

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

WESTLAND INSURANCE GROUP LTD.
(the “Agency”)

ORDER

As Council made an intended decision on November 16, 2021, pursuant to sections 231, 236 and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Agency with written reasons and notice of the intended decision dated January 11, 2022; and

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

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

1. The Agency is reprimanded;
2. The Agency is assessed investigation costs in the amount of \$2,375, to be paid by May 2, 2022; and
3. A condition is imposed on the Agency’s general insurance license that failure to pay the investigation costs by May 2, 2022 will result in the automatic suspension of that licence, and the Agency will not be permitted to complete its 2023 annual licence renewal until such time as the investigation costs have been paid in full.

This order takes effect on the **1st day of February, 2022.**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

WESTLAND INSURANCE GROUP LTD.
(the “Agency”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Agency acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct, and in particular to determine whether the Agency breached sections 5 (“Competence”) and/or 7 (“Usual Practice: Dealing with Clients”) of the Code of Conduct by failing to take appropriate action after becoming aware of a possible compromise of client information.
2. On October 5, 2021, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with the Agency’s nominee (the “Current Nominee”), as well as with two former nominees (“Former Nominee A” and “Former Nominee B”) via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee and the participants prior to the meeting. A discussion of the investigation report took place at the meeting and the Current Nominee, Former Nominee A, and Former Nominee B were given an opportunity to make submissions and provide further information. Having reviewed the investigation materials and discussed the matter with the meeting participants, the Committee prepared a report for Council.
3. The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its November 16, 2021, meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

4. Pursuant to section 237 of the Act, Council must provide written notice to the Agency of the action it intends to take under sections 231, 236 and 241.1 of the Act before taking any such action. The Agency may then accept Council's decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Licensee.

FACTS

5. A former Level 1 general insurance salesperson (the "Former Licensee") was authorized to represent the Agency between January and June 2017. The Former Licensee was primarily responsible for conducting Insurance Corporation of British Columbia ("ICBC") Autoplan transactions, and worked from an Agency office in Surrey, British Columbia. The Former Licensee was charged under the *Criminal Code*, in April 2020, with charges that included ten counts of identity theft, ten counts of unauthorized use of credit card data, and eight counts of fraud over \$5,000. Council cancelled the Former Licensee's licence in May 2020, under sections 231 and 238 of the *Financial Institutions Act*, considering him to pose an ongoing and serious risk to the public if allowed to continue conducting insurance business.
6. The Royal Bank of Canada ("RBC") contacted the Agency in June 2017 regarding an investigation into suspicious credit card transactions that they had linked to the Agency. The Former Licensee voluntarily resigned from the Agency shortly after contact was made by RBC, accepting a position with a different agency.
7. The Royal Canadian Mounted Police (the "RCMP") contacted the Agency in August 2017. In the months that followed, the RCMP interviewed Agency employees, including the Former Licensee's supervisor, and shared information with the Agency about a total of 15 suspicious transactions that had been identified by RBC. The RCMP ultimately concluded that, although the Former Licensee was responsible for the compromise of a series of client credit cards while employed at the Agency and another agency, not all the Agency transactions that had been flagged as suspicious were the result of compromised credit cards.
8. The Agency cooperated with both the RCMP and RBC. However, there is no record of the Agency otherwise taking action to address the potential breach of important client

personal information. The Agency did not contact ICBC about the suspicious transactions, even though they related to Autoplan policies.

9. Nominee A and Nominee B were co-nominees of the Agency during the material time. Their responsibilities were split such that Nominee A provided oversight of the Agency's Vancouver Island offices and a limited number of mainland offices, while Nominee B was responsible for mostly mainland offices. The Surrey office at which the Former Licensee worked fell under Nominee B's oversight. Both Nominee A and Nominee B have since retired from the insurance industry.
10. Nominee A, Nominee B, and the Current Nominee were forthright in their interview with the Committee. Nominee A, who had been primarily responsible for Vancouver Island offices, admitted that she had been entirely unaware of the RBC and RCMP investigations into suspicious transactions until being notified by Council during its investigation. Nevertheless, Nominee A helped provide the Committee with relevant information about the safeguards and procedures in place at the Agency during the material time.
11. Nominee B was similarly transparent in admitting that she had very little recollection of the RBC and RCMP investigations having ever been brought to her attention. She stated that she vaguely recalled having been told by an Agency vice president, after the fact, that the police had wanted to talk to someone, but that the matter had not been followed up. Nominee B speculated that Agency staff might have thought they were doing her a favour by resolving the matter without her.
12. The Committee was provided with information about the relevant procedures in place at the Agency for dealing with such situations, both during the material time and currently. The Committee was told that the Agency's policies have been enhanced in the years since the investigation of the Former Licensee, but that even at the time the procedures in place would have required the matter to be brought to the attention of one or both nominees. Nominee A and Nominee B explained that incidents involving alleged misconduct by Agency employees would typically be escalated to the attention of the president and nominee(s). They described having taken immediate action in response to similar situations, such as when an employee was suspected of forging signatures. They described themselves as having good working relationships with representatives of both ICBC and Council, and stated that they would have reached out to both organizations had the matter been properly brought to their attention.

ANALYSIS

13. Council has concluded that the Agency did not take appropriate action to protect client information after being made aware of the RBC and RCMP investigations into the suspicious transactions linked to the Former Licensee. At the very least, the Agency should have brought the matter to ICBC's attention, as required by their agreement with ICBC, so that a mutual course of action could be discussed. By failing to take appropriate action, the Agency neglected the duties set out in sections 5 ("Competence") and 7 ("Usual Practice: Dealing with Clients") of the Code of Conduct.
14. The involvement and culpability of both Nominee A and Nominee B was reviewed by Council during its investigation. Council's conclusion is that both were competent nominees and should not personally be sanctioned for the Agency's inaction. Council is satisfied that Nominee A and Nominee B had reached out to ICBC and Council in other circumstances involving staff misconduct, and likely would have done so regarding the Former Licensee had the matter been properly brought to their attention. Although Nominee B acknowledged that passing reference to the matter may have been made to her, Council accepts that she was not meaningfully engaged and was effectively left out of the Agency's response to the matter.
15. Although Council Rule 7(6) states that a "licensee that is a nominee of, or a sole-proprietor acting as an insurance agency or adjusting firm, is responsible to Council for all activities of the insurance agency or adjusting firm," it is Council's opinion that it would be unfair to discipline either Nominee A or Nominee B in these circumstances. Based on the information provided by the Current Nominee, Nominee A, and Nominee B, Council is satisfied that, had Agency staff properly followed the procedures in place at the material time, the matter would have been brought to the attention of one or both former nominees.
16. Council recognizes that Agency staff were concerned about potentially interfering with the RCMP's investigation. Further, the RCMP did not provide them with information as to exactly which clients likely had their credit card or other information compromised by the Former Licensee. Even so, Nominee A and/or Nominee B should have been involved in the Agency's response to the situation, and ICBC should have been communicated with. It would have been best practice for the Agency to have reported the Former Licensee's conduct to Council, and to have sought guidance from Council as to how to handle the situation.

17. Mitigating and aggravating factors were taken into consideration by Council. A significant mitigating factor was that the Current Nominee was able to demonstrate that the Agency has enhanced their privacy and related policies in the years since the incident with the Former Licensee. Conversely, the most notable aggravating factor was that the Agency had failed to reach out to ICBC at all, despite the suspicious transactions being related to Autoplan policies, and despite being contractually obligated to do so. Overall, Council concluded that the mitigating and aggravating factors were roughly equal in terms of significance and did not weigh in favour of either a more or less severe penalty.
18. Prior to making its determination, Council took a past decision dealing with a privacy breach into consideration as a precedent.
19. *Prestige Insurance Services Ltd. DBA Perpetual Insurance Services and Alexander Hamilton Cheung Hin Nam* (May 2020) concerned an agency and its nominee who were investigated following an incident whereby three boxes of insurance business documents were accidentally left behind in a temporary office that the agency had occupied while its usual office was being renovated. The agency and the manager in charge of responding to the incident reacted promptly and responsibly, by making immediate efforts to retrieve the documents, cooperating with ICBC, reporting the incident to the Office of the Information and Privacy Commissioner, posting a notice for clients on the agency website, and implementing new procedures to prevent a similar incident in the future. Nevertheless, Council concluded that the mistake had put client information at risk and warranted a reprimand of the agency. Additionally, the nominee was required to complete the Council Rules Course and a privacy course, and the agency was assessed investigative costs.
20. In the present matter, having weighed all considerations, Council has concluded that a sanction similar to the disposition in the *Prestige* precedent is appropriate. As such, Council intends to reprimand the Agency. The Agency put client information at risk by failing to take appropriate action when made aware that suspicious transactions had been identified by RBC and the RCMP. Council believes that this disposition will communicate to the industry and public the importance of protecting the privacy of client information and emphasize that action sometimes needs to be taken by licensees in the interest of protecting client information.
21. With respect to the investigation costs, Council finds that these costs should be assessed to the Agency. As a self-funded regulatory body, Council looks to licensees who have engaged

in misconduct to bear the investigative costs of their discipline proceedings, so that the costs are not otherwise borne by British Columbia's licensees in general.

INTENDED DECISION

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

- i. Reprimand the Agency;
- ii. Assess Council's investigation costs in the amount of \$2,375 against the Agency, to be paid within 90 days of Council's order; and
- iii. Impose a condition on the Agency's general insurance license that failure to pay the investigation costs within 90 days of Council's order will result in the automatic suspension of that licence, and the Agency will not be permitted to complete its 2023 annual filing until such time as the investigation costs have been paid in full.

23. Subject to the Agency's right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

RIGHT TO A HEARING

24. If the Agency wishes to dispute Council's findings or its intended decision, the Agency may have legal representation and present a case in a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Agency **must give notice to Council by delivering to its office written notice of this intention within fourteen (14) days of receiving this intended decision.** A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director. **If the Agency does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.**

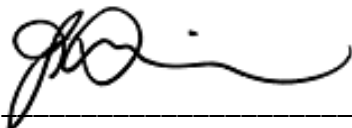
25. Even if this decision is accepted by the Agency, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right of appeal to the Financial Services Tribunal ("FST"). The BCFSA has thirty (30) days to file a Notice of Appeal once Council's decision takes effect. For more information respecting appeals to the FST,

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please visit their website at www.fst.gov.bc.ca or visit the guide to appeals published on their website at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

Dated in Vancouver, British Columbia on the 11th day of January, 2022.

For the Insurance Council of British Columbia

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

Janet Sinclair
Executive Director