps to become compliant since this mistaken belief was identified. Council determined that these considerations did not mitigate the fact that the Former Nominee and the Agency knew, or ought to have known, that the Agency's staff were required to be licensed before conducting any insurance activities. Council noted that the Former Nominee had completed its seminar on the duties and responsibilities of Level 3 agents, which addressed the need for intermediaries to be licensed in British Columbia, and was the nominee when Council published its Notice on sub-brokering in 1998, which included a statement that intermediaries were required to be licensed.

Even if Council was to accept the Agency and Former Nominee's explanation that they were not aware of the licensing requirements, it noted that Agency staff were permitted to continue to conduct insurance activities for at least six months after learning they were not in compliance with the Act. Council was also unable to reconcile the fact that the Former Nominee and a number of Agency staff were licensed while Williams, Fehr, and a third employee were not. Council determined the Former Nominee was willfully blind to his responsibilities as the Agency's nominee.

The onus is on the Former Nominee and the Agency to know their duties and responsibilities under the Act and Council Rules and, with regard to the matter before it, Council found both the Former Nominee and Agency to be woefully lacking in this regard.

Council considered the precedents *D. Hughes and Sussex Insurance Agency (Mission) Inc.*, *R. Atwal, Roadways Insurance Agencies Inc.*, *Y. Hui, BCAA Insurance Agency Ltd.*, *Hanin Insurance Services Inc.*, and *J. Cheng*.

In *D. Hughes and Sussex Insurance Agency (Mission) Inc.*, Council determined that the nominee and the agency knowingly permitted an unlicensed employee to engage in insurance activities. The unlicensed activity occurred over a period of three weeks. The nominee admitted he should not have allowed this conduct, and expressed remorse for his conduct. Council acknowledged that the unlicensed employee had been previously licensed and was qualified to complete the transactions in question, but that the employee's qualifications did not condone the conduct. Council initially concluded that the nominee should be suspended for 30 days, but realized this would cause the nominee and agency undue hardship in that the nominee did not have a Level 3 agent employed at the agency who could replace him. The nominee was able to find a short-term replacement nominee, and Council determined that the nominee and the agency would not be placed under undue hardship by suspending the nominee for 14 days. In addition, Council fined the agency \$4,000.00, and ordered the agency to pay the costs of Council's investigation.

In *R. Atwal*, Council determined the licensee failed to fulfill her responsibility as nominee to adequately supervise an insurance agency. Council found that the nominee was unaware of the culture of misconduct that existed at one of her agency's branch offices. Council acknowledged that this branch office was effectively being operated by the agency's owners, and that the licensee was beholden to these principals as her employer. Council determined that the nominee was not involved in the misconduct herself, but her lack of knowledge of the activities at the branch office demonstrated her failure to properly execute her supervisory responsibilities. Council recognized the challenges facing a nominee that is not an owner or directing mind of an agency, but these circumstances did not absolve the licensee from her responsibilities as nominee. Council fined the nominee \$5,000.00, and ordered her to pay the costs of Council's investigation.

In *Roadways Insurance Agencies Inc.*, Council determined that the agency allowed the Insurance Corporation of British Columbia's ("ICBC") extranet database to be improperly accessed at the agency on two occasions; an illegitimate transfer in ownership of a vehicle to be processed at the agency; ICBC premium payments made by clients to be mishandled at the agency; and, insufficient errors and omissions insurance coverage to be maintained. Council determined that a culture of impropriety existed at the agency which reflected on its trustworthiness, competence, and ability to carry on the business of insurance in good faith, and in accordance with usual practice. Council found that the agency was mired by a number of problems which were perpetuated by a previous owner, as well as one of its current owners. Council continued to investigate the extent of the nominee's misconduct, but found that the problems at the agency were of an egregious nature. Council required the agency to appoint a new nominee; fined the agency \$20,000.00; and, ordered the agency to pay the costs of Council's investigation.

In *Y. Hui*, Council considered a number of incidents of non-compliance that occurred at the agency while the licensee was the nominee of Roadways Insurance Agencies Inc. In addition to the incidents noted in the case of *Roadways Insurance Agencies Inc.*, Council determined the licensee engaged in his own transgression by completing an improper transfer and placement of insurance on a vehicle. Council determined that the licensee failed to act in a trustworthy manner, in good faith, and in accordance with the usual practice of the business of insurance. Council determined that the culture of impropriety it found in the case of Roadways Insurance Agencies Inc. was also perpetuated through the licensee in his role as nominee. Council acknowledged that the licensee was an employee and that he may have been beholden to the agency's owners, who were involved in perpetuating the culture of impropriety. Regardless, Council determined that the licensee had an obligation as a nominee to ensure the agency was in compliance with any requirements. Council determined the licensee was aware that Council had concerns with the agency, and he made a choice to ignore those concerns and, by doing so, eschewed his responsibilities as nominee. Council found the licensee was untrustworthy and unable to carry on the business of insurance in good faith, and in accordance with the usual practice of the business of insurance. Council cancelled the licensee's general insurance licence for a minimum of two years; prohibited the licensee from holding a Level 3 agent licence, should he become relicensed, until he obtained a minimum of five continuous years of active, licensed experience; required a condition be imposed on any licence held by the licensee in the future which would direct him to notify any employer of this decision for a period of five years; fined the licensee \$10,000.00; and ordered the licensee to pay Council's investigative costs.

In *BCAA Insurance Agency Ltd.*, Council determined that the agency, on 12 occasions, failed to notify Council within five business days when insurance licensees ceased to represent the agency. The agency, under its previous licence under a different name, had previously been reminded on five occasions regarding this failure to notify. Council recognized that these reminders were sent to the agency while it was operating under a previous licence, but felt it was no different than sending the reminders to the current agency. Council determined that no steps were taken to implement procedural or system changes to ensure compliance with this requirement to notify. Council determined that the additional 12 occasions of non-compliance represented the agency's blatant disregard for its obligations under Council Rules. Council believed that the agency was in the process of implementing changes to prevent similar situations from arising in the future, but that these changes did not mitigate the agency's past notification failures. Council fined the agency \$10,000.00.

In *Hanin Insurance Services Inc.*, Council determined that the agency failed to ensure its licensed employees were properly supervised and operating in accordance with the conditions and restrictions on their licenses. Council determined that a Salesperson employed by the agency was not being properly trained or supervised by the agency's Level 2 agent. Council determined there was an inadequate and incompetent level of supervisory oversight at the agency, for which it bore responsibility. Council fined the agency \$5,000.00, and ordered the agency to pay the costs of Council's investigation.



In *J. Cheng*, Council considered allegations that the licensee, as the nominee of Hanin Insurance Services Inc., failed to ensure licensed employees of the agency were properly supervised and operating in accordance with the conditions and restrictions on their licenses, as noted in the case *Hanin Insurance Services Inc.* Council determined that the licensee did not adequately fulfill his role as the agency's nominee, which required that he ensure that licensed employees were properly supervised and acting in accordance with the conditions of their licenses. Council concluded that the licensee was not acting in a competent manner and in accordance with the usual practice of the business of insurance. Council noted that the inadequate level of supervision was isolated to one particular area of the agency's business. Council fined the licensee \$2,500.00.

Council concluded the Former Nominee lacked an understanding of his role as nominee, and was complacent regarding his responsibilities as a nominee. In light of the foregoing, Council determined the Former Nominee is unsuitable to hold a Level 3 agent licence. Accordingly, Council decided to downgrade the Former Nominee's insurance licence to that of a Level 2 agent until such time as he can satisfy Council of his competency and suitability to hold a Level 3 agent licence.

While the Former Nominee and the Agency acknowledged it was not a heavy burden for the Agency to satisfy the licensing requirements respecting its staff, the Agency's position was that it believed continued business operations were of paramount importance when compared to compliance with licensing requirements.

Ultimately, Council determined the Former Nominee and the Agency were dismissive of, and did not take responsibility for, the requirements with which all insurance agents are governed. Council determined that the Former Nominee failed to properly execute his responsibilities as nominee by not knowing his regulatory responsibilities and by not ensuring that Agency staff were properly licensed.

Council determined a fine of \$5,000.00 was required to address the fact that the Former Nominee knew, or ought to have known, of the ongoing unlicensed activities at the Agency, and his failure to perform his responsibilities while acting as the Agency's nominee. Council determined a fine of \$10,000.00 was required to address the Agency's failure to ensure compliance with licensing requirements.

## **INTENDED DECISION**

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

1. Amend the Former Nominee's general insurance licence to a Level 2 general insurance agent.
2. Impose a condition on the Former Nominee's general insurance licence which prohibits him from holding a Level 3 general insurance agent licence until such time as he has satisfied Council he is competent to hold a Level 3 general insurance agent licence. Fine the Former Nominee \$5,000.00.
3. Fine the Agency \$10,000.00.
4. Impose a condition on the Agency making it jointly and severally liable for the fines against it and the Former Nominee.
5. Assess the Agency Council's investigative costs of \$1,343.75.

The Former Nominee and the Agency are advised that should the intended decision become final, the fines and costs will be due and payable within 90 days of the date of the order.

The Former Nominee is advised that failure to pay the fine within the 90 days will result in the automatic suspension of his general insurance licence and the Former Nominee will not be permitted to complete any annual filing until such time as the fine is paid in full.

The Agency is advised that any failure to pay the Former Nominee's fine or the Agency's fine and 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 fines and costs are paid in full.

The intended decision will take effect on **April 30, 2014**, 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 Former Nominee or the Agency wishes to dispute Council's findings or its intended decision, the Former Nominee and the Agency 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 licensees must give notice to Council by delivering to its office written notice of this intention by **April 29, 2014**. 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 the Former Nominee do not request a hearing by **April 29, 2014**, the intended decision of Council will take effect.

Even if this decision is accepted by the Former Nominee and the Agency, 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 [www.fst.gov.bc.ca](http://www.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](mailto:FinancialServicesTribunal@gov.bc.ca)

Dated in Vancouver, British Columbia, on the **11<sup>th</sup> day of April, 2014**.

For the Insurance Council of British Columbia

  
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Gerald D. Matier  
Executive Director

GM/cp