

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

CARL BERNARD BRODIE
(the “Licensee”)

ORDER

As Council made an intended decision on February 9, 2021 pursuant to sections 231 and 236 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 17, 2021; 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 and 236 of the Act, Council orders that:

1. The Licensee is fined \$2,500, to be paid by July 8, 2021;
2. The Licensee is required to complete the Council Rules Course, available through Advocis, by July 8, 2021; and
3. A condition is imposed on the Licensee’s life and accident and sickness insurance agent (“Life Agent”) licence that failure to pay the fine or complete the Council Rules Course by July 8, 2021 will result in the automatic suspension of his Life Agent licence, and he will not be permitted to complete his 2022 annual filing until the fine is paid in full and the Council Rules Course is completed.

Order
Carl Bernard Brodie
LIC-168880C104144R1, COM-2019-00266
April 9, 2021
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This order takes effect on the **9th day of April, 2021.**

A handwritten signature in black ink, appearing to read 'Janet Sinclair', positioned above a horizontal line.

Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

CARL BERNARD BRODIE
(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, and in particular whether the Licensee breached Council Rule 7(11)(a) by allowing his errors & omissions ("E&O") insurance to lapse in 2017/2018, and whether he had breached Council Rules 7(3)(a)(i), 7(3)(b), and/or 7(11)(c)(i) by failing to make required disclosures of information to Council.
2. On December 16, 2020, as part of Council's investigation, a Review Committee (the "Committee") comprised of Council members met with the Licensee via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to both the Committee and the Licensee in advance of the meeting. A discussion of the investigation report took place at the meeting, and the Licensee was given an opportunity to make submissions or provide any further information. Having reviewed the investigation materials and discussed the matter with the Licensee, the Committee prepared a report for Council.
3. The Committee's report, along with the aforementioned investigation report, were reviewed by Council at its February 9, 2021 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 and 236 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 has been licensed with Council as a life and accident and sickness insurance agent (“Life Agent”) since 2007, with the exception of a short period of non-licensing in 2008. He is licensed in multiple Canadian jurisdictions and has served as the nominee of British Columbia agencies since 2013.
6. Council became aware, in August 2019, that the Licensee had been disciplined by the Life Insurance Council of Saskatchewan (the “LICS”) in June 2019 for failing to notify them about the cancellation or non-renewal of his E&O insurance. Council staff determined that the Licensee had not reported the discipline from the LICS to Council, as required by Council Rule 7(3)(a)(i).
7. Council proceeded to conduct an audit of the Licensee’s E&O coverage for the years 2017, 2018, and 2019. As a result of the audit, Council staff determined that the Licensee had failed to maintain E&O insurance as an unaffiliated Life Agent between December 2017 and March 2018, contrary to Council Rule 7(11)(a). Council staff also identified that the Licensee may have failed to maintain E&O insurance in his capacity as Life Agent nominee of an agency as well, between March 2018 and August 2018.
8. Additionally, Council’s review determined that the Licensee had failed to notify Council that his authority to represent an agency had ended, as required by Council Rule 7(3)(b), and that he had failed to notify Council that he no longer carried E&O insurance, as required by Council Rule 7(11)(c)(i).

REVIEW COMMITTEE MEETING

9. The Licensee advised the Committee that he had reviewed the investigation report and found it thorough and accurate. He admitted to the breaches as alleged, with the exception of the allegation that he had failed to maintain E&O insurance in his capacity as nominee of an agency. The Licensee submitted that the breaches had occurred unintentionally and as the result of an oversight for which he took full responsibility.
10. The Licensee told the Committee that he had been very busy during the period when the breaches occurred. He was the nominee for two agencies as well as a dealing representative for an exempt market dealer, while also providing certified financial planning services. The Licensee advised that he was actively licensed with three provincial insurance regulators

and handled an extensive range of duties, including business development, dealing with managing general agents, strategic planning, vendor relations, application processing, staff training, and sales.

11. The Licensee explained that his E&O lapse had occurred because he thought that his E&O renewal was being handled by someone else. He acknowledged that he had not followed up on the matter, and told the Committee that his failure to do so had been an oversight as, ultimately, the responsibility was his. The Licensee emphasized that the failure to renew his E&O had stemmed more from communication errors than neglect.
12. When questioned by the Committee as to why he had not notified Council of the LICS discipline, as well as about his other failures to comply with Council's notification requirements, the Licensee explained that he had not known about the notification requirements in the Council Rules.
13. The Licensee told the Committee that he has since taken measures to ensure that his failure to maintain E&O insurance, as well as his failures to notify Council of required information, will not reoccur. Notable steps taken have included the hiring of a person to assist with administrative duties, and delegation by the Licensee of a number of responsibilities to others.
14. With respect to the alleged failure to maintain E&O insurance between March 2018 and August 2018 in his capacity as agency nominee, the Licensee explained that the agency in question had ceased operations in March 2018. He provided the Committee with documentation supporting a conclusion that he had not written any business for the agency while without E&O insurance.

ANALYSIS

15. Council determined that the Licensee had breached the following sections of the Council Rules:
 - a) Council Rule 7(3)(a)(i) for failing to notify Council he had been disciplined by the LICS;
 - b) Council Rule 7(3)(b) for failing to notify Council his authority to represent an agency had ended;
 - c) Council Rule 7(11)(a) for failing to maintain or be covered by E&O insurance in his capacity as an unaffiliated Life Agent for a period of approximately three months, between December 2017 and March 2018; and

d) Council Rule 7(11)(c)(i) for failing to notify Council that he no longer carried E&O insurance.

16. Council concluded that the alleged failure by the Licensee to maintain E&O insurance in his capacity as nominee of an agency between March 2018 and August 2018 had not been established.
17. Council took mitigating and aggravating factors into consideration. Mitigating factors included that the Licensee had not been the subject of discipline with Council before, that there was no client harm caused by the breaches, and that the breaches were unintentional. Furthermore, as communicated to the Committee, the Licensee is remorseful about the breaches and has taken several steps to prevent similar issues in the future.
18. Council considered it an aggravating factor that, at the time of the breaches, the Licensee had been licensed for over a decade. As such, he should have known better and ought to have acted in accordance with his obligations under the Council Rules.
19. Council also took four previous cases into consideration as precedents prior to reaching its decision. Council recognizes that similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case.
20. *Varinder Kaur* (July 2020) concerned a Life Agent licensee who failed to notify Council that her authority to represent an agency had been withdrawn, and failed to be covered by E&O insurance for a period of approximately one month. The licensee did not notify Council that she was without E&O insurance and did not immediately stop conducting insurance business after she ceased to be covered. Council found that the breaches were unintentional and that the licensee was remorseful. However, Council concluded that the licensee ought to have known the responsibilities and duties conferred upon her by the Council Rules. Furthermore, the licensee's failure to maintain E&O coverage put her clients at risk. The licensee was fined \$1,500 for failing to maintain E&O insurance and conducting insurance business while without coverage. She was also reprimanded for her failure to notify Council of either her E&O coverage lapse and the withdrawal of her authority to represent, and she was required to complete the Council Rules Course.
21. *Sentinel Financial Management Corp. and Merlin Henry Chouinard* (May 2020) concerned an agency and its former nominee who failed to notify Council of two instances of disciplinary action by another regulator and of a material change in the agency's ownership. Council held that the precedents suggest that a \$1,000 fine is appropriate for each failure to report discipline from another regulatory body. For the two failures to report, Council would have

assessed \$2,000, but reduced it to \$1,500 to reflect the efforts that the agency had taken to improve compliance. Council also determined that it was appropriate to fine the former nominee \$1,000 because it was his deficient understanding of both the Council Rules and his own duties as nominee that were the ultimate cause of the agency's repeated breaches.

22. *Maria Rhodora Banada Thomas* (October 2018) concerned a Life Agent licensee who failed to maintain her E&O insurance for approximately seven months. She was apologetic, and explained that the failure to renew was in error and partially due to personal circumstances. She also advised that she had not conducted insurance business during the period she was without coverage. Nevertheless, the licensee was responsible for maintaining E&O coverage as per the Council Rules, and Council concluded that a \$1,000 fine was appropriate for a failure to comply with this requirement, regardless of the reason for the breach. As such, the licensee was fined \$1,000.
23. *Prosperity Protection Corp.* (February 2017) concerned an agency that was disciplined by another provincial insurance regulator but failed to report the matter to Council. The agency also failed to notify Council about a lapse in its E&O insurance. The agency was fined \$1,000 and its nominee was required to complete the Council Rules Course.
24. Upon consideration of the facts, the similar past cases, and the mitigating and aggravating factors identified, Council's conclusion is that it is appropriate to fine the Licensee \$1,000 for his failure to maintain E&O insurance as an unaffiliated Life Agent between December 2017 and March 2018.
25. Council also considers it necessary to fine the Licensee for each of his three failures to notify Council in accordance with the Council Rules. Council's opinion is that a fine of \$1,000 for each failure to notify would be a suitable baseline, but that a reduction of \$500 in each of the three instances is appropriate given the mitigating factors identified. As such, Council intends to fine the Licensee \$1,500 for his failures to notify Council as required.
26. In addition to a total fine of \$2,500, Council intends to require the Licensee to complete the Council Rules Course, as a lack of familiarity with his obligations under the Council Rules had contributed to his breaches.

INTENDED DECISION

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

- I. Fine the Licensee a total of \$2,500;

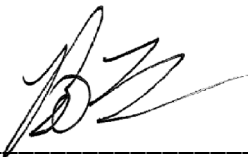
- II. Require the Licensee to complete the Council Rules Course within 90 days of Council's order; and
 - III. Place a condition on the Licensee's Life Agent licence that, if he fails to pay the total fine or complete the Council Rules Course within 90 days of Council's order, his licence will be automatically suspended and he will not be permitted to complete his 2022 annual filing until the total fine is paid and the Council Rules Course is completed.
28. 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.

RIGHT TO A HEARING

29. 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 within 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.
30. 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 FST. The BCFSA 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 visit the guide to appeals published on their website at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

Dated in Vancouver, British Columbia, on the **17th day of March, 2021.**

For the Insurance Council of British Columbia



For Janet Sinclair
Executive Director
jsinclair@insurancecouncilofbc.com