

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

MAXXAM INSURANCE SERVICES (BURNABY) LTD.
(the “Agency”)

and

JOHN ALEXANDER DEWAR
(the “Nominee”)

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Agency and Nominee to dispute an intended decision of Council dated November 28, 2019.

The subject of the hearing was set out in a Second Further Amended Notice of Hearing dated November 18, 2020.

A Hearing Committee was convened and scheduled to hear the matter between November 16-19, 2020, but on November 16, 2020, the Hearing Committee agreed to a proposal to adjourn the hearing until a later date.

The Hearing Committee heard the matter between January 11-13, 2021, and prepared its Reasons for Decision, dated June 9, 2021.

In accordance with the decision-making powers delegated to the Hearing Committee pursuant to section 223 of the Act, Council makes the following order:

1. The Agency is fined \$20,000, due and payable by September 7, 2021 (the “Agency Fine”);
2. The Agency is assessed investigation costs of \$2,562.50, due and payable by September 7, 2021 (the “Agency Investigation Costs”);

Order

Maxxam Insurance Services (Burnaby) Ltd. and John Alexander Dewar

LIC-174676C109721R1 and LIC-174108C109174R1 / COM-2017-00060

June 9, 2021

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3. A condition is imposed on the Agency's general insurance licence requiring the Agency to only appoint nominees who have successfully completed the Insurance Brokers Association of British Columbia's "Duties and Responsibilities for Level 3 Agents and Nominees in British Columbia" course, or other equivalent course as acceptable to Council, as well as the Council Rules Course, within two years prior to the date of their appointment;
4. A condition is imposed on the Agency's general insurance licence that prohibits the Agency from appointing any nominee who concurrently acts for or represents any other insurance agency;
5. A condition is imposed on the Agency's general insurance licence that failure to pay the Agency Fine or the Agency Investigation Costs by September 7, 2021 shall result in the automatic suspension of the Agency's licence and the Agency will not be permitted to complete its 2022 annual filing until such time as the Agency Fine and Agency Investigation Costs are paid in full;
6. The Nominee is fined \$5,000, due and payable by September 7, 2021 (the "Nominee Fine");
7. A condition is imposed on the Nominee's general insurance licence downgrading it from Level 3 to Level 2 for a two-year period commencing on July 9, 2021 and ending at midnight on July 9, 2023, after which the Nominee may reapply for a Level 3 general insurance licence;
8. The Nominee is required to complete the Council Rules Course by September 7, 2021;
9. The Nominee is required to complete the Insurance Brokers Association of British Columbia's "Duties and Responsibilities for Level 3 Agents and Nominees in British Columbia" seminar, or other equivalent course as acceptable to Council, prior to reapplying for a Level 3 general insurance agent licence;
10. A condition is imposed on the Nominee's licence that failure to pay the Nominee Fine and complete the Council Rules Course by September 7, 2021 will result in the automatic suspension of his general insurance agent licence, and the Nominee will not

Order

Maxxam Insurance Services (Burnaby) Ltd. and John Alexander Dewar

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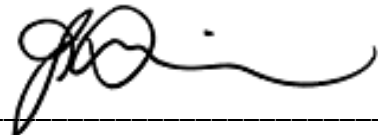
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be permitted to complete his 2022 annual filing until such time as the Nominee Fine is paid in full and the Council Rules Course is completed; and

11. The Agency and Nominee are assessed hearing costs of \$26,726.43, on a joint and several basis, due and payable by September 7, 2021 (the "Hearing Costs"). Failure to pay the Hearing Costs by September 7, 2021 will result in the automatic suspension of the Agency's and Nominee's general insurance agent licences, and each will not be permitted to complete their 2022 annual filings until such time as the Hearing Costs are paid in full.

This order takes effect on the **9th day of June, 2021.**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

In the Matter of
The *FINANCIAL INSTITUTIONS ACT*
(R.S.B.C. 1996, c. 141)
(the “Act”)

and

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

MAXXAM INSURANCE SERVICES (BURNABY) LTD.
(the “Agency”)

and

JOHN ALEXANDER DEWAR
(the “Nominee”)

Date: January 11, 2021
9:30 a.m.

January 12, 2021
9:30 a.m.

January 13, 2021
11:30 a.m.

Before: Chamkaur Cheema Chair
Michele Carver Member
Anita Gill Member

Location: By video-conference
Insurance Council of British Columbia
300 – 1040 West Georgia Street
Vancouver, BC

Present: David McKnight and
Thea Hoogstraten Counsel for Council
Martin Sheard Counsel for the Agency and the
 Nominee
John Alexander Dewar In Person
Elizabeth J. Allan Counsel for the Hearing Committee

REASONS FOR DECISION OF THE HEARING COMMITTEE

BACKGROUND AND ISSUES

1. On August 27, 2019, Council made an intended decision, pursuant to sections 231, 236 and 241.1 of the Act, to impose discipline against the Agency and Nominee (collectively, the “Licensees”) with respect to allegations that they failed to comply with Council’s Rules and Code of Conduct by facilitating improper insurance transactions, failing to provide adequate disclosure and failing to adequately supervise general insurance salespersons and agents.
2. On November 28, 2019, Council provided the Licensees with written reasons and notice of the intended decision, pursuant to section 237(2) of the Act. On December 19, 2019, the Licensees requested a hearing to dispute the intended decision pursuant to section 237(3) of the Act.
3. The hearing was scheduled to proceed in person in April 2020, but was adjourned due to the COVID-19 pandemic. It was re-set for a virtual hearing in September 2020, but then adjourned to November 16 – 19, 2020, due to the schedule of the Licensees’ counsel. On the first day of the hearing in November 2020, it was adjourned a third time due to circumstances outside of the parties’ control.
4. The hearing proceeded on January 11, 2021. The Second Amended Notice of Hearing alleged that the Licensees failed to act in good faith and in a trustworthy and competent manner and in accordance with the usual practice of the business of insurance, and in accordance with Council’s Rules, Code of Conduct and pursuant to section 231(1) of the Act by:
 - (a) permitting and facilitating improper insurance transactions regarding vehicle replacement insurance (“VRI”) at motor vehicle dealerships while the Agency did not hold an Autoplan Service Dealerships agreement with ICBC;
 - (b) breaching their duties to act in accordance with sections 3, 4, 8.1 and 8.2 of the Code of Conduct;
 - (c) allowing a Level 1 general insurance salesperson to sell VRI product policies contrary to Council Rule 6 and their licence restrictions;
 - (d) breaching their duties to adequately supervise and train their road agents in accordance with Council Rule 7 and section 5 of the Code of Conduct;

- (e) failing to ensure appropriate disclosure was provided to clients in accordance with section 7 of the Code of Conduct;
 - (f) failing to ensure their road agents accurately represented themselves in accordance with section 10 of the Code of Conduct;
 - (g) failing to demonstrate competence pursuant to sections 5 and 7 of the Code of Conduct as per Council Notice ICN 16-002 which states, "...any improper conduct by a Level 1 Salesperson will be deemed to reflect on the competence of the Level 1 Salesperson's employer (the insurance agency and its nominee)..."; and
 - (h) in any other manner.
5. The purpose of the hearing was to determine whether Council should do one or more of the following in accordance with sections 231, 236 and 241.1 of the Act:
- (a) fine the Nominee an amount not more than \$10,000;
 - (b) fine the Agency an amount not more than \$20,000;
 - (c) reprimand the Nominee and/or suspend or cancel the Nominee's general insurance licence;
 - (d) reprimand the Agency and/or suspend or cancel the Agency's corporate general insurance licence;
 - (e) impose conditions on the Nominee's general insurance licence;
 - (f) impose conditions on the Agency's corporate general insurance licence;
 - (g) require the Licensees to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;
 - (h) require the Licensees to pay the costs of Council's investigation and/or of this hearing; and
 - (i) take any other measures that Council deems appropriate.
6. The Hearing Committee was constituted pursuant to section 223(1) of the Act to hold a hearing and make a determination in this matter. Although four days were set aside for the hearing, the parties completed the hearing in three days due to a partial Agreed Statement of Facts. This is the decision of the Hearing Committee.

EVIDENCE

Exhibits

7. The following exhibits were entered during the hearing, by consent:

- | | |
|------------------|---|
| Exhibit 1 | Agreed Statement of Facts ¹ |
| Exhibit 2 | Council's Book of Documents |
| Exhibit 3 | Email chain dated January 13 – 16, 2017, with attachment |
| Exhibit 4 | Royal Bank Record |
| Exhibit 5 | Royal Bank Record |
| Exhibit 6 | Order of Council re West Canada Insurance Services Inc. and Sujin Tim Choe, December 20, 2019 |

8. Council provided a written argument and provided the Hearing Committee with a book of authorities. The Licensees also provided a written argument but did not rely upon any authorities (other than entering Exhibit 6 by consent).

Overview

9. At its core, this matter concerns the responsibility of the Agency with respect to a type of insurance sold by its employees when they were dually licensed with another agency through January 2017. The allegations centre around the culpability of the Agency (and, by association, the Nominee) in permitting or facilitating this to occur, as well as a failure to supervise its agents with respect to the sale of this product.
10. Essentially, Council alleged that the Agency's actions or lack thereof created a risk to the public by the Agency selling policies that it was not permitted to sell during this time period through the other agency or, at the very least, the other agency was properly selling the policies but they wrongly included the Agency's name as broker of record, which was not accurate.
11. At certain points, the Hearing Committee found the factual foundation of this matter confusing and difficult to follow. There was a partial agreed statement of facts and

¹ A correction was made to Exhibit 1 during the course of the Hearing. The Agreed Statement of Facts should indicate that Tab 8 of Council's Book of Documents (Exhibit 2) was created by Mr. P.P., Council investigator, to isolate the Level 1 Maxxam Burnaby salespersons who sold the Motomaxx product. It was not created by Intact Insurance as indicated elsewhere. These terms are defined further below.

admissions made, some of which ended up being disputed during the course of the hearing. Witnesses gave conflicting evidence even on relatively minor points. There was little documentation available to review, either because it was unavailable or had not been sought out. The witnesses who spoke to the documentation that was available were often in conflict about what the documentation showed. Some witnesses who were best placed to give evidence did not testify.

12. The Hearing Committee has carefully reviewed all evidence which was presented during the course of the hearing and has made findings where it is necessary to do so in order to decide the issues which were set out in the Second Amended Notice of Hearing. It has done its best to acknowledge the differences in the evidence and, where necessary, provide an explanation as to why it has made that finding.

Witnesses

13. Council called five witnesses in its case: Mr. P.P., the investigator of the complaint; Ms. C.R., a Level 1 salesperson with the Agency at the relevant time; Mr. D.C., the owner of West Canada Insurance Services Inc. (“West Can”) at the relevant time (the other agency); Mr. J.C., an employee of West Can at the relevant time; and, Mr. A.L., an executive with Intact Insurance.
14. The Licensees called Mr. B.R., the co-owner of the Agency, and Ms. J.C., the office manager of the Agency. The Licensees indicated throughout the hearing that the Nominee would testify in his own defense; however, right before he was affirmed, counsel advised that he did not think that it was necessary for the Nominee to give evidence and the Nominee never testified. This is addressed further below.

Facts

15. The facts of this matter are largely set out in Exhibit 1 and arise from Exhibit 2 and the testimony of the witnesses.

The Agency, Maxxam Langford and Motomaxx

16. The Agency is located in Burnaby, British Columbia and has held a corporate general insurance licence with Council since September 2008. It retains an Autoplan agency agreement with the Insurance Corporation of British Columbia (“ICBC”) which allows it to sell Autoplan business at the Agency office. The Agency also conducts general insurance business.
17. Mr. B.R. is a partial owner of the Agency. He is one of three directors of the Agency and is the Agency president and secretary. Mr. B.R. is not a licensee with Council.

18. Maxxam Insurance Services Incorporated is located in Langford, British Columbia (“Maxxam Langford”) and is considered a “sister” agency of the Agency. Mr. B.R. owns and is the sole director and officer of Maxxam Langford. Maxxam Langford is referenced in these reasons but has no real involvement in the issues as set out in the Second Amended Notice of Hearing.
19. 0910016 B.C. Ltd., doing business as Motomaxx Enterprises, (“Motomaxx”) is the managing general agent (“MGA”) for the Agency and the product carrier for VRI, a non-Autoplan product. The Motomaxx VRI product is underwritten by Intact Insurance. Mr. B.R. is the owner of Motomaxx.
20. At the material time, the Agency office contained approximately 30 staff conducting administrative duties and providing insurance services. As of December 2016, the Agency was servicing approximately 40 to 50 motor vehicle dealerships (“MVDs”) providing on-site insurance transactions, including offering VRI.

The Nominee of the Agency

21. The Nominee first became licensed with Council as a Level 1 salesperson on July 31, 2008. On April 20, 2012, the Nominee became a Level 2 agent.
22. On May 19, 2016, the Nominee became authorized to represent the Agency and became the Agency Level 3 general agent nominee.
23. As of March 5, 2020, the Nominee is no longer authorized to represent the Agency. The new nominee of the Agency is the office manager, Ms. J.C.

The VRI Arrangement

24. Prior to January 1, 2017, ICBC offered a Mobile Road Service (“MRS”) agreement with respect to Autoplan service in MVDs. As of January 1, 2017, ICBC replaced this program with an Autoplan Service Dealership (“ASD”) agreement. While the Agency had a MRS agreement pre-January 1, 2017, ICBC did not grant the Agency an ASD agreement. In the result, as of January 1, 2017, the Agency could no longer conduct insurance business at MVDs. The Agency disputed this decision and ultimately successfully challenged ICBC on the issue, but the relevant fact is that in early to mid-December 2016, there was a sudden and substantial change to the Agency’s business as of January 1, 2017.
25. As of January 1, 2017, the Agency employed 12 Level 1 general insurance salespersons and 13 Level 2 general insurance agents (together, the “Road Agents”). Through negotiations between the Agency and West Can, these 25 Road Agents obtained authorizations to represent West Can at MVDs as West Can did have an ASD agreement with ICBC (the “Arrangement”). These Road Agents became dually

licensed with both the Agency and West Can. The Arrangement enabled the Agency's Road Agents to continue to serve MVDs previously serviced exclusively by the Agency by offering auto insurance coverage on behalf of West Can. This fact, from paragraph 22 of Exhibit 1, became a point of contention in closing submissions, with the Licensees taking the position that "auto insurance coverage" included VRI and that Council had agreed to that fact. The Hearing Committee determined that this was a reference to Autoplan, given the language of paragraphs 23 and 24 of Exhibit 1 and the other evidence given during the course of the hearing which made it clear that Council did not concede the point and was in fact arguing the opposite.

26. In terms of how the Arrangement came to be, Mr. D.C. testified that he was approached by Ms. J.C. in late 2016, to see whether West Can could possibly take on the Agency's Road Agents as a result of the loss of the ASD. Mr. D.C. gave evidence that he raised the issue at this time that, while it may be possible for those agents to be licensed to sell Autoplan through West Can, he did not think that they could sell the Motomaxx VRI product because that product was from Intact and West Can did not have a contract with Intact. He stated at that time that the arrangement was going to have to be that the Road Agents operated under West Can's systems and products (including any replacement cost policy offered by West Can). The replacement cost policy that West Can offered at the time was [REDACTED].
27. Ms. J.C. also testified as to what she recalled that transpired in early or mid-December 2016 following the receipt of information that the Agency had not received an ASD. She stated that she contacted Mr. J.S. of West Can, who expressed interest in taking the Agency's road service business.
28. She then went to the West Can office and met with Tim Choe, the nominee of West Can, and Mr. J.S., described as a "principal" of West Can, and they conference-called Mr. B.R. to discuss West Can taking on the road service of the Agency. Ms. J.C. elaborated that Mr. Choe and Mr. J.S. wanted Mr. B.R., the majority owner of the Agency, included in the meeting. Ms. J.C. confirmed that at the time she had no interest in the Agency and:

Them discuss – they were discussing – and I was there --...Moving the road agents over to Canada West and them basically assuming the whole road service, meaning the agents and the dealership. So that component of Burnaby Maxxam -- sorry.²

29. Ms. J.C. testified that Mr. B.R. said during this call that the Motomaxx product was a replacement cost product "and if they [West Can] wouldn't mind taking a look at it". Upon prompting from counsel for the Licensees, Ms. J.C. then stated:

² Examination-in-chief of Ms. J.C., January 12, 2021, p. 130, l. 15 – 21.

I'll – I'm going to rephrase. They – there was an agreement of all parties at this meeting that they were going to take over the road service. And – and [Mr. B.R.] had mentioned Motomaxx, and they had mentioned, let's – okay. Let's talk further in more detail...if you – you go to my statement, my statement's pretty clear as to what took place at that meeting. And it was that they would continue or it was agreed upon all parties that West Can would continue to sell Motomaxx replacement insurance as an option to an alternative. And this statement was April 10th, 2018.³

...

Well, my statement states here at that meeting that they would take over the road service and that the parties would continue to sell Motomaxx replacement as an option or an alternative. That's in my statement. I only have my statement here in front of me as – as my – my document.⁴

30. Ms. J.C.'s statement is included at Tab 21 of Exhibit 2. She was not questioned on the circumstances which led to the preparation of this statement or if she had any assistance with its preparation.
31. When he testified, Mr. B.R. did not give evidence about the phone call that took place with Ms. J.C., Mr. Choe and Mr. J.S.
32. It was apparent that Ms. J.C. had her statement in front of her for at least part of her evidence-in-chief. She was asked to put it away for the duration of her cross-examination.
33. Ms. J.C. stated in cross-examination that in late December 2016, she met with Mr. D.C. at his home and that at that point he agreed to take "everything", not just Autoplan, and that he left for vacation after this point in time.
34. Ms. J.C. stated that she was not overseeing road service and so she did not know anything about the disclosure which was provided to the customer at point of sale. Her discussions about the transition from the Agency to West Can were mostly with Mr. Choe. While she was the office manager of the Agency, it was the Nominee who was responsible for answering questions from licensees and liaising with regulatory bodies and she "can only oversee what they [the agents] do in this office".
35. In the Licensees' submission to Council on August 7, 2019, submitted in advance of the intended decision and located at Tab 29 of Exhibit 2, they stated that:

³ Examination-in-chief of Ms. J.C., January 12, 2021, p. 135, l. 3 – 16.

⁴ Examination-in-chief of Ms. J.C., January 12, 2021, p. 135, l. 21 to p. 136, l. 1.

When it came into being, the agreement between West Canada and Maxxam was almost entirely verbal. The terms of the agreement were negotiated on behalf of Maxxam by [Ms. J.C.] on behalf of Maxxam. The terms of the agreement were negotiated on behalf of West Canada by [Mr. J.S.] and Tim Choe, two of West Canada's three principals...The agreement between West Canada and Maxxam contemplated the sale of Motomaxx products on behalf of West Canada.

36. In other words, Mr. B.R. and Mr. D.C., the owners of the respective agencies, were not meaningfully involved in the negotiations which led to the Arrangement. The evidence at the hearing was that each of Mr. B.R. and Mr. D.C. were meaningfully involved in the negotiation of the Arrangement.

The Sale of VRI

37. It was agreed between the parties that throughout January 2017, the dually licensed Road Agents continued to sell the Motomaxx VRI product at motor vehicle dealerships, which policies identified "Maxxam BBY" as the broker of record (paragraphs 23, 26 and 27 of Exhibit 1).
38. The following sentence is reproduced exactly from paragraph 24 of Exhibit 1: [t]he Road Agents sold VRI policies at the MVDs without providing disclosure to the customer that the VRI policy was being sold on behalf of the Agency. In closing submissions, the Licensees stated that this should be taken to mean that no member of the public was misled and that the Licensees never admitted that the Agency was the broker of record.
39. In terms of remuneration, Mr. D.C. testified that neither West Can nor its eventual purchasing agency ever received any commissions from the sale of Motomaxx policies through the Agency. Mr. B.R. confirmed this in his testimony and stated that the money received as a result of these sales remained with Motomaxx. At least one Road Agent received commissions as a result of the sale of the Motomaxx policies during the month of January 2017, which remuneration came from the Agency.

Evidence of Ms. C.R.

40. Ms. C.R. testified that she started as an agent with the Agency in December 2016. She had no relationship with Maxxam Langford.
41. Ms. C.R. stated that near the end of December 2016, she found out that the Agency did not receive its ASD and so it was looking for another agency from which the agents could work. Ms. C.R. understood that Ms. J.C. knew Mr. D.C. and so this is how she and her colleagues ended up at West Can as of January 2017. Specifically, Ms. C.R. recalled that she was told by Ms. J.C. that the Agency lost its licence and was looking for a new location to do ICBC transactions but that the other products, such as

Motomaxx and [REDACTED], they would continue to sell separately. The Hearing Committee accepts this evidence.

42. When the transition actually occurred, the dually licensed Road Agents continued to service dealerships that were previously serviced by the Agency. In terms of changes in her work on a day-to-day basis, Ms. C.R.'s inventory was from West Can and she was attending at the West Can office. She would "run" ICBC under West Can by using the West Can numbered stamp for ICBC products. She could not recall "100 percent" but she believed that the disclosure form provided by West Can to use pertained to ICBC products. She stated that the broker of record for Motomaxx products as of January 2017 was the Agency. She did not recall saying anything to her clients about the Agency being the broker of record for VRI, and was not given any training on what to do or say to clients in these circumstances. The Hearing Committee accepts this evidence.
43. To sell ICBC policies while working at West Can, she would log into the ICBC site. To sell the Motomaxx product, she logged into a separate portal by using an email address and password that had been provided by the Agency. West Can did not have a Motomaxx login. Ms. C.R. further testified that all policy documentation, ICBC and Motomaxx, was provided to batchers who came to West Can from the Agency. Ms. C.R.'s understanding was that those batchers processed the ICBC documents for West Can and the Motomaxx policies went to the Agency. The Hearing Committee accepts this evidence.
44. Ms. C.R. stated that she received commissions for selling the Motomaxx product in January 2017 by way of a separate paycheque from the Agency. She did not state how she was normally paid commissions for selling those policies. Ms. C.R. left West Can to work at [REDACTED] along with her other dually licensed Road Agents in approximately February 2017. She recalled that Ms. J.C. had said to her that the Agency was upset that it could not sell Motomaxx products at West Can but could do so at [REDACTED] and that is why the agents were moving locations. The Hearing Committee accepts this evidence.
45. In cross-examination, Ms. C.R. disagreed with the suggestions that no one on behalf of the Agency authorized her to sell Motomaxx products on behalf of the Agency after January 1, 2017, and that she started working for West Can to avoid that sequence of events.
46. The Hearing Committee found Ms. C.R. to present as an honest, credible and forthright witness who did not have a vested outcome in these proceedings. Where the evidence of Ms. C.R. and another witness differed and the Hearing Committee was required to make a finding of fact on that point of evidence, the Hearing Committee preferred the evidence of Ms. C.R.

The January 13, 2017 Meeting at West Can

47. Mr. D.C. testified that he was on vacation at the end of 2016 through the beginning of 2017. When he returned to work at West Can in early January 2017, he discovered that the dually licensed Road Agents were selling the Motomaxx VRI product through West Can. He was concerned about this as West Can did not have a relationship with Intact to sell this product but instead offered a competitive product called [REDACTED].
48. On January 13, 2017, there was a meeting at the West Can premises. Mr. D.C. gave evidence that during this meeting he directed all agents to cease selling the Motomaxx VRI product and instead offer the [REDACTED] product, which is what West Can used. He stated that at the time he thought that it may be possible to put something in place to have Motomaxx products sold eventually, but for now all VRI sales needed to be through [REDACTED].
49. Ms. C.R. testified that she attended this meeting with her colleagues and recalled that Mr. D.C. advised the dually licensed Road Agents to stop selling the Motomaxx product because Council had an issue with them doing so. There was an [REDACTED] representative who was in attendance that day and gave training with respect to that product.
50. Mr. J.C., the IT manager for West Can at the relevant time, testified that he attended this January 2017 meeting at West Can and during this meeting that his father, Mr. D.C., advised the dually licensed Road Agents to stop selling the Motomaxx product. Mr. J.C. recalled his father using a phrase during this meeting that he had heard him use before: in “no way, shape or form” was the Motomaxx product to be sold. Mr. J.C. stated that all agents were then offered training and login information with respect to the [REDACTED] product by an [REDACTED] employee who also attended the meeting.
51. Exhibit 3 is an email from Ms. M.W. at [REDACTED] to Ms. A.L. at West Can, with the subject “[REDACTED] Training Agent Sign-In Sheet – January 13 2017” attaching “the list of agents that had signed our sheet this morning”. Ms. M.W. goes on to say “If there was anyone that didn’t have a chance to sign in, or any agents who missed today’s training and would like to schedule one, please let us know”. Ms. C.R. is one of the 16 individuals who signed in that day. Although Ms. C.R. did not specifically remember signing the sheet, she recalled the meeting and identified her signature.

Evidence of Mr. A.L. (Intact Insurance)

52. Mr. A.L. testified as a representative of Intact Insurance. He testified about his work experience with Intact and about the Motomaxx product, which Intact supplied to the Agency and one other broker in British Columbia, [REDACTED], to sell to consumers. Mr. A.L. was working for Intact in Edmonton as of January 2017, and so did not have a direct relationship with the Agency at that time but reviewed Intact’s

records that were available and testified at the hearing as a representative of the company on that basis.

53. Mr. A.L. stated that for an entity other than the Agency or ██████████ to sell the Motomaxx product in BC there would need to be an agreement with Intact which would involve a discussion about the business plan (i.e. clientele and expected volume of business). Intact administered the portal by which the entity accessed Motomaxx and assigned user IDs. To Intact's knowledge, neither Mr. B.R., Ms. J.C., the Nominee nor anyone else at the Agency ever contacted Intact about engaging West Can to sell the Motomaxx product, about the Agency's loss of its ASD with ICBC or about replacing the broker of record on Motomaxx policies.
54. Mr. A.L. identified an email exchange that he had with Mr. P.P. on October 12, 2018, wherein Mr. A.L. confirmed that all transactions of Motomaxx products between November 2016 and February 2017 were reported either under the Agency or Maxxam Langford and there was no request to amend the broker of record to West Can. He stated that he had made those inquiries at the time he sent the email and that to the best of his knowledge the statements were accurate.
55. Mr. A.L. also identified the spreadsheet provided by his boss, Mr. M.O., to Council, which Intact uses to track sales and cancellations of a product (here, VRI) as the mechanism by which the broker or agency reported to Intact on a monthly basis. The agency, whatever that may be, indicated to Intact the total volume of sales and the gross amount, less commissions and fees, due to Intact. Once Intact had seen those numbers, Intact would make a withdrawal from the agency's account (here, the Agency's account). Mr. A.L. identified documents which were ultimately entered as Exhibits 4 and 5 showing that Intact made withdrawals from the Agency's account in April and August 2017 for Motomaxx business that was written in January 2017. On cross-examination, Mr. A.L. confirmed that the Agency and Maxxam Langford shared an Intact account and that there was no way to differentiate on the spreadsheet which policies were sold through the Agency and which were sold through Maxxam Langford, as all policies on the spreadsheet were attributed to "Maxxam BBY". The Hearing Committee notes that it is possible that all policies sold that month were attributable to the Agency and none were attributable to Maxxam Langford, as Mr. A.L.'s email to Mr. P.P. stating that some policies were processed through Maxxam Langford referenced a longer time period.
56. The Hearing Committee found Mr. A.L. to present as an honest and credible witness although, through no fault of his own, he was somewhat limited in the information that he could provide.

Evidence of Mr. B.R.

57. Mr. B.R., a 60% owner of the Agency, gave evidence in this matter. He stated that the Agency did not authorize the 101 impugned transactions and that the Agency did not make any money off of the impugned transactions. He confirmed that the Agency did pay some commissions, to Ms. C.R. in particular, because it was his understanding that West Can was not going to pay commissions to the dually licensed Agents and the Motomaxx cheques, which normally would have been used to pay commissions, were not available at the time. This was the totality of his evidence-in-chief.
58. On cross-examination, Mr. B.R. disputed the evidence given by Mr. A.L., and stated that the contract with respect to the Motomaxx VRI was between Intact and Motomaxx, not between Intact and the Agency, and Motomaxx then in turn has agreements with the Agency and with Maxxam Langford.
59. Mr. B.R. was questioned on previous discipline incurred in April 2015 by the Agency and its nominee at the time, Mr. A.T., another part-owner of the Agency. The findings in that case were, among other things, that they failed to act in a trustworthy and competent manner, in good faith and in accordance with the usual practice of the business of insurance as they failed to have adequate training and supervision in place regarding the sale of Autoplan products and access to the ICBC database and failed to enforce procedures with respect to access. As a result of this misconduct, the Agency was fined \$20,000, the nominee was fined \$10,000 and a condition was imposed on the Agency's general insurance licence that it must have a Level 3 general insurance agent acceptable to Council, who works from and is in regular attendance at the Agency, or its general insurance licence will be automatically suspended without further action by Council, among other orders.
60. Mr. B.R. was also questioned on previous discipline incurred in February 2016 by Maxxam Langford for that agency's failure to notify Council within five business days of the withdrawal of a licensee's authority to represent the agency, with such breaches taking place over a period of seven years. In that case Council had determined that the breaches occurred because there was a lack of procedures and oversight in place. As a result of this misconduct, Maxxam Langford was fined \$10,000 and the nominee at the time, Mr. A.T., was fined \$2,000, among other orders.
61. Mr. B.R. agreed that, without the Agency's ASD in place, the Level 1 salespersons it employed were no longer authorized to attend MVDs and therefore could not place Motomaxx products at the dealerships. He further agreed that this meant the Agency potentially lost significant revenue associated with both Autoplan and the Motomaxx product, placing the Agency's relationship with the various dealerships at risk. He agreed that it was imperative that the Road Agents still be able to sell the Motomaxx product to earn revenue. This was the genesis of the Arrangement that the Agency entered into with West Can. Mr. B.R. stated that his primary concern was the

employment of the approximately 30 staff members and that the Motomaxx product was one-third of the allover revenue that was generated at dealerships, which he quantified as “not significant”.

62. Mr. B.R. identified a spreadsheet included at Tab 7 of Exhibit 2 as something which was created by Motomaxx and submitted to Intact on a monthly basis to show the sales of products for the month of January 2017.⁵ Mr. B.R. confirmed that the notation of “Maxxam BBY” as the brokerage referred to the Agency and that the dealerships were dealerships which had a relationship with the Agency prior to it losing its ASD and they were not dealerships which were serviced by Maxxam Langford.⁶ Mr. B.R.’s evidence as to why the Agency was noted as the broker of record was because the Road Agents were using a system built by Motomaxx:

And what happened was, because this happened so quickly, we didn’t – our programmer was away at that time, the first couple of weeks of January, where we were going to be changing the actual name of the agency from Maxxam Burnaby to Canada West.⁷

...

But this is what I’m trying to tell you – is they have no – they had no way of changing that name from Maxxam Burnaby. That’s a programming change.⁸

63. Mr. B.R. further stated that the name should have been changed from the Agency to West Can because there was an “understanding” with West Can that it was “quite okay” to sell the product through their agency but that there was no way to do so in the circumstances.
64. Mr. B.R.’s evidence was that West Can did not need an agreement with Intact in order to sell Motomaxx products. Mr. B.R. was surprised when he heard about the January 13, 2017 meeting at West Can because he said that Mr. D.C. had agreed that the Agency could sell the product there. Although he was aware that the Road Agents continued to sell the Motomaxx product at West Can after that meeting, his view was that the Agency did not need to be involved as the Road Agents were in the “care, custody, control” of West Can at that point. He disagreed that the Road Agents’ licences were with the Agency and stated that the Agency had no authority to tell the

⁵ In the Licensees’ closing submissions, it was suggested at paragraph 5 that this document was created by Intact. The evidence of Mr. A.L. and Mr. B.R. confirm that it was not.

⁶ In the Licensees’ closing submissions, it was suggested at paragraphs 6 – 10 that Mr. A.L. admitted that some of these transactions were attributable to Maxxam Langford and his evidence on this point was inconclusive. As set out above, this may not be the case and there is a potential explanation for Mr. A.L.’s evidence. Further, Mr. B.R.’s evidence on this point suggests that is not the case.

⁷ Cross-Examination of Mr. B. R, January 12, 2021, p. 80, l. 11 – 16.

⁸ Cross-Examination of Mr. B. R, January 12, 2021, p. 81, l. 14 – 17.

licensee “anything” and they were dually licensed only for the purposes of commissions on non-Motomaxx products. Ms. J.C. gave different evidence on this point in her testimony and confirmed that some of the Road Agents maintained small books of business at the Agency during this time, which is why they were still licensed with the Agency and that the Nominee as the nominee of the Agency was available for questions from them. The Nominee, in his meeting with Council, the transcript of which appears at Tab 19 of Exhibit 2, stated that the Road Agents were dually licensed because they would still work at the Agency at this time and still had a customer base to serve there.

65. Mr. B.R. confirmed that he was not aware of any steps taken by the Agency to tell the Road Agents to stop selling the Motomaxx product or prevent the Road Agents from using login codes in January 2017. Upon questioning from the Hearing Committee, he confirmed that the Road Agents were continually licensed by the Agency during this time, were never terminated or released and that some remain licensed with the Agency at the time of the hearing.
66. For the Motomaxx policies that were sold in January 2017, Mr. B.R. testified that the money from the premiums, less the amounts paid to Intact, was still “sitting there”. Upon questioning from the Hearing Committee, he said that “we” had notified Mr. Choe “that there was an amount of money sitting there that Motomaxx owed to Canada West [sic]” but never heard anything back. Similarly, in cross-examination by Council, Mr. B.R. stated that “we” had questioned West Can about refusing to pay agent’s commissions and asked them to do so and never heard anything back, which is when the Agency elected to pay the Road Agent(s) out of its own pocket. Mr. B.R. disagreed with Council’s suggestion that West Can did not have the money to pay the commissions and stated that West Can could have written a cheque to the Road Agents at any point and then sought reconciliation for the amounts. The Hearing Committee does not accept this as a reasonable approach to the situation.
67. In response to a question from the Hearing Committee, Mr. B.R. stated that licensees were compensated for the sale of Motomaxx policies by the Agency out of the fee that was reimbursed back to the Agency, which was contrary to his evidence in his examination-in-chief, wherein he stated that normally Motomaxx would write the cheques and it was an exception for the Agency to pay this commission.
68. In terms of payments to Intact, Mr. B.R. stated that even though Exhibits 4 and 5 showed money being withdrawn from the Agency account, the premiums were transferred from the Agency to Motomaxx and then from Motomaxx back into the Agency’s account with Intact, as that is how Intact wanted it to be done. This point was never put to Mr. A.L. in cross-examination.
69. In terms of discussions with Intact about moving to West Can, Mr. B.R. stated in cross-examination that he verbally told Mr. P.R. of Intact that the Agency had lost its MRS

and that the intention was for West Can to sell the Motomaxx product. Mr. B.R. agreed that this was the first time he had provided this piece of information to Council.

70. There was no re-direct examination of Mr. B.R. at any point.
71. The Hearing Committee had some concerns with Mr. B.R.'s evidence on certain points. At times the Hearing Committee felt that he was self-serving where it suited him. Some of these examples are set out above. Further examples still of the Hearing Committee's concern in this regard are discussed below.

The Investigation

72. Mr. P.P. gave evidence with respect to his investigation of this matter. He stated that in February 2017, Council received a complaint from an employee of West Can that Ms. C.R. had conducted insurance transactions that she was not authorized to do. The complaint came in the form of a faxed letter, on West Can letterhead, signed by West Can (but no individual in particular) dated February 22, 2017, which letter is located at Tab 10 of Exhibit 2. Although the subject of the letter was "Notification of agents no longer authorized to represent West Canada Insurance Services Inc.", the concluding paragraph stated:

Please also be advised that on January 31st it was discovered that one of the brokers, [Ms. C.R.], during the course of the day as an ASD road broker for West Canada Insurance sold two insurance products for another agency. The broker turned in these transactions (attached) with her ICBC documents. All of the newly acquired agents were reminded in person and in writing that during the course of the daily ASD duties they were only permitted to sell products of West Canada Insurance. It concerns us greatly that she not only transferred these policies at the dealership but also used a screen shot of the ICBC transaction she processed under our agency number to apparently finance the Motomaxx product, although it is a little unclear as the contract is blank and the Dec page says the premium was paid by cash.

73. There were no attachments included with the letter at Tab 10 of Exhibit 2.
74. Mr. P.P. also identified that Council had a concern that Ms. C.R.'s licence restrictions would have prevented her from selling an insurance product on behalf of an agency that did not hold an ASD, as she was a Level 1 at that time, who are not permitted to conduct or transact insurance business at MVDs where the broker of record does not hold an ASD agreement. This is outlined in a bulletin from Council, which was included at Tab 1 of Exhibit 2, which was posted on Council's website as of March 3, 2016, with the ASD replacing the MRS as of January 1, 2017, with other revisions set out at Tab 3 of Exhibit 2. Licensees are obligated to keep apprised of these notices and developments.

75. Mr. P.P. interviewed several individuals during the course of his investigation, the notes of which were included at Tab 9 of Exhibit 2. The typed notes of his interview with the Nominee on August 17, 2017 stated:
- What did you advise the RA's [Road Agents] about selling VRI? They were to sell Intact. John [Dewar] called me later stating they had a verbal agreement with DC [Mr. D.C.] to set up a contract between WC [West Can] and Motomaxx and that dealerships would go back to MB [Maxxam Burnaby] when they got their ASD back
 - Did you discuss selling VRI with West? John [Dewar] not aware but assumes JC [Ms. J.C.] did.
 - Did the RA provide the clients with a Motomaxx disclosure doc? NO and now at [REDACTED].
- ...
- [Ms. C.R.] issue – Did you allow Intact to be sold by the road agents? Yes.
76. Mr. P.P. stated that with respect to the first bullet, the Nominee called him to provide this further information after their interview had concluded that day (but before he typed up his notes).
77. Mr. P.P. stated that with respect to the second bullet, the Nominee later called him to confirm that he had spoken to Ms. J.C. and confirmed that she stated that there was a verbal agreement that a contract would be put in place at some time between West Can and Motomaxx.
78. Further, Mr. P.P. testified that, during the course of his interview with the Nominee, the Nominee advised that he was unaware that road agents licensed with Council as Level 1 salespersons were not permitted to sell any type of insurance products while situated at MVDs, when representing an agency that did not hold an ASD agreement with ICBC. Further still, the Nominee advised during his interview that the Road Agents were not required to provide clients with a disclosure document when discussing non-ICBC insurance-related business, such as VRI policies, at the MVDs, as he believed that West Can's disclosure document provided during Autoplan business was sufficient. These two pieces of information were recorded in the Report to Council, dated July 23, 2019, included at Tab 28 of Exhibit 2, which document Mr. P.P. created. Mr. P.P. provided an explanation as to why those two facts were not included in the notes of his interview with the Nominee as included at Tab 9 of Exhibit 2, which was that at the time of the interview his investigation was focused on the complaint with respect to Ms. C.R.
79. Mr. P.P. also testified with respect to his conversation with Mr. M.O., the Vice President of Intact, about what Intact knew about the Arrangement. Mr. M.O. informed Mr. P.P. that Road Agents would collect the gross premium, including

commissions from the Motomaxx product that were paid to the Agency, and Intact received the premium net of those fees. In email exchanges between Mr. P.P. and Mr. M.O., included at Tabs 22 and 23 of Exhibit 2, Mr. M.O. stated the following:

These policies [VRI] are broker-billed policies. The broker collects the premium and remits to Intact, net of fees. As the fees are deducted by the broker who then remits to Intact, we would have no record of where the fees go and who they are being paid [to].

...

We do offer the vehicle replacement product through one other broker [other than Motomaxx], [REDACTED]. And they, in turn, do support other brokers that Intact is aware and in agreement [with].

...

[W]e are not aware of Motomaxx themselves selling the product through other brokers but would not be contrary to our contract per the point above.

80. Finally, Mr. P.P. gave evidence about a spreadsheet that had been provided by Intact, which was included at Tab 7 of Exhibit 2. It recorded the Motomaxx VRI policies sold in January 2017, with the Agency listed as the broker of record and the allotment or distribution of premiums to the various entities. Mr. P.P. then filtered this document so that only those transactions of the Level 1 salespersons were recorded, which spreadsheet was included at Tab 8 of Exhibit 2. On the Hearing Committee's count of the 101 reported impugned transactions by Level 1 salespersons in Tab 8 of Exhibit 2, 57 transactions occurred prior to January 13, 2017, and 44 transactions occurred on or after that date.
81. The Hearing Committee found Mr. P.P. to present as an experienced and credible investigator, particularly given that his investigation took place nearly four years ago.

Admissions

82. In addition to the admissions made by the Licensees in Exhibit 1, during the course of Council's investigation of this matter, the Licensees made other admissions. In the letter to Council dated August 7, 2019, located at Tab 29 of Exhibit 2, sent in advance of the intended decision, the Licensees state:

Maxxam acknowledges having made a mistake with regard to the road agent's use of the Maxxam codes at the point of sale. It is clear from the evidence before the Council that the road agents have received unequivocal direction that they were working for and on behalf of West Canada. Nevertheless, all parties involved, including Maxxam, should have ensured that road agents could no longer utilize Maxxam codes.

...

The Road Agents were operating on behalf of West Canada. Maxxam and Mr. Dewar understand that all proper disclosure documents were provided to the customers by the Road Agents operating on behalf of West Canada. Maxxam never received any of the policy documents and so is not in a position to confirm what materials were processed by West Canada.

That being the case, Maxxam does not (and cannot) dispute the Council's assertion that the impugned policies were generated identifying Maxxam as the brokerage of record.

That should not have occurred and Maxxam admits to this unqualifiedly.

As explained above, despite clear direction to the Road Agents that they were operating on behalf of West Canada, they still had access to their Maxxam codes.

83. The Licensees attempted to resile from this in their closing submissions, apparently for the first time since the letter was sent 16 months ago, stating that it is "unfortunate" that the letter uses the term Maxxam codes, but submits that it is an understandable error in the middle of a 12-page letter and the evidence at the hearing supersedes what had previously been acknowledged.

SUBMISSIONS OF COUNCIL

84. As stated above, Council provided a written submission which, among other things, recited Exhibit 1 and provided authorities for the Hearing Committee's consideration. In terms of the *viva voce* evidence, Council's position was that some areas of testimony from Mr. B.R. and Ms. J.C. should be treated with extreme caution and that Ms. J.C. was evasive and selective in her testimony. Council submitted that, as between Ms. J.C. and Ms. C.R., the Hearing Committee should prefer the evidence of Ms. C.R.
85. The specific submissions of Council are referred to by the Hearing Committee in its findings as set out below.

SUBMISSIONS OF THE LICENSEES

86. The primary position of the Licensees was two-fold: (1) Council failed to prove its case, in that persons or entities other than the Agency and the Nominee, namely West Can and Motomaxx, were responsible for the identified issues; and (2) if responsibility does lie with the Licensees, any penalty should not be worse than that which was ordered as against Ms. C.R., Mr. Choe and West Can. The Licensees also sought a

10% reduction in the financial penalties sought by Council as a result of mitigating factors.

87. The Licensees state that the Agency ceased to have any oversight of what the Road Agents did at auto dealerships effective January 1, 2017, and all such duties were specifically removed from them and transferred to West Can. In the Licensees' submission, the Agency bore no oversight of the subject employees on the impugned transactions. At paragraph 19, the Licensees state:

To the extent it was Maxxam's failing (which is denied) the failure to shut off the departed employees' access to the Motomaxx system might be likened to a failure to change the locks or alarm codes when staff leave. There is no straight line from the shortcoming to a conclusion that security will be breached.

88. Ultimately, the Hearing Committee did not accept this submission and this is discussed extensively below.
89. The Licensees conceded that prior discipline was a relevant consideration and that if liability was found the non-financial sanctions proposed by Council were appropriate but did not provide any authorities or explanation as to what specific mitigating factors should be considered and how or why a 10% reduction in a monetary penalty would meet this objective.
90. The Hearing Committee has addressed many of the specific points raised in the Licensees' closing submissions in its findings as set out below.

FINDINGS OF THE HEARING COMMITTEE

Lack of Evidence from the Nominee

91. After the Licensees indicated that the Nominee would not be testifying due to the information elicited by Council, Council made submissions that it would seek an adverse inference for his failure to do so at the end of the day. The Licensees did not respond to this assertion. Ultimately, Council did not seek such an adverse inference in its closing submissions and the Hearing Committee does not draw such an adverse inference.
92. The lack of testimony from the Nominee does not impact the fact that the Council still has to prove its case on a balance of probabilities. The Hearing Committee has proceeded on the evidence that was entered at the hearing, applying the applicable law and has made findings of fact accordingly.

93. The Hearing Committee does not hold anything against the Nominee for not testifying, but it takes this opportunity to express disappointment that he did not do so. To be clear, this is not to say that a licensee has any obligation to participate in a hearing. However, when a hearing is requested by a licensee, and representations are then made from the beginning, and indeed, on the day that he is due to testify, that a licensee will in fact testify, the Hearing Committee will often conduct the hearing and prepare its questions for other witnesses on the understanding that it will be hearing from the licensee. Furthermore, in this case in particular, there are contested facts about what transpired for which, on many occasions, the Nominee would appear to have been the most appropriate person to offer potentially clarifying evidence. Mr. B.R. and Ms. J.C. stated respectively that the Nominee was responsible for the day-to-day responsibilities of the Agency and liaising with the Road Agents.
94. In the end, it does not matter why the Nominee did not testify. He did not do so, which is his right. When informed of this fact, Council took some time to consider its position and did not seek an adjournment to consider the matter further or apply to re-open its case and subpoena him as an adverse witness. Instead, Council stated that it was prepared to proceed to closing submissions, and the parties and the Hearing Committee continued accordingly.

Hearsay Evidence

95. During at least one point of the hearing, and in closing submissions, the issue of hearsay evidence arose. The Hearing Committee takes this opportunity to remind the parties that, as an administrative tribunal, it is not bound by the traditional rules of evidence, except where specifically prescribed, which is not the case here. It is entitled to act on any material evidence which is logically probative, even though the evidence may not be strictly admissible in court. The Hearing Committee has done so.
96. In terms of conversations which took place between two or more people, the contents of those conversations is not hearsay evidence. The Hearing Committee acknowledges that it can accept the evidence as what was said, or it can reject that proposition. Whether or not what was said is what actually occurred is a different question.

Factual Findings of the Terms of the Arrangement

97. It is clear that ICBC's decision not to grant the Agency an ASD was a decision which came unexpectedly and caused a great deal of upset to the operations of the Agency. The Agency scrambled to find somewhere for its Road Agents to work as of January 1, 2017, and managed to come to an arrangement with West Can on very short notice and with West Can's owner, Mr. D.C., who was out of the country from late December through early January.

98. The Hearing Committee does not need to make a legal determination about the specific terms of the agreement between the Agency and West Can, particularly with respect to the sale of the Motomaxx product. It seems clear that there were at least some discussions about this possibility, and an intention to put it in place, at least eventually – perhaps what one might call an “agreement to agree”. With other more pressing matters, the reduced time frame to get the Road Agents up and running, the Christmas holidays and Mr. D.C. being out of the country, it appears fair to conclude that things were left somewhat up in the air and without the legal certainty to form a contract. This is supported by Ms. J.C.’s evidence that during the conference call Mr. B.R. had asked West Can to “take a look at it”(meaning the Motomaxx product), Mr. B.R.’s evidence that there was an “understanding” that it was “quite okay” to sell the product and that there was some confusion as to why West Can was not paying the Road Agents, and the Licensees’ submission to Council in advance of the intended decision that the agreement “contemplated” the sale of the Motomaxx product.
99. The Hearing Committee also finds it difficult to accept the Licensees’ submission to Council that Ms. J.C., the office manager at the time, was the chief negotiator of this important deal, wherein the fate of 30-plus staff members and the Agency’s vital relationship with its MVDs rested. Ms. J.C. did not give evidence consistent with someone who had the authority to conduct these negotiations and come to an agreement, or someone who actually did so.
100. In any event, even if there was an agreement between the Agency and West Can with respect to the Motomaxx product between January 1 and 12, 2017, the Hearing Committee concludes that there was no such agreement as of January 13, 2017. The Hearing Committee finds that on this date Mr. D.C., the owner of West Can, instructed the Road Agents to cease selling the Motomaxx product by way of a staff meeting at the West Can offices. If there was a meeting of the minds with respect to the sale of the product prior to that time, it ceased as of that date.
101. The Hearing Committee also accepts that the Road Agents did not cease selling the product as of January 13, 2017, and that 44 policies were sold by various Level 1 salespersons through the remainder of the month (assuming that the effective date of the policies is the date of sale).
102. Just as the Hearing Committee does not need to decide whether there was an agreement that West Can could sell the Motomaxx product, the Hearing Committee also does not need to find whether or not Intact required a contract for West Can to sell the Motomaxx product. Intact’s evidence from Mr. A.L., and through Mr. P.P. by virtue of his conversations with Mr. M.O., was that Intact needed to be made aware of who was selling the Motomaxx product and that there needed to be agreement from Intact to do so, either with Motomaxx on Mr. M.O.’s interpretation, or with the brokerage (Maxxam or West Can as the case may be) on Mr. A.L.’s evidence. For the purposes of this hearing, it does not matter which it is. The requirement of Intact’s approval in

one way or another makes sense to the Hearing Committee although, again, it makes no specific findings in this regard.

103. Mr. B.R. stated that he had made Mr. P.N. of Intact aware of the plan to sell the product, although it is important to note that Mr. B.R. did not go as far as to say that he made Mr. P.N. aware that this had actually commenced as of January 1, 2017. Mr. B.R. further stated that no contract needed to be in place. With all due respect to Mr. B.R., whether or not Mr. P.N. was made aware of the impending change, it is clear that Intact's position prior to and at the hearing was that it did need to be made aware of West Can's involvement and sign off on it, and did not actually sign off on it. Mr. B.R. is not well placed to determine what Intact did or did not require at the relevant time and without the evidence of Mr. P.N., whom the Licensees did not call as a witness and Council could not have called as a witness having only found out about this conversation during the course of the hearing, the Hearing Committee prefers the evidence of Mr. A.L. over that of Mr. B.R. on this point.

The Allegations in the Second Amended Notice of Hearing

104. The Hearing Committee finds that the Agency and the Nominee failed to act in good faith and in a trustworthy and competent manner and in accordance with the usual practice of the business of insurance, in accordance with Council's Rules, Code of Conduct and section 231(1) of the Act in the following ways.

Permitting and facilitating improper insurance transactions regarding vehicle replacement insurance ("VRI") at motor vehicle dealerships while the Agency did not hold an Autoplan Service Dealerships agreement with ICBC

105. The Hearing Committee finds that the Licensees permitted improper insurance transactions with respect to the Motomaxx VRI while the Agency did not hold an ASD. The Hearing Committee finds that "facilitating" is something more than "permitting" and that the impugned conduct may not have risen to that higher level, but there is no doubt that the Agency permitted, by its actions, or perhaps more accurately, by its omissions and lack of action, these transactions to occur.

106. To use the alarm analogy from the Licensees' closing submission, even if the alarm codes came from the alarm company (Motomaxx), the Agency was responsible for administering them. The Agency cannot reduce the staff's responsibilities such that they should no longer have unfettered access to the premises, fail to take steps to ensure that the alarm codes were changed and then, when it finds out that staff, which it still employs in some capacity, are improperly accessing the premises and creating risk to the public by way of that access, shrug its shoulders and take the position that the staff should not be doing it and someone else has more responsibility to tell them to stop. To continue that analogy, once the Agency became aware of these matters, at all times the Agency and, by association, the Nominee, had responsibilities to contact the alarm

company to revoke the codes and to direct its staff to stop trespassing, even if others also carried that responsibility.

107. The Hearing Committee rejects the suggestion in the Licensees' closing submission that there is nothing in the record suggesting that the Agency or the Nominee did, or even could, exercise more control over the Road Agents "than those Agents' employer (West Can)". First, that is not entirely accurate. Second, this hearing is not intended to apportion responsibility between the Licensees and other potentially culpable parties. The question is whether Council has proven the allegations against the Agency and the Nominee. The Hearing Committee finds that: (1) the Road Agents were dually licensed and still working for the Agency; (2) the Agency and Nominee took no steps to ensure that it was "off the record" with respect to the Motomaxx policies and commencing around January 13, 2017; (3) the Agency and the Nominee had actual or constructive knowledge that there was a dispute about a type of policy that it was associated with being issued and still did nothing with respect to contacting its agents, West Can or Motomaxx (with which it had a common ownership and a business relationship); and (4), the Agency and Nominee permitted improper insurance transactions regarding VRI at MVDs while the Agency did not hold an ASD agreement with ICBC.
108. The Hearing Committee reviewed the letter to Council in which the Licensees admitted that the codes used to sell VRI were Agency codes and that it was a mistake to permit this to occur. There were several paragraphs which addressed this issue in no uncertain terms. The Hearing Committee also considered the Licensees' position at the hearing that this was an error and that the codes were Motomaxx codes. The Hearing Committee does not accept that the codes were Motomaxx codes. If the Hearing Committee is wrong on this point and Motomaxx created them, at the very least the Agency appears to have managed them or exerted some control over them. In addition to the original admission, Ms. C.R. testified that the Agency provided her with the login information. The Hearing Committee recognizes that it was a confusing and chaotic time, and that certain logistical matters may have fallen through the cracks, but at some point in the month of January 2017, it became apparent to the Agency what was transpiring and the Agency took an approach ranging somewhere in between willful blindness and deliberate inaction and declined to take steps to contact its Road Agents, Motomaxx or West Can to address the issues. Instead, it did nothing, and permitted Motomaxx to continue collecting premiums from policies which were being sold under the Agency's name.
109. Even if it was a term of the Arrangement at all times that West Can would permit the Road Agents to sell Motomaxx policies and the absence of a programmer⁹ prohibited

⁹ It was unclear to whom Mr. B.R. was referring when he said "our" programmer in cross-examination. He is an owner of the Agency, Maxxam Langford and Motomaxx. He was not asked to clarify this point in cross-examination or re-direct. The Hearing Committee did not catch it at the time and is not able to

changing the broker name to West Can for the first few weeks of January, the Hearing Committee finds that after this time the Agency codes were still used to sell the policies showing the incorrect broker of record, there was no disclosure of this fact to the consumer and no steps taken by the Agency to address this issue.

110. The Hearing Committee would like to address the apparent motivations of the Agency in the Road Agents becoming licensed with West Can. Mr. B.R. gave evidence, and the Licensees submitted, that its motivations were altruistic and it was simply trying to ensure that its 30-plus agents were not out of a job as of January 1, 2017. The Hearing Committee accepts that this was a factor, and perhaps even the main factor, of the Agency's decision to approach West Can and other brokerages upon receiving ICBC's decision. However, the Hearing Committee was not persuaded by Mr. B.R.'s evidence that he did not have a financial stake in this matter at all.

111. Mr. B.R. agreed during his evidence that protecting the relationship with the MVDs was integral to his business, which is a financial issue even if the Agency did not receive any immediate financial benefit.

Breaching their duties to act in accordance with sections 3, 4 and 8.1 and 8.2 of the Code of Conduct

112. For reference, sections 3.2, 4.2, 8.1 and 8.2 of the Code of Conduct state respectively:

You must be trustworthy, conducting all professional activities with integrity, reliability and honesty. The principle of trustworthiness extends beyond insurance activities. Your conduct in other areas may reflect on your trustworthiness and call into question your suitability to hold an insurance licence.

...

You must carry on the business of insurance in good faith. Good faith is honesty and decency of purpose and a sincere intention on your part to act in a manner which is consistent with your client's or principal's best interests, remaining faithful to your duties and obligation as an insurance licensee.¹⁰

...

determine which entity is being referred to after reviewing the transcript. The Hearing Committee finds that nothing turns on this, as on Mr. B.R.'s evidence the programmer was back after the first few weeks of January and still there was no change and the Agency has an obligation to take some positive steps to ensure that its services are not being misrepresented to the public.

¹⁰ 4.3.1 (b) states that misrepresentation or failing to disclose material information where required reflects adversely on the intention to practice in good faith.

Licenseses act as intermediaries between clients, insureds and insurers in a contractual relationship. The insurers' ability to meet their contractual duties is based on your honesty and competence in provided advice and information.

...

You have a duty to insurers with whom you are transacting business to:

- Make reasonable inquiries into the risk;
- Provide full and accurate information;
- Promptly deliver all insurance documents and monies due;
- Represent the insurer's products fairly and accurately;
- Adhere to the authority granted by the insurer; and
- Promptly report all potential claims.

113. The Hearing Committee finds that the Licensees breached their duties in this regard. They did not act competently in handling the situation in taking reasonable steps to address the transition with respect to the Motomaxx policies or ensure that full and accurate information was provided when they found out that West Can was not permitting the sale of the Motomaxx policy but the Road Agents (which were dually licensed through the Agency) were still conducting those transactions.

Allowing Level 1 general insurance salesperson to sell VRI product policies contrary to Council Rule 6 and their licence restrictions

114. The Hearing Committee finds that the Licensees allowed Level 1 general insurance salespersons to sell VRI product policies contrary to Council Rule 6 and applicable licence restrictions.

115. Assuming that there was confusion or miscommunication between January 1 and 12, 2017 about what West Can was willing to do, there is no doubt that as of January 13, or shortly thereafter, the Agency, if not both Licensees, were actually aware that West Can, for whatever reason, was not willing to have dually licensed Road Agents sell Motomaxx policies under its banner. Mr. B.R. stated that he knew that Level 1 salespersons could not sell the product without an ASD in place, West Can had the ASD and West Can, as of January 13, 2017, was no longer willing to let this occur.

116. The Hearing Committee rejects Mr. B.R.'s evidence that the Road Agents were under the "care, custody, control" of West Can and that the Agency had no business telling them what to do. They were the responsibility of West Can, but only in part. They were also licensed with the Agency.

Breaching their duties to adequately supervise and train their road agents in accordance with Council Rule 7 and section 5 of the Code of Conduct

117. For reference, Council Rule 7, subsection 8, states that a licensee must comply with Council's Code of Conduct. Section 5.3.3 of the Code of Conduct states:

Nominees are responsible to Council for all activities of the insurance agency or adjusting firm and must ensure the agency or firm and its employees are properly supervised and operate in accordance with the conditions and restrictions on their licences.

118. The Hearing Committee finds that this allegation is made out, namely that there was a breach of the duty to supervise the Road Agents, if not through all of January at least during the post-January 13, 2017 time period.

119. Once again, the Hearing Committee rejects Mr. B.R.'s position that the Road Agents were under the "care, custody and control" of West Can and that the Agency had no business telling them what to do. On his own evidence, they were dually licensed with the Agency during that period. On Ms. J.C.'s evidence the Agents maintained a book of business at the Agency during that period. On the Nominee's admission to Mr. P.P., he stated something similar.

120. As long as the Road Agents remained licensed with the Agency, which they did for the entirety of January 2017, the Agency and the Nominee had an obligation to supervise them, which they failed to do. Certainly, as soon as the Agency and the Nominee became aware of West Can's position that the Road Agents were not to sell the Motomaxx product, the Agency ought to have given the direction that the Road Agents cease doing so until the issue could be resolved.

121. The Nominee apparently resided on Vancouver Island. This was suggested by a previous Hearing Committee to be a potential problem in the previous discipline against the Agency with respect to the residence of Mr. A.T. as the nominee for the Agency. The Hearing Committee does not wish to imply that a nominee must live in the municipality of the brokerage; however, according to Ms. C.R., the Nominee was not actually in attendance at the Agency in December 2016 on a daily or even weekly basis. This may have contributed to his failure to supervise as of January 2017, although the Hearing Committee has no evidence on his attendance at the Agency during that time period.

122. The Hearing Committee accepts that West Can and its nominee Mr. Choe had responsibility to supervise the Road Agents as well, and perhaps had primary responsibility, but responsibility placed elsewhere does not absolve the Agency and the Nominee of their responsibility. The Hearing Committee also accepts that West Can had responsibility to train the Road Agents in its policies and procedures.

Failing to ensure appropriate disclosure was provided to clients in accordance with section 7 of the Code of Conduct

123. For reference, section 7.2 of the Code of Conduct states:

When dealing with clients you must:

- Protect clients' interests and privacy;
- Evaluate clients' needs;
- **Disclose all material information;** and
- Act with integrity, competence and the utmost good faith.

(emphasis added)

124. The Hearing Committee is also aware that Council identifies a licensee's responsibilities with respect to disclosure on Council's website as follows:

Licenses must provide disclosure to the client:

- Before the sale of an insurance product.
- On every initial transaction with a client.
- On every subsequent transaction where there is a change in the information contained in the original disclosure; for example, if a product is being placed with a new insurance company, another disclosure is required.

The disclosure should outline:

- That the transaction is between the client and a named insurance company.
- The particulars of the relationship between the licensee and the insurance company.
- The nature and extent of any business or financial interest, if any, the licensee has in the insurance company; and the insurance company has in the licensee.
- The nature and extent of whatever interest, if any, the licensee has in the transaction; including, but not limited to, whether they have the right to receive a commission or other remuneration in respect of the transaction (the amount of remuneration or commission does not have to be disclosed).
- Where a commission or remuneration is payable, the identity of the company or person paying it.

125. Paragraph 23 of Exhibit 1 states that the Road Agents sold VRI policies at the MVD without providing disclosure to the customer that the VRI policy was being sold on behalf of the Agency. In their closing submissions, the Licensees' position is that West

Can was the broker of record during this time period and that is the assumption under which members of the public operated.

126. The problem with this position is that Ms. C.R. testified that, while she could not be certain, she thought that the disclosure form came from West Can and pertained only to ICBC policies and on Motomaxx policies the broker of record was “Maxxam” and that nothing was mentioned to clients about this information. She was not challenged on these points in cross-examination and the Hearing Committee accepts her evidence in this regard. For clarity, the Hearing Committee accepts that her reference to “Maxxam” in her evidence was the Agency as she had no affiliation with Maxxam Langford.

127. Mr. P.P.’s evidence was that, during his interview with the Nominee, they had the following exchange, which supports Ms. C.R.’s evidence:

- Did the RA [Road Agent] provide the clients with a Motomaxx disclosure doc? NO and now at [REDACTED].

128. Further, Mr. B.R. agreed that “Maxxam BBY” as brokerage of VRI policies was an entry created by Motomaxx on its internal documentation for the benefit of Intact during January 2017, and that Level 1 salespersons licensed with the Agency could not sell the VRI policy once the Agency failed to obtain an ASD and that commissions for the sale of this policies never went to West Can.

129. Further still, Ms. J.C., the current nominee of the Agency, agreed in cross-examination that:

- Any Agency employees that were licensed with West Can but were placing the Motomaxx product which listed the Agency as the broker of record had to disclose that to the client;
- Any Agency agents were required to disclose the amount of commissions payable and which agencies are receiving those commissions;
- There is an obligation to act competently and honestly when dealing with an insurer such as Intact and that includes providing full and accurate information;
- There is an obligation to act honestly, competently and in a forthright manner when dealing with members of the public and that includes providing full and accurate information to a member of the public placing insurance, including disclosure of insurance documents and where they will be stored and the broker of record; and
- If a policy lists a particular agency as the broker of record the client needs to be told that that is the broker of record, and this is particularly so when an agent is dually-licensed.

130. While Ms. J.C.'s answers on these points are not dispositive of the issues, they do offer significant insight into what her understanding is as a Level 3 agent and the current nominee of the Agency.

131. The Hearing Committee accepts that there was confusion between the Agency and West Can about who was to be the broker of record between January 1 and 12, 2017 and that at least as of January 13, 2017, West Can did not permit its agents to offer that product and yet the dually licensed agents continued to do so. The Hearing Committee finds that the Agency was in fact the actual broker of record for at least part of January 2017, and that this fact was not brought to the customer's attention. The Agency and the Road Agents ought to have conducted themselves as described by Ms. J.C. The only question for the Hearing Committee is whether or not the disclosure of the broker of record is material information such that it is a breach of the Code of Conduct for failure to make such a disclosure. The Hearing Committee finds that it is given that the consumer is entitled to know where its information and documentation is being kept and who is receiving a commission.

Failing to ensure their road agents accurately represented themselves in accordance with section 10 of the Code of Conduct

132. For reference, section 10.2 of the Code of Conduct states that "You must represent yourself and the services and products you provide so as not to mislead the public".

133. The Hearing Committee finds that this allegation is made out and flows from the finding that the Road Agents did not provide material disclosure about the brokerage of record for Motomaxx policies during the month of January 2017.

Failing to demonstrate competence pursuant to sections 5 and 7 of the Code of Conduct as per Council Notice ICN 16-002 which states, "...any improper conduct by a Level 1 Salesperson will be deemed to reflect on the competence of the Level 1 Salesperson's employer (the insurance agency and its nominee) ..."

134. The Hearing Committee finds that there was improper conduct and a failure to demonstrate competence by Level 1 salespersons licensed with the Agency in selling the Motomaxx policies in the manner that they did as admitted to in Exhibit 1 and as set out with respect to allegation (c), above. By virtue of Council Notice ICN 16-002, this reflects on the competence (or lack thereof) of the Agency and the Nominee.

Any other manner

135. In its closing submissions, Council identified three other potential findings against the Agency and the Nominee which were not particularized in the Notice of Hearing.

136. Council submitted that section 8.3.1 of Council's Code of Conduct states that licensees owe a duty to fully and accurately disclose any information material to an insurer's decision to issue a contract of insurance, and this means that a licensee is required to advise an insurer who the broker of record is so that the insurer can decide whether it wishes to grant authority to the agency to sell the product, and this required the Agency or West Can to have a specific agreement with Intact Insurance. Council also pointed to section 12 of the Code of Conduct, which states that licensees must respond promptly and honestly to inquiries from Council and that it is a breach of the Act under section 231(1)(c) to make a material misstatement in response to Council, and section 13 of the Code of Conduct which requires licensees to be aware of and comply with duties under the Act, the *Insurance Act*, Rules and the Code of Conduct.
137. As these points were not particularized in the Notice of Hearing and were not fully argued before the Hearing Committee, the Hearing Committee does not make any findings in this regard or on any other ways in which the Licensees potentially did not act in good faith and in a trustworthy and competent manner and in accordance with the usual practice of the business of insurance.

ORDERS OF THE HEARING COMMITTEE

138. The primary purpose of the legislation governing licensees is the protection of the public. Council submitted, and the Hearing Committee accepts, the following authorities apply when considering the appropriate sanction for misconduct of licensees. Professor James T. Casey in his leading text *The Regulations of Professions in Canada* states:
- A number of factors are taken into account in determining how the public might best be protected, including specific deterrence of the member from engaging in further misconduct, general deterrence of other members of the profession, rehabilitation of the offender, punishment of the offender, isolation of the offender, denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members, and ensuring that the penalty imposed is not disparate with penalties imposed in other cases.
139. In *Financial Services Commission v. The Insurance Council of British Columbia and Maria Pavicic*, November 22, 2005, the Financial Services Tribunal held that three factors to be considered in sentencing include: (1) the need to promote specific and general deterrence, and, thereby protect the public; (2) the need to maintain the public's confidence in the integrity of the...profession; and (3) the range of sentencing in other similar cases.

140. The Hearing Committee has reviewed and considered the following precedent decisions presented by Council: *InsureBC Underwriting Services Incorporated et al* (2018), *The Whistler Shoppe Ltd. dba The Whistler Insurance Shoppe et al* (2016), *MAC Insurance Service Ltd. et al*, (2017) and *Park Georgia Insurance Agencies (2014) Ltd. et al* (2018). The Hearing Committee recognizes that it is not bound by these precedent decisions but finds them helpful. Finally, the Hearing Committee has reviewed and considered the three previous disciplinary decisions related to the parties or the subject matter at issue against the Agency, Maxxam Langford and Mr. Choe.

Penalty

141. In light of the foregoing, the Hearing Committee makes the following orders:

- a) The Agency pay a fine of \$20,000 within 90 days of the date of this order (the “Agency Fine”);
- b) The Agency pay investigation costs of \$2,562.50 within 90 days of the date of this order (the “Agency Investigation Costs”);
- c) A condition be imposed on the Agency’s licence requiring the Agency to only appoint nominees who have successfully completed the seminar entitled “Duties and Responsibilities for Level 3 Agents and Nominees in British Columbia”, or other such equivalent course as acceptable to Council, and the Council Rules Course within two (2) years of the date of appointment;
- d) A condition be imposed on the Agency’s licence that prohibits the Agency from appointing any nominee who concurrently acts for or represents any other insurance agency;
- e) A condition be imposed on the Agency’s licence that failure to pay the Agency Fine and the Agency Investigation Costs within 90 days of the date of this order shall result in the automatic suspension of the Agency’s licence and the Agency will not be permitted to complete its 2022 annual filing until such time as the Agency Fine and/or the Agency Investigation Costs are paid in full;
- f) The Nominee pay a fine of \$5,000 within 90 days of the date of this order (the “Nominee Fine”);
- g) The Nominee’s licence shall be downgraded from a Level 3 General Insurance agent licence to a Level 2 General Insurance agent licence for a period of two (2) years 30 days after this order. After two (2) years at Level 2, the Nominee may reapply for a Level 3 agent licence;

- h) A condition be imposed on the Nominee's licence requiring him to complete the Council Rules Course within 90 days of the date of this order;
 - i) A condition be imposed on the Nominee's licence requiring him to successfully complete the seminar entitled "Duties and Responsibilities for Level 3 Agents and Nominees in British Columbia", or other such equivalent course as acceptable to Council, prior to reapplying for a Level 3 General Insurance agent licence;
 - j) A condition be imposed on the Nominee's licence that failure to pay the Nominee Fine and complete the Council Rules Course within the stipulated timeframe will result in the automatic suspension of the Nominee's General Insurance agent licence and the Nominee will not be permitted to complete his 2022 annual filing until such time as the Nominee Fine is paid in full and the course is successfully completed; and
 - k) Costs of the hearing payable by the Licensees on a joint and several basis in accordance with the Hearing Costs Assessment Schedule within 90 days of the date of this order. Failure to pay costs within the stipulated timeframe will result in the automatic suspension of the Agency's and Nominee's General Insurance licences and each will not be permitted to complete their respective 2022 annual filing until such time as the costs are paid in full.
142. The Hearing Committee considered the Licensees' submission that discipline should be no worse than that imposed on West Can and Mr. Choe; however, this submission must be considered in light of the fact that there was no discipline imposed on West Can and the Licensees' concession that if liability was found that the non-financial sanctions were appropriate and that a 10% discount on monetary fines was appropriate (i.e. that substantial fines were still acceptable). The parties agreed, and the Hearing Committee finds, that all non-financial sanctions as sought by Council are appropriate and well-supported in the circumstances. The only revision the Hearing Committee has made is with respect to the condition that the Licensees not be permitted to file their 2021 annual filing if they do not comply with certain orders. Given that the 2021 date to file passed on June 1, the Hearing Committee has replaced this with the 2022 filing deadline.
143. Other disciplinary decisions are precedents which guide the range of outcomes but which do not bind this Hearing Committee. Mitigating factors, as elucidated by Professor Casey, include attitude since the offence was committed (i.e. a less severe punishment may be imposed on an individual who genuinely recognizes that his or her conduct was wrong), the age and inexperience of the offender, whether the misconduct is the individual's first offence, whether the individual has pleaded guilty to the charge of professional misconduct which has been taken as showing the acceptance of responsibility for his or her actions, whether restitution has been made, the good character of the offender and a long unblemished record of professional service.

144. The Hearing Committee determined that a \$20,000 fine was appropriate as against the Agency as it was in line with the precedent decisions and nothing less was acceptable due to its history of prior misconduct, the similarity of the prior misconduct and lack of mitigating factors. It has not applied the previous discipline levied against Maxxam Langford in this analysis. While Maxxam Langford is a related entity and one owned by Mr. B.R., the Hearing Committee did not feel it was technically appropriate to factor it in to the progressive discipline. That prior disciplinary order would be a consideration in any future discipline against the corporate entity of Maxxam Langford. The Hearing Committee did consider the fine against Mr. A.T. as the nominee in that matter as a precedent case in its consideration of any fine against the Nominee here.

145. The Hearing Committee determined that a fine of \$5,000 as against the Nominee is within the range of sanctions identified by the Council. In terms of quantum and whether a 10% reduction was appropriate, the decisions where there was a fine as against the nominee in addition to the agency, the fine of the nominee ranged from one-fifth to one-half of the fine levied against the agency. As such \$5,000 is squarely within the range. While this is not a mathematical or proportional exercise, a fine of anything less than one-quarter of the fine levied against the Agency in this case would be at the lowest end of that range of sanctions, and anything less than half the maximum permissible fine under the legislation (\$10,000) is not reflective of the fact that there were multiple breaches involving multiple licensees over a period of weeks which was more than a mere technicality, error or mistake. Further, there were no mitigating circumstances such as acknowledgement of misconduct, remedial steps taken, an apology or explanation for the misconduct, inexperience of the licensee etc. The Nominee's lack of prior disciplinary history is a mitigating factor and one which was considered in arriving at the assessment of \$5,000. The Hearing Committee notes that, with the exception of Mr. A.T., the nominees in each of the precedent cases did not have any identified previous disciplinary history and had fines in the range of \$2,000 through \$10,000.

Costs

146. Council sought costs of the hearing in the Notice of Hearing and in its closing submissions where it detailed the investigation costs as testified to by Mr. P.P. and hearing costs in accordance with the Hearing Costs Assessment Schedule. The Licensees did not make any submissions on costs in their response submissions or seek to make any in sur-reply.

147. With respect to an order on costs, this is a discretionary order of the Hearing Committee within Council's policy J.21 Assessing Investigation Costs and Hearing Costs.

148. The factor that most strongly supports an award of costs as sought by Council is that Licensees each sought this hearing and were each entirely unsuccessful in their defense. Further, although the Nominee had every right to request a hearing and have Council prove its case, even if he did not personally participate in the hearing at the end of the day, there are associated risks in making that request, including an award of costs. The members of the industry ought not to bear the burden of those costs.
149. Although a submissions made with respect to a reduction of any financial penalty imposed on the Licensees and not a submission specifically made with respect to costs, the Hearing Committee did consider whether there should be a 10% reduction in this amount, or any other such reduction. The Hearing Committee did not find it appropriate in the circumstances or consistent with the orders made and has declined to make any reduction on costs.
150. In the absence of any mitigating circumstances presented by the Licensees, having considered the substance and complexity of the issues of the investigation and the eventual hearing which was contested on many points, the Hearing Committee finds that both the investigative costs as set out by Mr. P.P. in his evidence and advanced by Council, and the hearing costs payable in accordance with Council's Hearing Costs Assessment Schedule in an amount to be determined as sought by Council, are appropriate in the circumstances.

Dated in Vancouver, British Columbia, on the 9th day of June, 2021.



Chamkaur Cheema
Chair of Hearing Committee