

**In the Matter of the**

***FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141***

(the “Act”)

**and the**

**INSURANCE COUNCIL OF BRITISH COLUMBIA**

(“Council”)

**and**

**DAVID IAN SOMERVILLE**

(the “Former Licensee”)

**ORDER**

As Council made an intended decision on March 7, 2023, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated March 14, 2023; and

As the Former Licensee 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 Former Licensee is fined \$2,500, to be paid by July 4, 2023, and which must be paid in full prior to the Former Licensee being licensed in the future;
- 2) The Former Licensee is required to complete the following courses, or equivalent courses as acceptable to Council, prior to being licensed in the future:
  - a. Cyber & Privacy Liability, offered through Advocis; and
  - b. the Council Rules Course for life and/or accident and sickness insurance; and

Order

David Ian Somerville

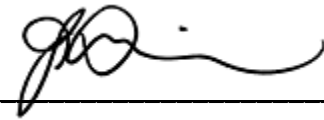
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- 3) The Former Licensee is assessed Council's investigation costs of \$1,581.25 to be paid by July 4, 2023, and which must be paid in full prior to the Former Licensee being licensed in the future.

This Order takes effect on the **3<sup>rd</sup> day of April, 2023**



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Janet Sinclair, Executive Director  
Insurance Council of British Columbia

**INTENDED DECISION**

of the

**INSURANCE COUNCIL OF BRITISH COLUMBIA**

(“Council”)

**respecting**

**DAVID IAN SOMERVILLE**

(the “Former Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Former Licensee breached the Council Rules and/or the Code of Conduct (the “Code”) when the Former Licensee distributed confidential information about other licensees and related clients to three managing general agencies.
2. On September 27, 2022, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee and the Former Licensee prior to the meeting, and the Former Licensee was given an opportunity to make submissions and provide further information. The Former Licensee was given advance notice and did not attend the meeting. A discussion of the investigation report took place at the meeting.
3. Having reviewed the investigation materials and having discussed the matter at the September 27, 2022 meeting, the Committee prepared a report for Council which was reviewed by Council at its December 13, 2022 meeting. The matter was further reviewed by Council at its March 7, 2023 meeting. Council determined that 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 Former Licensee of the action it intends to take under sections 231, 236 and 241.1 of the Act before taking any such action. The Former Licensee may then accept Council’s decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Former Licensee.

## **FACTS**

### Background

5. The Former Licensee became licensed with Council as a life and accident and sickness insurance agent (“Life Agent”) on April 15, 2009. The Former Licensee is also life licensed in Alberta and Ontario.
6. On June 17, 2021, Council received a letter and Life Agent Reporting Form (“LARF”) from a managing general agency (the “Agency”). The letter alleged that the Former Licensee had distributed confidential information about other licensees and related clients to another managing general agency (“MGA One”), and the LARF indicated that there was evidence suggesting issues with disclosure, privacy or confidentiality, trustworthiness, and professionalism.
7. The Former Licensee was employed by the Agency as Regional Director, Sales, in the Vancouver Island, BC office until November 17, 2020. Though his employment had ended, the Agency had not terminated the Former Licensee’s ability to submit future business through the Agency.
8. According to the LARF, the Agency had evidence that the Former Licensee had sent confidential information to MGA One:
  - A PDF report of business submitted through the Agency by one of the Agency’s contracted advisors from January 1, 2014 to January 8, 2020 (“Document One”);
  - An Excel spreadsheet containing names, email addresses and phone numbers of 1,300 active insurance advisors contracted by the Agency in BC (“Document Two”);
  - A PDF production summary report of business submitted by BC advisors from January 1 to November 17, 2020 (“Document Three”).
9. Document One contained various consumer information, including consumer name, carrier, face amount, premium and first-year commission. Document Two and Document Three contained advisor information and their productions. The Former Licensee claimed that he did not intend to send Document One to MGA One, and that it was sent in error.
10. During Council’s investigation, it was determined that the Former Licensee also sent Document Two and Document Three to two other managing general agencies (collectively, the “MGAs”). The MGAs confirmed that they had not solicited the information from the Former Licensee, and that the documents were deleted upon receipt.

11. On June 23, 2021, the Agency confirmed that the broker agreement the Former Licensee had with the Agency had been terminated. Council had obtained a copy of the Agency's investigative report concerning the Former Licensee's misconduct. The Agency found that the Former Licensee's misconduct did not result in harm to either the advisors or the clients.
12. The Former Licensee provided multiple written responses to Council. He acknowledged his lapse in judgment, which he said was due to personal issues, and he was seeking counselling. He claimed he had sent the documents to gain favour for employment and was remorseful. He admitted to storing client information on an encrypted hard drive and kept it behind locked doors.
13. On July 28, 2021, the Former Licensee advised Council's Investigator that he had enrolled in three ethics courses with Advocis. Subsequently, Council received a copy of the certificate showing the Former Licensee's completion of the course *Making Choices III - Ethics and Professional Responsibility in Practice*.
14. On March 1, 2022, Council's Investigator conducted an interview with the Former Licensee. The Former Licensee confirmed the following:
  - a) the Former Licensee admitted to sending the documents to the MGAs in order to gain favour for employment after the Agency had terminated him, which affected his ability to provide for his family;
  - b) the MGAs did not solicit the information the Former Licensee disclosed and did not engage with the Former Licensee;
  - c) the Former Licensee did not share the documents with any third parties in addition to the MGAs;
  - d) the Former Licensee had not taken any steps to mitigate harm after the disclosure but reiterated that no client harm had resulted from his actions;
  - e) the Former Licensee had a procedure in place for responding to a privacy breach; and
  - f) the Former Licensee expressed regret and remorse for his actions, and understood his actions constituted a severe error in judgment.
15. On January 23, 2023, the Former Licensee requested to have his Life Agent licence terminated. The Former Licensee's Life Agent licence was terminated on January 24, 2023.

## **ANALYSIS**

16. Council considered the investigation report, the Committee's report to Council, and the Former Licensee's submissions and determined that the Former Licensee's conduct amounted to clear breaches of section 3 ("Trustworthiness") and section 4 ("Good Faith") of the Code. Council Rule 7(8) requires licensees to comply with the Code.
17. Council believed that the Former Licensee's management position at the Agency provided him access to information that he used for his own advantage, which was to seek employment at the MGAs. Council noted that the knowledge the Former Licensee obtained as a licensee with Council likely informed him of the specific information that he would take and who he would share it with. The Former Licensee misused proprietary information owned by the Agency for his personal benefit. Council found the Former Licensee's conduct reflected adversely on his trustworthiness.
18. Similarly, by taking and disclosing the confidential information owned by the Agency, the Former Licensee breached his duty of good faith towards the Agency, the insureds, and fellow licensees. The Former Licensee used and disclosed confidential information that was not authorized by the Agency. None of the MGAs that the Former Licensee disclosed the confidential information to had solicited the information. Council found that the Former Licensee prioritized his own interests in his pursuit of employment.
19. Council took several aggravating factors into consideration. For instance, Council found the Former Licensee's decision to save the client and licensee information and then disclose same to the MGAs several months later to be premeditated. Council determined that the Former Licensee's misconduct showed a flagrant disregard for the laws governing the Former Licensee's conduct. Also, Council found the Former Licensee's experience in the insurance industry to be relevant.
20. Although there was no direct client harm, Council was troubled that the Former Licensee failed to recognize the potential for client harm. Also, the Former Licensee was defensive in his responses to Council and attempted to downplay the extent of harm attributed by his actions. Further, by disclosing the information to the MGAs, the Former Licensee intended to seek employment, and indirectly, to derive a financial benefit.
21. In terms of mitigating factors, Council noted that the Former Licensee cooperated with Council's investigation. Council accepted that the Former Licensee acknowledged his misconduct and was remorseful. In addition, the Former Licensee had his broker contract terminated by the Agency, and Council acknowledged the various mental health stresses that have impacted the Former Licensee. Council also considered that the Former Licensee had pre-emptively completed an ethics course.

22. Council agreed that the Former Licensee's misconduct did not result in direct client harm. Further, Council accepted that the Former Licensee's misconduct was an isolated event as the information was disclosed to the MGAs around the same time. Lastly, Council considered that the Former Licensee did not have a prior disciplinary history with Council.
23. Council is not bound by precedent to follow the outcomes from prior decisions, but similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case.
24. With respect to the Former Licensee's misconduct, Council considered the cases of [Rodney Gillis Tidsbury](#) (August 2022), [Suzanne Annette-Marie Clement](#) (November 2013), and [Teresa Anne Cantin](#) (February 2013).
25. [Rodney Gillis Tidsbury](#) (August 2022) concerned a Level 2 general insurance agent licensee who provided client information to a realtor. The licensee informed the realtor, who was acting in a real estate transaction, that there was insurance confirmation on a property that a client intended to purchase. The client had requested an extension to remove subjects as the client wanted further time to explore whether the insurance rate for the property could be obtained at a reasonable rate. The sellers did not extend the time for removal of subjects and ultimately the sale fell through. Council concluded that the licensee did not intentionally disclose confidential client information; rather, he failed to hold confidential client information in strict confidence and did not receive authorization from the client to release information related to the insurance confirmation of the property. Council ordered that the licensee be fined \$1,000, required to complete the Council Rules Course and a privacy compliance course, and assessed investigation costs.
26. [Suzanne Annette-Marie Clement](#) (November 2013) concerned a Life Agent licensee who provided client information to an agency "associate member" who was not licensed with Council. The licensee believed that client information could be provided to a person with associate member status. The licensee advised that she did not have consent from any of the clients to release their personal information, but it was not her intent to cause any harm to any clients. Council determined that the licensee did not intend to harm any party intentionally or breach confidentiality, given the associate member status of the individual within the agency. Council determined that the licensee did not consider client confidentiality or whether client consent was required, particularly as the associate was unlicensed. Council ordered that the licensee be fined \$1000 and assessed investigation costs.
27. [Teresa Anne Cantin](#) (February 2013) concerned a Level 1 general insurance salesperson licensee who provided client information to a former supervisor who was working at another agency at the

time of the disclosure requests. Council determined that the licensee breached client confidentiality when releasing client information to the former supervisor without required authorization. Due to the former relationship, the licensee mistakenly assumed that the required authorization had been secured from the client. Council ordered that a condition be imposed on the licensee's general licence, restricting her to holding a level 1 general insurance licence for 12 months. Council also ordered that the licensee be fined \$1,000, required to complete the Insurance Corporation of British Columbia Privacy Please Tutorial, and assessed investigation costs.

28. Council determined that [Clement](#) was relevant to the subject case as both matters concerned life insurance and the licensees' misconduct resulted in harm to the employers in both cases; however, Council distinguished [Clement](#) from the subject case as the licensee in [Clement](#) intended to breach client information, whereas the Former Licensee in the subject case did not intend to do so. Council accepted the Former Licensee's statement that he had only intended to breach licensee information.
29. Council did not find [Tidsbury](#) and [Cantin](#) as relevant since the cases involved licensees who disclosed client information to third parties after they were solicited. The Former Licensee in the subject case disclosed the client and licensee information by his own volition.
30. Council has determined that investigation costs should be assessed against the Former Licensee. As a self-funding regulator, the cost to investigate the misconduct of a licensee or former licensee should not be borne by members of the insurance industry unaffiliated with the investigation. This is particularly true when the evidence is clear that the actions of a licensee or former licensee have amounted to misconduct.

#### **INTENDED DECISION**

31. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:
  - (a) Fine the Former Licensee \$2,500, to be paid within 90 days of the date of Council's order, and which must be paid in full prior to the Former Licensee being licensed in the future;
  - (b) Require the Former Licensee to complete the following courses, or equivalent courses as acceptable to Council, prior to being licensed in the future:
    - i) Cyber & Privacy Liability, offered through Advocis; and
    - ii) Council Rules Course for life and/or accident and sickness insurance; and



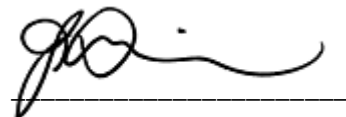
- (c) Assess the Former Licensee Council's investigation costs of \$1,581.25, to be paid within 90 days of the date of Council's order, and which must be paid in full prior to the Former Licensee being licensed in the future.

#### **RIGHT TO A HEARING**

32. If the Former Licensee wishes to dispute Council's findings or its intended decision, the Former Licensee may have legal representation and present a case at a hearing before Council. **Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Former Licensee must give notice to Council by delivering to its office written notice of this intention within 14 days of receiving this intended decision.** A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director. **If the Former Licensee does not request a hearing within 14 days of receiving the intended decision, the intended decision of Council will take effect.**
33. Even if the Former Licensee accepts this decision, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right to appeal to the Financial Services Tribunal ("FST"). The BCFSA has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at [www.fst.gov.bc.ca](http://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](http://www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf).

Dated in Vancouver, British Columbia, on the 14<sup>th</sup> day of March, 2023.

For the Insurance Council of British Columbia



Janet Sinclair  
Executive Director