

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

PAMELA PEEN HONG YEE
(the “Licensee”)

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee to dispute an intended decision of Council dated August 1, 2017.

The subject of the hearing was set out in a Notice of Hearing dated December 14, 2018.

A Hearing Committee heard the matter January 29-31, 2019 and presented a Report of the Hearing Committee to Council at its May 14, 2019 meeting.

Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236 and 241.1 of the Act:

1. The Licensee’s life and accident and sickness insurance agent licence is cancelled with no opportunity to reapply for an insurance licence for a period of two years, commencing June 25, 2019 and ending at midnight on June 24, 2021;
2. The Licensee is fined \$5,000, due and payable no later than September 23, 2019;
3. The Licensee is assessed Council’s investigation costs in the amount of \$1,862.50, due and payable no later than September 23, 2019; and
4. The Licensee is assessed Council’s hearing costs in the amount of \$20,209.10, due and payable no later than September 23, 2019.

This order takes effect on the **25th day of June, 2019**.



Ken Kukkonen
Chairperson, Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

REPORT OF THE HEARING COMMITTEE

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(R.S.B.C. 1996, c. 141)
(the “Act”)

AND

PAMELA PEEN HONG YEE
(the “Licensee”)

Date: January 29-31, 2019
9:30 a.m.

Before: Ken Kukkonen Chair
Frank Mackleston Member
John Crisp Member

Location: Suite 300, 1040 West Georgia Street
Vancouver, British Columbia V6E 4H1

Present: David McKnight and Naomi Krueger Counsel for Council
Bryan Baynham, Q.C. and Mollie Clark (articling student) Counsel for the Licensee
Pamela Peen Hong Yee Licensee
Michael Shirreff Counsel for the Hearing Committee

BACKGROUND AND ISSUES

This hearing was convened to determine whether the Licensee failed to act in a trustworthy and competent manner, in good faith and in accordance with Council’s Rules and Code of Conduct (the “Code”) during the course of her dealings with her client whom will be referred to in this report as “W”.

Specifically, it was alleged by Council that the Licensee had made material misstatements on a life insurance application that she submitted for W; had made misrepresentations to the insurer about the replacement of W’s previously purchased life insurance policy; had processed an electronic life insurance application without W’s consent; had then improperly attempted to

influence W to keep the policy after W had declined to proceed with the insurance; and had offered to pay for W's policy premiums in order to maintain her commission from the insurer.

There was also an allegation by Council that the Licensee had failed to maintain adequate books and records with respect to W's file.

All of these issues arose from W's interactions with the Licensee between May and June of 2016.

As outlined in detail below, the Licensee acknowledged certain professional failings with respect to these events. However, the Licensee did not concede all of the allegations in the Notice of Hearing. The Licensee accepted that it was appropriate in these circumstances for Council to discipline her, but she took the position that an appropriate penalty was a modest fine, coupled with an extended period of supervision. The Licensee argued that a more serious penalty was not required, as Council had not met its burden to establish certain of the more serious allegations.

After hearing evidence over the course of almost three days, it was apparent to the Hearing Committee that there were important differences as between the evidence of the Licensee and W with respect to some of the material events. In order to fully and properly assess the allegations against the Licensee, it was necessary for the Hearing Committee to review the evidence of the parties in some detail, while also reaching conclusions about the credibility of the witnesses. The Hearing Committee has outlined our findings in detail below and Council will see that we have ultimately accepted W's version of the majority of the events.

In the result, the Hearing Committee has made a series of recommendations to Council that includes a two year period of licence cancellation for the Licensee.

EVIDENCE

Exhibits

Council called only one witness at the hearing, the complainant W. The Licensee testified at length on her own behalf. Both witnesses were cross-examined by the opposing counsel.

In addition to the witnesses, a series of documents were entered by Council as Exhibits, as follows:

- Exhibit 1: Partial Agreed Statement of Facts, which contained facts that had been agreed as between the parties.
- Exhibit 2: Joint Book of Documents, which contained certain documents from Council's investigation.
- Exhibit 3: Council's Notice to the Profession concerning amendments to Life Insurance policies, dated February 3, 2012.

- Exhibit 4: Council's investigation activity log, which set out its investigation costs and expenses.
- Exhibit 9: Council's invoice for interpreter services for the hearing, dated January 30, 2019.

During the Licensee's testimony, certain additional documents were entered into evidence as Exhibits, specifically:

- Exhibit 5: Emails showing that the Licensee used third-party services to take paramedicals on other life insurance applications.
- Exhibit 6: [REDACTED] policy illustration that the Licensee testified was presented to W during a meeting on May 14, 2016.
- Exhibit 7: Handwritten illustrations relating to annual costs of insurance for W (undated).
- Exhibit 8: Handwritten illustrations regarding property tax increases (undated).

Partial Agreed Statement of Facts (Exhibit 1)

These are the facts that had been agreed to by the parties in advance of the hearing.

The Licensee was first licensed as a life agent with Council in 2000. She is currently an independent agent and her managing general agent is [REDACTED] ("[REDACTED]"), which is located in [REDACTED]. Most of the Licensee's business is done with [REDACTED] and [REDACTED].

W and the Licensee first had professional dealings many years ago. In February 2004, W purchased a \$200,000 universal life policy from [REDACTED]. As of February 17, 2016 the annual premium on this policy was \$660 and the total investment value and cash surrender value was \$5,194.13. As of the date of the hearing, the Licensee was no longer the advisor on this policy.

In 2007, W also purchased a \$200,000 [REDACTED] universal life insurance policy through the Licensee (the "2007 Policy"). This policy contained a level death benefit option and the cost of the insurance increased each year. As of July 18, 2016, the annual premium on the 2007 Policy was \$660 and the cash surrender value was \$4,240.21.

On May 14, 2016, the Licensee submitted an application to [REDACTED] for a new insurance policy for W (the "2016 Policy"). The application for the 2016 Policy stated that the 2007 Policy would be replaced by the 2016 Policy and that the cash value from the 2007 Policy would be used to pay for the first year's premiums on the new 2016 Policy.

The parties agree that there were a series of meetings between the Licensee and W in the spring of 2016 during which the above-noted policies were discussed. As outlined below, there are

some disagreements between the Licensee and W with respect to what was discussed at these meetings. That being said, the parties were able to agree on some general facts.

In mid-April 2016, the Licensee contacted W with a view to determining if W might be interested in a property tax deferral program that would allow W to defer property taxes until her children were the age of majority (using the money saved on the tax deferrals to purchase an insurance policy). There was a meeting at W's house on May 14, 2016 during which the property tax deferral plan was discussed. As noted below, the Licensee believed this to be the second meeting they had; W testified that this was the first time they got together in person.

By text message on May 16, 2016, W advised the Licensee that she was not interested in the property tax deferral opportunity:

Hi Pamela, thanks again for taking the time to explain the investment opportunity with me. I spoke with [husband] and decide that we will decline for now. We may revisit it again later. Thanks again. I'm still hoping we can touch base on other life insurance policies in the coming future. [W]

Later that same day, W sent another text to the Licensee:

...I wanted to clarify that I'm interested in declining the property deferral investment opportunity. As for my life insurance policy, I'd like to know my options. We talked about \$200/month. Can you also show me something that is just a payout at death?

Ten days later, on May 26, 2016, [REDACTED] issued W [REDACTED] Policy (# [REDACTED]) (referred to earlier as the "2016 Policy"). The face value of the policy was \$102,000 and it had a 10 year guaranteed enhanced coverage amount of \$118,000.

The Licensee was sent the original of the 2016 Policy by [REDACTED] to deliver it to W. The Licensee also received an Advisor Summary from [REDACTED].

There was a further call between the Licensee and W late in May 2016 during which they discussed the 2016 Policy that W had received from [REDACTED]. The parties next met on June 3, 2016.

On Monday, June 6, 2016, the Licensee texted W:

Hello [W] have you decide whether you want the new insurance plan. The insurance company is waitting [sic] your decision and let know if you have any questions pamela.

W replied by text that same day:

Hi Pamela. Thanks for following up with me. I meant to get back to you yesterday. After reviewing my family budget, I don't think I can afford the proposed plan and will decline. Perhaps we can revisit this when my income is steadier. Thanks again for all your time!

On June 16, 2016, the Licensee then phoned W and asked if they could meet at W's home to sign paperwork confirming that she was declining the 2016 Policy and did not want to cancel the 2007 Policy. There is a dispute between the parties as to precisely what was said during this meeting, but the Licensee has acknowledged that she expressed frustration with W for wasting her time and that the Licensee had an outburst, of sorts, during the meeting.

After she left W's house, the Licensee then left W two voicemails while she sat outside in her car, which have been translated into English:

[W], I am sorry for my bad temper earlier. If you want to cancel, I need the current policy number and the previous policy number. I have to [inaudible] the current policy number to [or for] you. And you, because I am still at your place, I don't want to make another trip, to spend time making another trip coming here, so if you can, I can do it for you. OK? And you, but you are not answering my call, I don't know what to do. OK.

...

Hi [W], I am at your doorstep. These few days I've been quite...quite [inaudible]. Many things aren't going that well. I shouldn't have asked you...asked you to do things that you don't want to do. OK? I want to say "Sorry." As your mother was [has been] very nice to me, I remember that; I hope that you won't have any hard feelings towards me. I am at your doorstep. I can write a letter for you, to fill out the new one, and to continue the old one. As I've been really busy these few days, dealing with mortgage matters, if you open the door, I'll do it for you. If not, I don't know when I'll have time to do it. OK? Sorry, Ok?

Later in the evening on June 16, 2016, W texted the Licensee as follows:

Per your advice, I will submit a letter/email to [REDACTED]. I am also busy and won't be able to sign papers. If formal documentation is needed, you can mail it to me.

The last communication between the Licensee and W was the Licensee's reply text message later on June 16, 2016, which stated:

Hello [W], I want to say sorry if I say something hurting you. You have been nice to me and I like you as a person. I was a bit stress when the deadline approach [sic]. Please forgive me.

During the course of the hearing, in addition to the above evidence relating to W's policies, evidence was also adduced about the Licensee's purchase of a condominium during the material period. Very briefly, the Hearing Committee was told that on May 6, 2016, the Licensee had entered into a contract of purchase and sale for a condominium in [REDACTED]. That sale later completed on June 28, 2016, with the Licensee obtaining mortgage financing for the purchase from a local lender. One of the issues in the hearing was whether the Licensee had encouraged W to keep the 2016 Policy in order to assist the Licensee to prove her income for her mortgage lender.

W's Evidence

Council's only witness at the hearing was W. W had known the Licensee since 2004 when her mother had first introduced them. W knew that the Licensee was a life insurance agent and W had purchased [REDACTED] policy through the Licensee in 2004. At that time, W was in her early 20s and did not have a spouse or any children. Similar life insurance policies were purchased in 2004 through the Licensee by W's sisters.

In 2007, W had occasion to purchase a second insurance policy through the Licensee. W believed this policy to be a reasonable investment opportunity at that time (the "2007 Policy").

W's mother passed away in 2008 and following her mother's passing she did not have any contact with the Licensee for many years. In the spring of 2016, she received an unexpected phone call from the Licensee. During this call, the Licensee told W that she had just met with W's aunt and uncle and that she wanted to discuss a property tax deferral program with W.

W testified that she had three meetings with the Licensee in the spring of 2016 – May 14, 2016; June 3, 2016; and June 16, 2016.

The first time they got together in person was at W's home on May 14, 2016. The Licensee was late, as the meeting was scheduled for 10:30 am, but the Licensee did not show up until 11:00 am. W said that she had selected that time because she knew that her daughter would be sleeping and she would be able to devote her full attention to the Licensee. During the meeting, W said that the Licensee:

- came with information about the property deferral tax program, suggesting that W could use her deferred tax money to purchase a new policy;
- presented her with a handwritten analysis of what would be owing to the government by W after the property taxes had been deferred;
- explained the difference between the interest paid on the deferral and the money to be made in the policy; and
- showed her the similar application materials that had been completed by W's uncle.

W advised the Licensee that she needed to speak with her husband before making any decisions about the tax deferral program and asked the Licensee if she could, in the meantime, obtain copies of the two insurance policies that W had purchased through the Licensee many years before.

It was W's evidence that during this meeting the Licensee asked her for her driver's license number, social insurance number and other information in order to allow her to obtain copies of

the older policies. W said that the Licensee also asked her for the name of her family doctor, which W provided.

At a general level, W recalled asking the Licensee what she might be able to purchase in terms of insurance that would cost in the range of \$200 per month. She said that the Licensee told her that critical illness insurance would be too expensive and would not fit within W's budget.

W was very clear that no forms were signed at the May 14, 2016 meeting and that no documents were left with her by the Licensee.

It was W's evidence that when they were discussing potential new life insurance policies, the Licensee showed her the two illustrations at Tab 8 of Exhibit 2, along with two similar illustrations for W's husband. W said that the illustrations were presented to her by the Licensee in paper form and at no time did the Licensee take her to documents or illustrations on a laptop computer. W testified that there was a discussion during this meeting about the maximum payout that she could receive on a life insurance policy and that the Licensee advised her that she could obtain a \$220,000 policy without having to complete a medical questionnaire, which would have addressed W's family history of illness.

W was very clear that she was not distracted during this meeting and believed that she was fully able to pay attention to what the Licensee was advising her.

When W was shown Exhibit 3, which is the declaration form for replacing life insurance, she testified that such a form was not signed or presented to her at this meeting and that the Licensee had never asked her to sign such a form. W denied that she told the Licensee that she wanted to replace the 2007 Policy and said that she made no commitment to the Licensee during this meeting that she would purchase a new life insurance policy.

At some point a few days after that meeting, W received a letter from [REDACTED] indicating that she had applied for a new life insurance policy (Tab 10, Exhibit 2). W said she was shocked to receive the letter as she had not signed for anything and she called the Licensee to ask what this was about. The Licensee told her not to worry and that she would explain it at their next meeting.

Counsel for Council very carefully took W through the insurance application form that was submitted to apply for the 2016 Policy (Tab 9, Exhibit 2). It was W's evidence that this application form was never presented to her during the meeting and that the Licensee did not go through the questions in the application with her. W denied that she had given the Licensee any of the answers reflected in the application.

W was adamant that she had not given the Licensee instructions to replace her 2007 Policy and W said that the first time she saw the application form was after she had filed a complaint with [REDACTED]. W testified that there was no discussion with the Licensee about the application; she did not sign the application; and she did not authorize the Licensee to sign the application for her. When the questions on the application were reviewed with W, she pointed out a number of

answers where the information provided to [REDACTED] was not accurate (job description; net worth; personal health history; etc.).

They were going to next meet on May 28, 2016, but W had to reschedule that meeting to June 3, 2016. The Licensee again came to W's home on June 3, 2016 and the meeting took place around 4:30 pm. On this occasion, W had her daughter with her as her husband was not yet home. During this meeting, W testified that the Licensee brought a series of further policy illustrations that they reviewed (Tab 14, Exhibit 2). The handwritten notes on these illustrations were made during the meeting by W. As far as W understood it, two scenarios were presented – one that showed a withdrawal of cash many years down the road; and one where the cash was never withdrawn.

Again, it was W's evidence that these illustrations were presented to her in hard copy and that the Licensee did not use a laptop computer during this meeting.

After the meeting on June 3, 2016, W said that she advised the Licensee by text on June 6, 2016 that she was not interested in the proposed insurance (Tab 6, Exhibit 2):

Hi Pamela. Thanks for following up with me. I meant to get back to you yesterday. After reviewing my family budget, I don't think I can afford the proposed plan and will decline. Perhaps we can revisit this when my income is steadier. Thanks again for all your time!

On June 16, 2016, W said that the Licensee called her and said that W needed to sign some documents to decline the 2016 Policy. W testified that the Licensee came to her house around 2:30 pm that afternoon and they had a meeting in W's kitchen. Instead of having her sign documents, W said that the Licensee told her that she had a "no harm" plan for W. In essence, the Licensee explained to W that she was in the process of buying a home and that the Licensee was hoping that W would keep the 2016 Policy to assist her to establish her income level with her mortgage lender. W also said that the Licensee told her that she would lend her the money necessary to keep the 2016 Policy in place for a short period of time and that W could then cancel the policy later. W explained to the Licensee that she had reflected the commission income she was to receive from the policy in her application to obtain mortgage financing.

When W refused to assist with this plan, she said that the Licensee "turned 180" and began to berate her about being inconsiderate and not thinking about the feelings of others. W said that the Licensee became belligerent, called her a bad daughter among other things and told her that W would have to cancel the 2016 Policy with [REDACTED] herself.

After the Licensee left the house, W heard her come back to the door. The Licensee rang the doorbell a few times and called out W's name. W refused to answer the door, even though the Licensee lingered outside her home for perhaps 20 minutes. W also called her husband and asked him to come home, but eventually the Licensee left.

The Licensee then left W the two voicemails set out above and the two women also exchanged text messages later that day (Tab 6, Exhibit 2):

Per your advice, I will submit a letter/email to [REDACTED]. I am also busy and won't be able to sign papers. If formal documentation is needed, you can mail it to me.

...

Hello [W], I want to say sorry if I say something hurting you. You have been nice to me and I like you as a person. I will a bit stress when the deadline approach [sic]. please forgive me.

On June 20 and 22, 2016, W filed complaints about the Licensee with both Council and [REDACTED]. In her complaint to Council, W described the June 16, 2016 meeting as follows (Tab 17, Exhibit 2):

Turns out she is in the process of buying a home and had told her mortgage broker that she expects a signed policy from me, and that she needed my help to prove that she will get this commission. She acknowledge [sic] weeks ago that I declined the new policy yet she is offering to pay for my annual policy in order to meet her commission target for the bank to approve her mortgage. Her plan is then for me to write a cheque back to her and then within 30 days cancel my new policy.

...

I don't know 100% if this is fraud-based, but I feel that as a client, this isn't something that would be asked of from a professional broker.

In her complaint to [REDACTED], W similarly stated (Tab 18, Exhibit 2):

The Licensee came to my home last Thursday to propose a "no harm to me" plan, despite my wish to cancel this plan over a week ago, so that she could meet her mortgage requirements. Turns out she is in the process of purchasing a home and had counted the commission from this policy toward her month-end earnings. Because I had turned it down, she proposed that she will offer to pay for my annual premium for this new policy, I would then cancel within 30 days, and then write her a cheque back.

During cross-examination, counsel for the Licensee spent much time putting suggestions to W that reflected what the Licensee was expected to say when she testified about the key meetings. For the most part, the Licensee's version of the events was denied by W, who maintained what she had testified to during her evidence in chief.

It was also suggested to W during cross-examination, in a general way, that there were difficulties in the communication between her and the Licensee due to the fact that the Licensee was not proficient in English and W did not speak fluent Cantonese. W also denied these suggestions and said that they were able to communicate during their meetings without issue.

With respect to the meetings, it was suggested to W that her first meeting with the Licensee had actually taken place on May 3, 2016, almost two weeks before W said she met the Licensee. W denied that suggestion and maintained that she had first met with the Licensee on May 14, 2016. Counsel for the Licensee also put certain additional documents to W and suggested that these materials had been presented to her on May 14, 2016 (Exhibits 6 – 8). W denied having seen these documents before and testified that these were never presented to her by the Licensee.

It was suggested to W that she was attracted to a policy that would provide income on retirement. W denied that suggestion, stating that she was not looking at a new policy as an investment. She said that she was primarily interested in critical illness or other similar options that would provide a payout on death.

With respect to the application for the 2016 Policy, it was put to W that the Licensee had in fact filled in that application during the May 14, 2016 meeting in front of W, by way of a laptop computer that the Licensee had brought to the meeting. W denied this was the case and said that at no time during that meeting did the Licensee use a laptop.

The Licensee's Evidence

In somewhat of an unusual sequence of events, when the Licensee began to give evidence she testified for a few questions through an interpreter. The Licensee had requested an interpreter prior to the hearing and Council had made arrangements for a certified court interpreter to be at the hearing to assist the Licensee. However, almost immediately after the Licensee began her testimony, she took issue with some of the interpretation and advised the Hearing Committee that she preferred to give her evidence in English. Although the Licensee suggested that she communicates better in Cantonese, the Hearing Committee had no difficulties following her English testimony over the course of the next day.

A lot of evidence was adduced with respect to the Licensee's personal circumstances and background. Only the highlights of this evidence are referred to in our report. The Licensee was born [REDACTED]. She came to Canada when she was 19 years old and had to take courses to learn English. She obtained her high school equivalency and then pursued post-secondary education. During that time, she paid for her school and cost of living by working a series of low-paying jobs. Eventually, she attended BCIT where she took courses relating to technology and marketing.

When she started in the insurance industry as a young woman, she typically found clients by cold-calling people through the phone book. It was a difficult process, but she was persistent and a hard worker and after four years or so she had enough business to make a comfortable living as an insurance agent. The Licensee said that she has earned a good income over last 20 years as a life insurance agent. She enjoys the work, particularly when being an insurance agent lets her help her clients.

The Licensee indicated that she currently has around 300 insurance clients. She said her clients are typically blue-collar workers and they prefer to communicate with her in Chinese. Obtaining insurance for her clients can present certain challenges because her clients are often hard to reach because they work so much. She said that her retention rate on policies was in the range of 99%, which she said reflected on the quality of service that she provided.

The Licensee explained that in her experience insurance is an important component of estate planning for traditional Chinese clients. She testified that it is very common for her to help

insure multiple members of the same family and many of her clients are looking for insurance policies that will specifically assist with their estate planning.

The Licensee was first introduced to W's family in 2004 when she made a cold-call to W's mother. At that time, members of W's family purchased a number of life insurance policies through the Licensee. With respect to the first policy that she placed for W, the Licensee recalled that W was looking for a policy that provided a life insurance component, but also had some investment potential (the [REDACTED] Policy). The Licensee recalled that she also placed a second policy for W in 2007 (the "2007 Policy").

In 2016, the Licensee said that she reached out to W after placing some new insurance for W's family members. The Licensee agreed that she had phoned W in mid-April 2016. The Licensee said that almost all of the communications between the Licensee and W were in Cantonese.

During that initial call, the Licensee said that W provided an overall update about her personal circumstances, including that she was now married and had a young daughter. The Licensee explained to W that she was hoping to present her with the property tax deferral opportunity.

Contrary to what W testified, the Licensee was certain that there were four meetings in May and June 2016. The Licensee said that the first meeting took place on May 3, 2016. During their meeting on May 3, 2016, the Licensee said that they again discussed W's family circumstances, including the amount of W's property taxes, as well as the value of her townhouse. It was left at the conclusion of the meeting for the Licensee to prepare an insurance proposal for W.

In support of her evidence, the Licensee referred to her statements at Tab 23 of Exhibit 2, which were certain notes that she had made in the summer of 2016 when she was responding to W's complaint to [REDACTED].

When they next met on May 14, 2016, the Licensee said that she presented W with the illustrations dated May 11, 2016 (Tab 8, Exhibit 2). She also testified that she showed W the [REDACTED] policy illustration (Exhibit 6). Further, the Licensee testified that she showed W the hand-written illustrations that were marked as Exhibits 7 and 8. These handwritten documents were prepared by the Licensee to illustrate how the property tax deferral program would benefit W.

At some point during the May 14, 2016 meeting, the Licensee said that she asked W if she was ready to apply for the new insurance policy. The Licensee said that, after a brief pause, W nodded her head and said "yes." At that point, in order to complete the application, the Licensee asked W for her driver's licence and social insurance number.

The Licensee explained how she then opened her laptop while sitting at W's kitchen table and went through the application form found at Tab 9 of Exhibit 2 with W. The form was completed electronically and the Licensee said that she did not leave a hard copy for W. The Licensee testified that W provided the answers that were put in the application form and that the Licensee had asked W each of the questions in the application.

The Licensee conceded that she did not allow W to formally submit the application and/or enter her own initials on the electronic application (as required). On the portions of the application that were to be personally completed by W, the Licensee admitted that she had filled out W's name. This was acknowledged by the Licensee during submissions as having been a breach of her professional obligations.

Some of the discrepancies in the application form were put to the Licensee by her counsel, but she maintained that the information she had provided the insurer was given to her by W (for example, W's job description; net worth; and the medical questions).

With specific respect to the medical questions, the Licensee explained the errors in the application by noting that W was distracted at the time the application was being completed because she was involved in preparing dinner and caring for her daughter. Importantly, the Licensee maintained that W had in fact answered all of the questions. On page 11 of the application form, when dealing with family history, even though the Licensee was aware of W's mother's history of cancer, the Licensee explained that she put "unknown" on the insurance application as she was unsure about certain words in that particular question, generally unfamiliar with the form and typically had the paramedical questions completed by a qualified person.

The Licensee said the May 14, 2016 meeting was quite long and that W was fixing dinner when it ended. The Licensee said that she told W that she would soon receive an application summary from [REDACTED] and would then have the option at that time of taking the policy or not. After she left W's house, the Licensee said that she prepared the "needs analysis" found at Tab 11 of Exhibit 2.

The Licensee said that she next met with W on June 3, 2016, when she came to deliver the 2016 Policy. During that meeting, the Licensee said that she also brought the illustrations dated May 27, 2016 that are found at Tab 14 of Exhibit 2. The Licensee said that the notes on those documents were made during the meeting on June 3, 2016. The Licensee said the meeting lasted approximately two hours and they went over the same options that they had canvassed on May 14, 2016. At the end of the meeting, W advised that she needed to consult with her husband.

A few days later, W texted the Licensee and said that she was not going to be able to keep the 2016 Policy as it was no longer in the family budget. The Licensee then texted W back, wishing her the best.

During the next meeting on June 16, 2016, the Licensee acknowledged that she acted inappropriately, but she denied W's version of what occurred that day. The Licensee agreed that she had gone to see W to discuss the cancellation of the 2016 Policy, but she denied the suggestion that she had tried to pressure W to maintain the policy for a period of time. The Licensee admitted that she was frustrated with W, as she said that W was always distracted by her daughter and did not treat the meetings as seriously as she should have. She was also frustrated by the fact that W repeatedly deferred to her husband on these issues which in the Licensee's eyes did not make her work seem "countable." The Licensee said that W suggested

during this meeting that insurance agents were effectively the same as a real estate agent and that the Licensee should expect some clients to not carry through with insurance. The Licensee admitted that she was angry, compared W to her mother and told W that she did not think enough about others. The Licensee admitted that her conversation with W was not professional.

The Licensee acknowledged that she was very emotional when she got to her car. She agreed that she had lost her patience and said that, as a salesperson, she should not have let her emotions take over. The Licensee returned to the house and tried to speak with W, but she would not answer the door. The Licensee then left W two voicemails, apologizing for her behaviour.

The Licensee was also asked a series of questions about the changes she has made to her practices after going through Council's disciplinary process. The Licensee explained that she was very new to electronic applications at the time that she submitted the application for the 2016 Policy. The Licensee said that she no longer uses electronic applications. She now completes a paper application that she can check later. All of her applications for insurance are also reviewed by her business coordinator and supervisor at [REDACTED], so as to ensure that the applications are compliant.

The Licensee has also focused her business on clients who can communicate fluently with her in Cantonese and she only works with potential clients who are "serious" about the insurance process. She testified that she now restricts her business to individuals born in China, as opposed to people of Chinese heritage born in Canada.

The Licensee also testified that she now ensures to keep everything purely business, so she does not lose her temper again like she had when she met with W on June 16, 2016.

With respect to the medical questions on the insurance applications, the Licensee no longer completes those forms herself. She now has a qualified person complete the paramedical questionnaires (typically a paramedic or a nurse). She indicated that she takes "zero risks" with these issues now.

In cross-examination, the Licensee acknowledged that she was aware during the material period of her duties and obligations as a licensee. She knew that she had professional obligations to be trustworthy; to act with good faith and integrity; and to act in the best interests of her clients. She accepted that she was aware of Council's Rules and the Code and that she was not to use her position as an agent for her own personal gain.

The Licensee confirmed that when the 2016 Policy application was completed, she knew that W's mother had been diagnosed with cancer in 2007 and had passed away shortly thereafter. The Licensee also knew that W's father had suffered from [REDACTED] cancer and that W's aunt had [REDACTED] cancer at some point.

The Licensee also conceded that there had been some discussions with W on June 16, 2016 about the Licensee's purchase of a new home. The Licensee agreed that she had given her lender two years of information as to her earnings and that her earnings information included the

commission she was to earn on the policy she wanted to place with W. She also agreed that she had told W that she was trying to show a realistic estimate of her income to the lender.

With respect to the May 14, 2016 meeting, it was suggested to the Licensee that the meeting was not nearly as long as she had testified to in chief. The meeting started at 11:00 am, so it was put to the Licensee that there was no way that W was preparing dinner when the meeting ended. The Licensee maintained that it was dinner time and dark when she left W's house. The Licensee also denied that W asked her about critical illness insurance at that meeting, although she acknowledged that they discussed what kind of insurance W could purchase for \$200/month.

The Licensee was asked many questions about what took place at the May 14, 2016 meeting. She maintained that she had used her laptop to complete the insurance application and that she had gone through each and every question in the application with W. The Licensee denied that she had filled out the application *after* the May 14, 2016 meeting and said that W verbally confirmed at that time that she wanted to apply for a new insurance policy. With respect to the errors in the application, the Licensee attributed the mistakes to communication issues with W and the fact that W was busy and distracted during the meeting.

SUBMISSIONS OF COUNCIL

We will not repeat all of Council's submissions in this report. Council prepared and filed a 28 page written argument which was reviewed with the Hearing Committee in some detail during closing submissions.

Council submitted that the credibility of the witnesses was a key issue in this proceeding. On the credibility issue, Council argued that the Hearing Committee should prefer the evidence given by W wherever it differed from the evidence of the Licensee. Council submitted that the Licensee's evidence about the material events was simply not believable or credible.

One of the key issues in the hearing was what had taken place with respect to the completion of the application for the 2016 Policy. Was this application completed during the May 14, 2016 meeting or did the Licensee complete the application at a later date without W's knowledge or consent?

Council took the position that the Licensee completed the application form using information that she had gleaned from W about her mortgage, her job and her finances, and that the application itself was not completed during the course of the May 14, 2016 meeting as the Licensee had testified. Council submitted that W's evidence about this meeting should be preferred and asked the Hearing Committee to conclude that W was never shown the application by the Licensee, including the questionnaire portion of the application which contained significant and material errors, particularly with respect to W's family and medical history, as well as the nature of her employment and her net worth.

Council also focussed in its submissions on certain misconduct that the Licensee had admitted, particularly the fact that she had incorrectly filled out aspects of the application form and that she

did not have W complete the signature portion of the form. However, Council argued that the evidence went further and proved that the Licensee intentionally included false information about W's history, health and finances on the form and disregarded her obligations to the insurer under the Act, Rules and Code by breaching her duties of trustworthiness, good faith and competency to both W and the insurer.

Further, by representing to the insurer that W wanted the 2016 Policy to replace the 2007 Policy, Council said that the Licensee intentionally misled, misrepresented and concealed the true reason for the replacement of the 2007 Policy to the insurer. Council argued that the 2016 Policy was nothing more than a product intended to generate a commission for the Licensee.

In terms of assessing the evidence as between the Licensee and W, Council highlighted that the Licensee had no documentation to show that she took any steps to ensure a mutual understanding between her and W with respect to the replacement of the life insurance policies. Council also noted that the failure to have W sign the mandatory declaration relating to the replacement of a life insurance policy was particularly telling in terms of W's lack of compliance with her professional obligations. There was no documentation of any consent by W to the replacement of the life insurance policy despite clear requirements in the Insurance Contracts (Life Insurance Replacement) Regulation and the Code.

Council argued that the Licensee knew, or ought to have known, that the insurer required W to personally place her electronic signature on the application. The Licensee acknowledged during her evidence that she had typed W's signature into the application form. By entering the electronic signature for W, and by submitting the application without W's consent (and failing to also submit the declaration), Council said that the only reasonable conclusion was that the Licensee had wilfully disregarded her obligations to W and the insurer, thereby again breaching her duties of trustworthiness, good faith and competency.

With respect to the subsequent meeting on June 16, 2016, it was the position of Council that the Licensee attempted to induce W to retain the 2016 Policy – the “no harm to me” plan – in order to realize the commission that the Licensee was expected to receive on the transaction. Council submitted that the independent, objective evidence (particularly the voicemails and text messages) revealed that the Licensee discussed her personal real estate issues with W, which Council argued corroborated W's recollection of the discussion. Council took the position that this was yet another example of the Licensee placing her own interests ahead of the interests of W and the insurer.

Finally, Council submitted that the Licensee's failure to retain her file materials with respect to W was an obvious breach of the Licensee's professional obligations to maintain adequate records.

SUBMISSIONS OF THE LICENSEE

The Licensee's counsel started by confirming that the Licensee understood the seriousness of the allegations made against her in this matter by Council. The Licensee acknowledged that she

made mistakes with respect to the information that was provided to the insurer in the application for the 2016 Policy. The Licensee also acknowledged that she should not have signed the electronic application form by personally putting in W's name and initials. As outlined in detail above, the Licensee testified to the many ways that she had changed her practices so as to make sure that nothing similar would happen in the future (by no longer using electronic applications and by having all medical questionnaires completed by a qualified third party).

The Licensee advised that she has a very busy practice with approximately 300 clients, working with a select group of people in [REDACTED] who require help with important insurance matters in their own language. The Licensee said she has served the community very well in this capacity, including her interactions with W's family dating back to 2004. She believes she has provided a good service to the community in terms of assisting people with their insurance needs.

When examining the within allegations, the Licensee highlighted the fact that this hearing dealt with a series of only four meetings and related to a singular life insurance policy taken out by only one of her 300 clients. The issues in this proceeding did not reveal any systemic issues with the Licensee's insurance practices. With respect to fashioning an appropriate disciplinary penalty, the Licensee indicated that in addition to the impact of the penalty on the Licensee personally, Council also needed to give consideration to the need to protect the rest of her clients, as well as the public. Her client group includes a number of vulnerable people, to whom the Licensee provides a very valuable service. In the result, any suspension or cancellation of her licence will be bound to have an impact on her client group.

The Licensee's own counsel acknowledged that she was not a strong witness. He conceded that the Licensee at times wandered during the course of her evidence and often gave convoluted answers. Nevertheless, he urged the Hearing Committee to view the Licensee as a genuine and honest person whose overall evidence about the events was reliable and credible. With respect to the key events and meetings, it was noted that the Licensee's recollection differed from that of W in a number of material respects. By way of example, the Licensee was adamant that there were four meetings, with the first meeting occurring on May 3, 2016.

With respect to the evidence of W, the Licensee argued that W was effectively too "polished" for the hearing. The Licensee took the position that W's answers were more detailed than one should reasonably expect, which showed that she was too well-prepared for the hearing. As between the two witnesses, the Licensee argued that her evidence was more natural and therefore credible and that where there was a difference as between the witnesses' evidence, the Licensee's recollection of the events should be preferred.

The Licensee also urged the Hearing Committee to carefully review the notes that she had made in July 2016 summarizing her meetings with W (Tab 23, Exhibit 2). The Licensee said that these notes were made shortly after the events at issue and therefore outline the best evidence available in terms of what actually occurred as between the parties.

If there was any confusion as between W and the Licensee, the Licensee said that the Hearing Committee should also consider the fact that the meetings were conducted in Cantonese, which

is not W's fluent language. On this basis, it could be reasonable to conclude that there was some miscommunication between the Licensee and W during the course of the May 14, 2016 meeting when the insurance application form was being completed.

With respect to the June 16, 2016 meeting, the Licensee argued that the objective evidence again favoured her position over that of W. As outlined in the application for the 2016 Policy, the first year's premiums for that policy were to be paid from the cash value of the 2007 Policy. In the result, there was no need for W to write any cheque to pay for the premiums on the 2016 Policy. Further, it was argued that it would not make any sense that the Licensee would "risk her insurance license" only to obtain a rather nominal commission on a single life insurance policy. Finally, the Licensee noted she had no personal incentive to try to have W maintain the 2016 Policy, as she had already received her mortgage commitment from her lender six days earlier. As such, there was no need for the Licensee to still show the commission from the policy in her financial reporting.

With respect to the differences in the evidence as between the Licensee and W, the Licensee pointed to W's email exchanges with ██████████ during the complaint process where she described the May 14, 2016 meeting and indicated that "the Licensee did not *explicitly* say she was going to put a new application in for me" [emphasis added]. In the Licensee's submission, the use of the word "explicitly" signified that there was in fact a discussion at that May 14, 2016 meeting about a replacement of the 2007 Policy (Tab 24, Exhibit 2).

The Licensee also pointed to the text exchanges as supporting her recollection of the events, particularly the Licensee's text on May 28, 2016, in which the Licensee stated:

I will prepare the detail summaries for *your original as well as the new one*. Hope this will save your time!

[emphasis added]

Again, the Licensee suggests that the text messages show that W knew before the June 3, 2016 meeting about the 2016 Policy and this confirms that she had in fact agreed to apply for it.

The Licensee submitted that if the Hearing Committee ultimately cannot decide as between the Licensee and W with respect to precisely what occurred, the allegations in the Notice of Hearing should be dismissed as Council has not met its burden. On this issue, the Licensee cited the following decisions: *Bradt v. 1169630 Ontario Inc.*, 2003 CanLII 46907 (ON LRTB); *Chaube v. Neja*, 2017 BCSC 1415; and *DeLong v. Sands*, 2017 ONCJ 670.

With respect to the errors that were made on the application, the Licensee acknowledged that there were a series of errors, including the ten year term for coverage option (as opposed to a lifetime coverage), along with the fact that the Licensee wrongly signed the electronic statement on behalf of W. The Licensee admitted that there were also serious omissions in the application with respect to W's family medical history. The Licensee attributed her mistakes in the

application on the time pressure that they were under when filling out the application, along with her lack of familiarity with completing the medical questionnaire.

With respect to Exhibit 3, the life insurance replacement declaration, the Licensee again acknowledged that she had failed to comply with her professional obligations to have that form executed by W. The Licensee said that she believed at the time that if the replacement policy was with the same insurer and the same agent, then you did not need to complete the declaration form. She acknowledged that this was not a correct understanding, but suggested that it was her genuinely held belief at the time. She believed that the form was to give notice to the agent about the replacement, not the insured.

Concerning the June 16, 2016 outburst, the Licensee conceded that there was no excuse for her verbally attacking W. She admitted that her conduct that day was inappropriate. She stressed that she recognized this immediately and apologized to W very quickly, both in terms of what she said at the door, but also through the voicemails and text messages. The Licensee accepted that she acted unprofessionally on June 16, 2016, but she took the position that this misconduct did not rise to a level where it is necessary to suspend or cancel her licence.

Ultimately, the Licensee conceded that with respect to certain allegations she fell far short of her professional duties as a licensee, but she was not willing to admit that she had applied for a policy without W's instructions and she did not accept what W alleged in terms of the conversation they had on June 16, 2016. The Licensee stressed the many changes that she had made to her practice since these issues arose and assured the Hearing Committee that she would not have issues in the future because of the checks and balances that had been put in place between her and [REDACTED].

She accepted that she should be subject to some discipline on account of the manner in which she completed the insurance application form, together with what she said occurred on June 16, 2016, but she submitted that the appropriate disciplinary action in this matter did not require a period of licence cancellation. In the Licensee's submission, Council would be able to meet its mandate by requiring her to undergo two further years of supervision; complete an additional ethics course; pay a fine of \$5,000; and pay the costs of the investigation. The Licensee also indicated that she would commit to confining her practice to her existing clients and those of her community who "share her values".

LEGISLATION AND GUIDELINES

It is useful when looking at the issues raised in this matter to start with a review of the professional obligations that the Licensee was expected to meet. Pursuant to the Act, Council is responsible for maintaining the standards of conduct within the insurance industry so as to ensure the ultimate protection of the public.

There are a number of provisions of Council's Rules and Code that are relevant when assessing the allegations against the Licensee. In particular, there are provisions in the Code that emphasize the expectation that licensees will conduct themselves with trustworthiness, good

faith, reliability and competency. There are also provisions that specifically address a licensee's obligations with respect to his or her interactions with an insurer. Some of these relevant Code provisions include:

3. TRUSTWORTHINESS

3.1 PRINCIPLE

In an industry where trust is the foundation of all dealings, you must meet rigorous standards of personal integrity and professional competence. These characteristics speak to the essence of what a licensee does. Failure to adhere to these standards reflects not only on you, but also on the profession. Trustworthiness is a fundamental element of each requirement in the Code.

3.2 REQUIREMENT

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

...

4. GOOD FAITH

4.1 PRINCIPLE

The insurance industry is based on fiduciary relationships. Accordingly, the exercise of good faith by licensees in the practice of the business of insurance is essential to public confidence in the industry. Good faith is a fundamental aspect of your conduct and a key element in each of the Code's requirements.

...

8. USUAL PRACTICE: DEALING WITH INSURERS

8.1 PRINCIPLE

Licensees 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 providing advice and information.

8.2 REQUIREMENT

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

- make reasonable inquiries into the risk;
- provide full and accurate information;

...

There are other sections of the Code that are also germane to the allegations against the Licensee. Section 7 addresses licensee competence, as well as the expectations on a licensee when dealing with clients. Further, section 13 requires licensees to read, understand and remain current on the applicable regulatory requirements that apply to a licensee under the Act and Rules.

Finally, as this matter involved the potential replacement of a life insurance policy, there are very specific statutory requirements that must be met in such circumstances.¹

Section 2(2) of the Regulation provides that:

- (2) A life insurance agent must not make a recommendation to or induce an insured to lapse, forfeit or surrender for cash... the insured's contract of life insurance with an insurer in order to effect another contract of life insurance with that insurer unless replacement of the existing contract of life insurance with the new one
- (a) is not detrimental to the interests of the insured, and
 - (b) is in accordance with section 3.

[Emphasis added]

As outlined in section 3(3) of the Regulation, a licensee must obtain a signed statement expressing an intention to replace an existing life insurance policy:²

- (3) Every life insurance agent licensee must
- (a) obtain, as part of each application for a contract of life insurance, a statement signed by the applicant stating whether or not replacement of a contract of life insurance is intended, and
 - (b) prepare and forward to the insurer with each application for a contract of life insurance a statement as to whether or not replacement of a contract of life insurance is intended.

[Emphasis added]

The Hearing Committee has kept these provisions of the Code and the Act in mind as we have reviewed and considered the allegations Council has raised against the Licensee.

FINDINGS OF THE HEARING COMMITTEE

In some respects, despite the volume and complexity of the evidence, it was not a difficult task for the Hearing Committee to reach a conclusion on certain of the allegations in the Notice of

¹ The *Insurance Contracts (Life Insurance Replacement) Regulation, 2012* (the "Regulation") defines replacement of a contract of life insurance as follows:

...any transaction in which life insurance is to be purchased in a single contract or in more than one related contract by a person from an insurer and, as a consequence of the transaction, any existing contracts of life insurance have been or are to be

- (a) rescinded, lapsed or surrendered,
- ...
- (c) changed in any other manner to effect a reduction of benefits in a contract of life insurance...

[Emphasis added]

² Note that section 177(b) of the Act also sets out that it is an offence when selling insurance for a licensee to make any false or misleading statement or representation in the solicitation or negotiation of insurance.

Hearing. The Licensee conceded during closing submissions that she had not met her obligations to the insurer and W with respect to the completion of the application for the 2016 Policy. She accepted that there were a series of material and serious errors in the application that were attributable to her failure to meet her professional obligations. These errors included information that was provided to the insurer with respect to W's employment, personal finances and family medical history.

The information provided by the Licensee with respect to the medical questions was particularly troubling to the Hearing Committee. It would have been well-known to the Licensee that the insurer would be relying on this information when making its decision whether or not to insure W. The Licensee was acutely aware of W's family history of serious disease and illness, including how and when W's mother unfortunately passed away from [REDACTED] cancer. Despite her knowledge of these issues, the Licensee completed the application by indicating "Not sure/Unknown Family history" in response to the medical questions. The Hearing Committee believes this to have been an intentional material misstatement on the application and in completing the application in the manner that she did, the Licensee breached her obligations of trustworthiness, good faith and competency to both W and the insurer.

Council also alleged that the Licensee processed the application for insurance without W's consent. This is an issue where there was a significant disagreement between W and the Licensee in terms of what was discussed and decided when they met on May 14, 2016. Council asked the Hearing Committee to conclude that the Licensee never had W's consent to apply for the 2016 Policy and argued that the only reasonable conclusion on the evidence was that the Licensee in fact completed the application subsequent to the May 14, 2016 meeting, when W was not present.

On this latter issue, Council highlighted the many errors that were made on the application, as well as the Licensee's lack of credibility with respect to her discussions with W. Council argued that there was no way that a meeting which started at 11:00 am lasted until W was preparing dinner some six hours later. Council asked the Hearing Committee to accept the evidence of W that she was never shown an application form; conclude that the Licensee did not use a laptop during their meeting and did not answer the questions on the application; and find that W never consented to apply for the insurance. As corroboration for W's evidence, Council referred the Hearing Committee to the contemporaneous text messages, as well as W's complaints to [REDACTED] and Council, both of which were prepared shortly after the events in question.

The Licensee on the other hand is adamant that she had consent from W to apply for the 2016 Policy. The Licensee said that the application was reviewed with W during the course of the meeting on May 14, 2016 and that W confirmed that she wanted to apply for a new policy to replace the 2007 Policy. The Licensee accepted that she committed misconduct by entering W's electronic signature on the application, but she maintained that they reviewed the application questions during that meeting and that the Licensee completed the electronic application at W's house on a laptop computer that she had brought with her. As to the errors on the application form itself, the Licensee attributed these to possible confusion between the parties arising from

their communications, as well as to W's inability to focus on the meeting given her childcare obligations and the fact that she was preparing dinner.

There is no question that the Licensee's admission that she electronically signed the application on behalf of W reveals a serious breach of her professional obligations. The Licensee would have known that the insurer required her client to personally execute the electronic signature so as to confirm both the client's consent to the application, as well as the accuracy of the information provided in the application.

The problems that arise from the manner in which the Licensee submitted the electronic application are magnified in this instance by the fact that she also failed to provide the insurer with an executed copy of the legislated declaration confirming that W intended to replace the 2007 Policy with the 2016 Policy. The requirement to have W sign such a declaration is expressed in very plain language in the Regulation as set out above. The absence of an executed declaration is a serious omission. The Hearing Committee does not accept the Licensee's explanation that she believed the declaration was not required in this instance given that the applicant and the insurer were going to be the same as between the two policies.

Ultimately, the Hearing Committee does not believe it to be necessary in this matter to fully resolve the conflict in the evidence as between the Licensee and W in terms of what happened at the May 14, 2016 meeting. Having considered the evidence in its totality, the Hearing Committee is more than satisfied that W at no time consented to the Licensee applying for a new insurance policy. In addition to what W testified about, we note that there is no independent evidence that the Licensee can point to that would show a mutual understanding that W wished the Licensee to apply for a new policy. Further, it cannot be lost that although her testimony was at times perhaps too polished, the Hearing Committee found W's evidence to be very credible and compelling with respect to the shock and surprise that she felt when she received the 2016 Policy in the mail from [REDACTED] late in May 2016.

If we were required to make a conclusion as to when the application was completed, the Hearing Committee believes that the evidence very much favours a finding that the Licensee completed the electronic application at some time after she left W's house on May 14, 2016. The Hearing Committee accepts that there may have been some confusion during that meeting as to W's intent, but for the reasons outlined below, the Hearing Committee does not believe any such confusion extended to whether or not W instructed her to apply for a new policy. There was no such consent.

In light of the Licensee's admissions with respect to the manner in which she completed the electronic application, coupled with our view of the evidence, the Hearing Committee believes that Council has met its burden to prove the allegations that the Licensee processed an insurance application without her client's consent and also made misrepresentations to the insurer about W's intentions in applying for new insurance.

Before we turn to the events of the June 16, 2016 meeting, we will very briefly address the Licensee's record-keeping practices. Although we understand why the Licensee may have

believed this issue to have been closed after the internal investigation undertaken by the insurer, Council of course always retains its oversight jurisdiction on such issues. Despite the Licensee's provision of additional documents during the course of the hearing, it remains to be said that her record-keeping practices with respect to W's file were woefully inadequate and not in keeping with her obligations pursuant to the Act, Code and Rules.

With respect to the final in person interactions between W and the Licensee on June 16, 2016, the Licensee has again accepted that she did not act in a professional manner. Council argued that in addition to acting unprofessionally, the Licensee attempted to influence W to retain the 2016 Policy in order to assist her with the financing of her new property purchase. This was the "no harm to me" plan that W testified about.

Having considered all of the evidence, the Hearing Committee has no doubt that the Licensee discussed her own personal financial circumstances with W during this meeting. The contemporaneous documents, including the Licensee's notes that were made for [REDACTED] refer to the Licensee mentioning her property purchase. However, the Licensee argued that the documents from the same period of time show that she had already received her mortgage commitment and that there would be no need for the Licensee to be paying for W's policy given that the plan had been for the cash value of the 2007 Policy to pay for the first year's premiums on the 2016 Policy. It is also difficult for the Hearing Committee to conclude that the Licensee believed that her commission on a single insurance policy would have a significant impact in terms of her ability to obtain a mortgage given her long history in the insurance business (and resulting steady income). Of note, [REDACTED] also concluded after its investigation that it did not find any evidence of rebating or compensation manipulation by the Licensee in this instance (Tab 27, Exhibit 2).

Ultimately, the Hearing Committee does believe that the Licensee improperly attempted during the June 16, 2016 meeting to influence W to retain the 2016 Policy. That being said, we do not believe the evidence goes far enough to conclude that the Licensee offered to pay for W's premiums. On that issue, we accept the evidence that was given by the Licensee, as it would appear to be most consistent with the documentary evidence from the same period of time.

In our view, the Licensee attended W's residence that day with a view to trying to convince W to keep the new policy. During the course of their conversation, as confirmed by the Licensee's own statements to [REDACTED], she referred to her recent purchase of a new property. The Hearing Committee regards the Licensee's statements as being one prong of her overall sales approach with respect to the policy in question. There was realistically no need for the Licensee to earn the commission from that policy to close her property purchase or obtain a mortgage, but the Hearing Committee believes that the Licensee thought that referring to those issues could apply a certain degree of pressure on W to retain the policy. The Hearing Committee views the Licensee's actions in this regard as raising concerns about her trustworthiness and integrity and has concluded that Council has proven that the Licensee improperly attempted to influence W even if there was no specific offer by the Licensee to pay the policy premiums.

Having determined that Council has met its burden with respect to establishing the misconduct alleged in all six aspects of the Notice of Hearing, the Hearing Committee must also make recommendations to Council as to the appropriate disciplinary penalty that should follow.

An oft-cited statement as to the factors to be taken into account when considering how to determine an appropriate penalty for misconduct in a regulatory setting is that set out by James T. Casey in the *Regulation of Professions in Canada*:

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, the denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of a profession's ability to properly supervise the conduct of its members, and ensuring that the penalties imposed is not disparate with penalties imposed in other cases.

It is the view of the Hearing Committee that in addition to Council's over-arching mandate to ensure the protection of the public, the key factor in terms of assessing a disciplinary penalty in this matter is specific deterrence; that is, ensuring that the Licensee does not commit further misconduct in the future and that the public is protected from future misconduct by the Licensee.

All of the issues that have been raised by Council in this proceeding call into question the Licensee's trustworthiness, integrity and honesty. The allegations are serious and raise significant concerns about the Licensee's compliance with her professional obligations.

Further, the Hearing Committee is particularly troubled by the fact that the Licensee has previously been subject to discipline on a number of occasions in the past. The Hearing Committee believes that the principles of progressive discipline are also important in this matter with respect to determining the appropriate penalty. This is the third occasion on which the Licensee has come before Council on disciplinary matters. In 2013, the Licensee was disciplined for failing to maintain errors and omissions insurance, as required by the Rules. On that occasion, the Licensee was fined \$1,600.

One year later, in 2014, the Licensee was then disciplined for failing to identify a material misstatement on an application for insurance; failing to maintain proper client files; and failing to complete her continuing education courses for a three year period. The Licensee was fined \$3,000 and was subject to a series of conditions on her licence, including that she was required to be supervised by a qualified life and accident and sickness insurance agent for 24 months.

Even more importantly, the Hearing Committee notes that it was while the Licensee was already under the supervision required by the 2014 order that the events occurred with respect to W. It would appear to the Hearing Committee that the Licensee had not taken the steps that one would have expected in order for her to avoid future disciplinary issues.

During the course of submissions, the Hearing Committee was referred by Council to the following decisions as being potentially of assistance in terms of assessing a penalty for the Licensee in this instance:

1. Khamsouei Phovixayboulom (February 2018) – this was an unusual set of circumstances where the licensee intentionally misled clients for personal benefit and failed to place insurance as instructed; failed to provide information to his client so as to allow the client to make an informed decision about a policy; used a third party to pay for the policy premium, without consent from either the third party or the client; and made a material misrepresentation to the insurer in the application with respect to the client’s address.

In these circumstances, the Hearing Committee found that the licensee’s conduct raised serious questions about his competency, trustworthiness and ability to act in good faith. The licensee was suspended for a period of one year and was fined \$5,000.

2. Ismat Simo (September 2017) – the licensee recommended that a client cash in a TFSA investment and then re-invest it in the same year in another TFSA. This led to a significant tax penalty for the client. Council determined that the licensee had not undertaken an appropriate needs analysis and that his failure to provide proper advice to his client raised concerns about his competency. The licensee was suspended until he had taken certain continuing education courses and was also subject to a two year period of supervision by a qualified life agent.
3. Jiang Ping Zhang (September 2018) – the licensee knowingly submitted a series of transactional documents to an insurer that had been signed and initialed by the licensee instead of the client. It was accepted by Council that the licensee had not done this for personal gain, but only for convenience for the client. Nevertheless, such actions caused serious concerns about the licensee’s trustworthiness and Council ordered the licensee to be suspended for one year, with an additional two year period of supervision after the suspension.

Council also referred the Hearing Committee to two further decisions – Antony Fransen (January 2019) and Wei Kai (Kevin) Liao (April 2017). In the Fransen decision, the licensee’s prior discipline history was an aggravating factor in terms of assessing an appropriate penalty. In Liao, the licensee had committed further misconduct while already under supervision. Both circumstances would of course be considered to be aggravating in terms of setting an appropriate penalty.

The Licensee also noted the Phovixayboulom and Liao decisions as being similar in terms of the underlying facts, but argued that the misconduct by the licensees in those matters was much more serious than the Licensee’s misconduct. The Licensee also submitted that the Lambert Schmid (March 2012) decision was useful in terms of assessing the lower end of the appropriate penalty. In Schmid, the licensee had failed to undertake a proper needs analysis of his client and had also completed forms without another client’s awareness that an application was being made and had witnessed forged signatures. Council was ultimately of the view that the licensee had not acted with ill intent or an attempt to gain personally, but had instead been motivated by a belief that the second client genuinely wanted the insurance. Mr. Schmid was fined \$2,000 and was required to undertake some additional education.

Having reviewed all of these decisions, the Hearing Committee has concluded that the Licensee's misconduct requires both a period of licence cancellation, as well as a fine. Further, the length of the licence cancellation in this case must be at the higher end of the spectrum given the Licensee's prior professional conduct history. The principle of progressive discipline mandates very much in favour of a significant penalty. The Licensee's breaches of the Act, Code and Rules raise serious issues about her trustworthiness and integrity as licensee. She has unfortunately come before Council on a number of recent occasions and the events in question in this matter occurred when the Licensee was already under a supervision order. Even though this matter related to the Licensee's interactions with only one client, the Hearing Committee has concluded that the misconduct is serious and that a significant disciplinary penalty is warranted.

RECOMMENDATIONS OF THE HEARING COMMITTEE

In light of our conclusions above, the Hearing Committee recommends that Council consider the following penalty:

1. the Licensee's life agent licence be cancelled for a period of two (2) years;
2. the Licensee pay a fine in the amount of \$5,000 within 90 days of Council's penalty decision being issued;
3. should the Licensee become licensed again in the future, that she be subject to a further two (2) year period of supervision by a life agent supervisor approved by Council; and
4. the Licensee pay Council's investigation costs in the amount of \$1,862.50, within 30 days of Council's penalty decision being issued.

Council also sought an order that the Licensee be required to pay the hearing costs, including the expense of the interpreter who the Licensee had requested be made available for the hearing (with the hearing costs to be determined at a later date). With respect to the hearing costs, the Licensee's counsel argued that the Licensee should not have to bear the burden of these costs in light of the other penalties.

In these circumstances, the Hearing Committee believes there to be no reason to depart from the usual rule that a licensee will bear the burden of the hearing costs when found to have committed professional misconduct. This hearing was required in order for Council to continue to meet its public interest mandate. This matter addressed serious allegations of misconduct against the Licensee and by her own admission this was an appropriate case for her to face discipline by Council. Therefore, in addition to the above-noted penalties, it is our recommendation that Council also order the Licensee to pay for the costs of the hearing, as assessed.

Dated at Vancouver, British Columbia, on the **5th day of May 2019.**



Ken Kukkonen, Chair of Hearing Committee
Insurance Council of British Columbia