

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

LAWRENCE ROYAL FULLER
(the “Licensee”)

and

CANADA LOYAL FINANCIAL LTD. and
CANADA LOYAL INSURANCE AGENCY LIMITED
(the “Agencies”)

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 February 9, 2021.

The Hearing Committee heard the matter on October 6, 2021, January 26, 2022, and February 22, 2022.

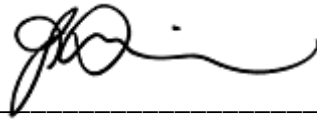
The Hearing Committee then prepared its Reasons for Decision, dated August 24, 2022.

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

- (a) The Licensee’s licence is suspended for a period of two (2) years, beginning on August 26, 2022 and ending at midnight on August 26, 2024;
- (b) The Licensee is prohibited from being a nominee of any licensed agency in British Columbia for a period of two (2) years, beginning on August 26, 2022 and ending at midnight on August 26, 2024;

- (c) The Licensee is fined \$10,000, due and payable by February 22, 2023, and which must be paid in full prior to the Licensee's licence suspension being lifted;
- (d) The Agencies, jointly and severally, are fined \$20,000, due and payable by February 22, 2023, and which must be paid in full prior to the Licensee's licence suspension being lifted;
- (e) The Licensee and the Agencies, jointly and severally, are ordered to pay Council's costs associated with the investigation of this matter in the amount of \$1,937.50;
- (f) The Licensee and the Agencies, jointly and severally, are ordered to pay Council's costs associated with the hearing, in the amount of \$9,049.90;
- (g) The investigation and hearing costs are due and payable by February 22, 2023, and must be paid in full prior to the Licensee's licence suspension being lifted; and
- (h) A condition is imposed on the Agencies' corporate licences that failure to pay the fine or the investigation and hearing costs by the deadline will result in suspension of those licences, and they will not be permitted to complete their next annual filing until such time as the fine and costs are paid in full.

This order takes effect on the **26th day of August, 2022.**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

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

and

**INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)**

and

**LAWRENCE ROYAL FULLER
(the “Licensee”)**

and

**CANADA LOYAL FINANCIAL LTD. and
CANADA LOYAL INSURANCE AGENCY LIMITED
(the “Agencies”)**

Date: October 6, 2021
9:30 a.m.

January 26, 2022
9:30 am

February 22, 2022
9:00 a.m.

Before: Terry Ray/Brett Simpson Chairs
Glen Ewan Member
Calvin Joe Member

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

Present: David McKnight,
Naomi Krueger
and Michael Thomas
(articling student) Counsel for Council

Peter Senkpiel and
Julia Riddle

Counsel for the Licensee/Agencies

Michael D. Shirreff

Counsel for the Hearing Committee¹

REASONS FOR DECISION OF THE HEARING COMMITTEE

BACKGROUND AND ISSUES

1. On February 9, 2021, Council issued an intended decision, pursuant to sections 231, 236 and 241.1 of the Act, relating to allegations that the Licensee and the Agencies had failed to comply with Council's Rules and the Code of Conduct (the "Code") by failing to disburse monies received from an insurance company to advisors engaged by the Agencies, as well as by using the advisors' funds for other purposes.
2. On February 24, 2021, the Licensee and the Agencies requested a hearing to dispute the intended decision, as provided for in section 237(3) of the Act.
3. The hearing proceeded by video over the course of three days on October 6, 2021, January 26, 2022 and February 22, 2022.
4. The Notice of Hearing (which was amended to address the changes of the hearing dates) alleged that the Licensee and the Agencies failed to act in good faith and in a trustworthy and competent manner, failed to act in accordance with the usual practices of the business of insurance and failed to act in accordance with Council Rules and the Code, by:²
 - a) not disbursing compensation received from insurance companies properly to advisors and by using funds that were received by the Licensee and Agencies from insurance companies for the purpose of advisor payments for other uses;

¹ Mr. Ray was the Chair of the Hearing Committee on the first day of hearing. Following that appearance, Mr. Ray resigned his position with Council. At that point, Mr. Simpson was appointed as the Chair of the Hearing Committee with respect to this proceeding. Mr. Joe was also appointed as a member to sit on the Hearing Committee in place of Mr. Ray. There were no concerns raised by any parties with respect to these changes to the composition of the Hearing Committee.

At the initial hearing, on October 6, 2021, Ms. Krueger appeared as co-counsel for Council and Ms. Riddle appeared as co-counsel for the Licensee and the Agencies. When the matter reconvened on February 22, 2022, Mr. Senkpiel appeared without Ms. Riddle. Ms. Krueger also did not appear at that hearing, but Mr. McKnight was joined by Michael Thomas (articling student).

² Note that there was no subparagraph "d)" in the Notice of Hearing.

- b) breaching their duties to act in accordance with sections 3, 4, 5 and 6 of the Code;
 - c) breaching their duties with respect to the collection of funds on behalf of an insurer in accordance with Council Rule 7(2)(b);
 - e) breaching their duties to act in accordance with Council Rules 7(6) and 7(8); and
 - f) in any other manner.
5. The purpose of the hearing was to determine whether the allegations could be proven and whether Council should make one or more of the available orders set out in sections 231, 236 and 241.1 of the Act.
6. At the hearing, the Licensee admitted that he had committed misconduct as alleged in paragraphs 1. a), b), c) and e) of the Notice of Hearing. The Licensee and the Agencies also accepted that it was appropriate in this case for each to pay the maximum available fine set out in the Act (\$10,000 for the Licensee; and \$20,000 for the Agencies, as at the time of the underlying events). Finally, the Licensee also agreed that his misconduct was such that it was also an appropriate matter for Council to order that his licence be suspended for a two-year period.
7. In addition to the above, Council took the position that the Licensee should also be prohibited from being a controlling shareholder, partner, officer or director of any licensed agency in British Columbia for a period of five years. Council submitted that divesting the Licensee of these powers was warranted in light of the nature of his misconduct, and in an effort to ensure that the public is protected while also maintaining the public's confidence in the integrity of the insurance industry.
8. The Licensee and the Agencies, while agreeing with much of what was being sought by Council, submitted that there was no need for the additional prohibition and took the position that the penalty ordered by Council in this proceeding ought to be harmonious with the penalties imposed against the Licensee and the Agencies in regulatory proceedings in Ontario. The respondents submitted that Council would be able to meet its public interest mandate by prohibiting the Licensee from acting *as a nominee* of the Agencies during the period of suspension (with no restrictions on the Licensee as a shareholder, partner, director or officer of the corporate entities).

9. The Hearing Committee was constituted pursuant to section 223(1) of the Act to hold a hearing and decide the matter. This is the Hearing Committee's written decision.

Evidence

Exhibits

10. There were no witnesses called at the hearing. On October 6, 2021, Council introduced three documents into evidence, which included a detailed and comprehensive Agreed Statement of Facts (the "ASF").
11. The matter was next scheduled for hearing on January 26, 2022, but an adjournment was sought on that date by the Licensee and the Agencies, which was granted by the Hearing Committee. When the matter reconvened on February 22, 2022, the parties entered six additional exhibits into evidence, by consent.
12. In the result, the following exhibits were entered during the course of the hearing:

Exhibit 1	Notice of Hearing, dated August 11, 2021
Exhibit 2	Agreed Statement of Facts, signed September 24, 2021
Exhibit 3	Council's Book of Documents (24 tabs of various materials)
Exhibits 4 - 6	Records relied on by the Licensee and the Agencies in support of the adjournment application
Exhibit 7	Order No. 1867652 – Jan. 26, 2022 filing for Canada Loyal Insurance Agency Limited
Exhibit 8	Two reports on filing for Canada Loyal Financial Ltd., dated January 26 and 27, 2022
Exhibit 9	Council's investigation activity log (\$1,937.50 in expenses)
Exhibit 10	Letter from Council to the FSRA, dated Feb. 14, 2022
Exhibit 11	Notice of Proposal to revoke licence between FSRA and Fuller, dated October 9, 2020
Exhibit 12	Minutes of Settlement between Fuller and the FSRA, dated January 4, 2022

13. At the conclusion of the matter, Council also provided the Hearing Committee with a written submission and a book of authorities. The parties also subsequently exchanged brief written submissions with respect to hearing costs.

Facts

14. There was broad agreement between the parties with respect to the facts pertaining to the allegations against the Licensee and the Agencies. In advance of the hearing, the parties came to terms on a comprehensive ASF, which provided a detailed and chronological review of the evidence.
15. The Hearing Committee will not repeat all of the evidence set out in the ASF, but will synthesize certain of the more relevant facts in the following section of this decision.
16. The Licensee has been licensed with Council as a Life and Accident and Sickness Insurance Agent since November 1999. The Licensee is the owner and nominee of two corporate insurance agencies: Canada Loyal Financial Ltd. ("CLF") and Canada Loyal Insurance Agency Limited ("CLI").
17. CLF has had an active Corporate Life Agent licence with Council since November 1999. CLI has had an active Corporate Life Agent licence with Council since August 2009.
18. The Agencies each hold Managing General Agent contracts with a number of major insurance companies.
19. CLI contracted with various licensed insurance agents (the "Agents") to place insurance contracts with insurance companies, including one company that eventually ended up reporting the Licensee and the Agencies to Council (the "Insurance Company").
20. Prior to 2016, the Agents were paid their commissions directly by the Insurance Company. The commission funds were not handled by the Licensee or the Agencies.
21. Beginning in around 2016, the Insurance Company transitioned the payment of the Agent commissions to a centralized computer platform. The Licensee understood that he was required to use the centralized computer platform if he wanted the Agencies to continue to do business with the Insurance Company.
22. Following the change, instead of the commissions being paid directly by the Insurance Company to the Agents, a bulk payment would be transferred from the centralized computer platform to CLI at regular intervals. CLI was then expected to

pay the commissions to the Agents who had been responsible for placing the underlying insurance.

23. As the president, sole director and designated agent or nominee of CLI, the Licensee was responsible for ensuring that CLI paid the commissions to the Agents.
24. The Licensee and CLI did not pay the Agents. During 2017 and 2018, the Licensee and CLI failed to pay approximately **\$265,000** that was owed to 154 Agents in respect of business placed with the Insurance Company.
25. Eventually, some of the Agents complained to the Insurance Company about their unpaid commissions. After the Insurance Company investigated the matter, it concluded that CLI had misappropriated funds that were due and owing to the Agents. The Insurance Company terminated its business relationship with the Licensee and CLI on November 30, 2018.
26. These issues were initially referred to the Financial Services Regulatory Authority of Ontario (the "FSRA"). During the course of the FSRA investigation, the Licensee explained that he and CLI had been facing financial difficulties during the material period as a result of a business loan that had been unexpectedly called by a lender (the Licensee also indicated that he faced cash-flow issues from the fees associated with the centralized computer platform, as well as chargebacks from the Agents).
27. The Licensee acknowledged to the FSRA that it was his responsibility to ensure that the Agents were paid and admitted that he had failed to pay the Agents approximately \$265,000 that had been received by CLI from the Insurance Company.
28. The Licensee also admitted that he had used the funds for his own business purposes and that, as at the date of the FSRA investigation, he was not in a financial position to pay the outstanding commissions to the Agents. The Licensee indicated to the FSRA that he intended to pay the amounts owing to the Agents by refinancing two commercial real estate properties.
29. The Licensee accepted that he knew that the money provided to CLI by the Insurance Company was intended to be used to pay Agent compensation. He explained that CLI's cash-flow was not sufficient to satisfy his business debt obligations (as a result of a loan that he had taken out to purchase three Managing General Agencies) and that he had ended up using the money that was supposed to be paid as Agent compensation to service his business debts.

30. On December 3, 2018, the Insurance Company also reported this matter to Council. Council then undertook its own investigation, during the course of which the Licensee submitted two written responses to questions from Council and also participated in an interview with a Council investigator. Council also had the benefit of the investigation materials compiled by both the Insurance Company, as well as the FSRA.
31. Similar to what he had advised the Insurance Company and the FSRA, the Licensee admitted to Council that he had used the Agents' money to pay his business debts.
32. There was some suggestion by the Licensee, in response to Council's investigation, that some of the delays in CLI's payment to the Agents were the result of funds being held up by the Insurance Company. The Hearing Committee was shown documentation revealing three payments to CLI from the Insurance Company that may have been delayed. That being said, the amount of those delayed payments was only a small fraction of the total amount owed by CLI and the Licensee to the Agents.
33. The essence of the evidence, which was agreed to and accepted by the Licensee and the Agencies, was that after the required switch to the centralized computer platform, CLI found itself in a position where it had a cash-flow shortage as a result of other business dealings of the Licensee. CLI and the Licensee had insufficient funds to service their outstanding business debts. To deal with these cash-flow issues, the Licensee used the funds that had been transferred by the Insurance Company to CLI, which he knew had been intended to pay Agent commissions.
34. In essence, the Licensee and CLI took money that they were not entitled to – the funds that they were holding for the Agents.
35. At paragraph 23 of the ASF, the Licensee admitted that his conduct, as set out above, amounted to misconduct and that all allegations in the Notice of Hearing were established.
36. After the hearing of this proceeding had commenced, on January 7, 2022, the FSRA issued an order suspending the Licensee's Ontario licence for a period of 6 months. The order also stated that the Licensee was to be replaced as the designated agent for CLF in Ontario. The order did not address the implications of the Ontario penalty on the insurance business of the Licensee and the Agencies in British Columbia or elsewhere.

SUBMISSIONS OF COUNCIL

37. As noted above, Council provided a comprehensive written submission on the final day of the hearing which, among other things, reviewed the facts set out in the ASF and outlined a number of authorities for the Hearing Committee to consider with respect to determining the appropriate penalty in this matter.
38. Council emphasized that the allegations in the Notice of Hearing were proven by the Licensee's admissions in the ASF. Council submitted that in taking and using the funds that had been paid by the Insurance Company to CLI for the Agents, the Licensee had failed to act in good faith; had failed to act in a trustworthy and competent manner; and had failed to act in accordance with the usual practices of the business of insurance.
39. Council submitted that the Licensee's actions in taking the Agents' money amounted to a breach of his duties set out in sections 3, 4, 5 and 6 of the Code, as well as a breach of Council Rules 7(2)(b), 7(6) and 7(8).
40. It was Council's position that the Licensee and the Agencies' failure to pay the Agents and the misappropriation of the funds should be regarded as an "egregious failure" to carry out a number of fundamental responsibilities and professional obligations owed by the Licensee and the Agencies. Council submitted that the principles of specific and general deterrence, as well as the need to maintain public confidence in the insurance industry, required maximum fines for both the Licensee and the Agencies, as well as a significant period of licence suspension.
41. To that end, Council sought an order that the Licensee be suspended for a period of two years and submitted that the Hearing Committee should also order that the Licensee be prohibited from being a controlling shareholder, partner, officer or director of any licensed agency in British Columbia for a period of five years.
42. It was Council's position that an order prohibiting the Licensee from filling these roles with a licensed agency was required in order to prevent the Licensee from having any decision-making and management powers in respect of the Agencies (or other agencies) for the next five years. Council argued that divesting the Licensee of these powers was warranted on the facts of this matter in order to ensure the public is properly protected going forward, as well as to maintain the public's confidence in the integrity of the insurance industry.

SUBMISSIONS OF THE LICENSEE AND THE AGENCIES

43. The Licensee and the Agencies accepted that the Licensee's misconduct was serious and agreed that it was appropriate for the Licensee and the Agencies to pay the maximum fines available under the Act.
44. The Licensee and the Agencies also accepted that it was appropriate that the Licensee be suspended for a two-year period.
45. The Licensee and the Agencies did not agree that there was any need for a further, broad prohibition preventing the Licensee from acting as a controlling shareholder, partner, officer or director of the Agencies (or any other licensed agency) for any period of time.
46. The Licensee and Agencies emphasized that this matter was the first instance of misconduct that the Licensee had faced in almost 40 years of involvement in the insurance industry (with a lengthy history of holding licences in British Columbia dating back to 1999). The Licensee and the Agencies further stressed that this was a matter in which the Licensee had admitted his misconduct, cooperated during the course of all of the investigations and was actively taking steps to ensure that the Agents received the commission funds that were due and owing.
47. Further, the Licensee also explained the constellation of business circumstances that led him to use the money from the Insurance Company to alleviate the ongoing business cash-flow issues – not in an attempt to excuse his misconduct, but as he put it, to provide some context for the Hearing Committee as to how the underlying issues arose.
48. The Licensee submitted that the penalty ordered by Council in British Columbia, while needing to be appropriately serious in light of the underlying facts, ought to also be “harmonious” with the penalty already ordered against the Licensee and the Agencies in Ontario by the FSRA.
49. The Licensee and the Agencies submitted that it would be unfair if the penalty in British Columbia might cause a series of unexpected issues for the Licensee in terms of continuing with the Agencies in light of the resolution with the FSRA. In Ontario, the settlement agreement between the Licensee and Agencies provided for a period

of suspension for six months and only restricted the Licensee from acting as the designated agent of CLF during the period of suspension.

50. In British Columbia, the Licensee and the Agencies were agreeable to a two-year period of suspension for the Licensee, but submitted that the only prohibition that should be made contemporaneous with that suspension was a restriction that the Licensee not be permitted to be the nominee for the Agencies during the period of suspension. In order to avoid any suggestion that the replacement nominee would simply be a “puppet” of the Licensee, the respondents proposed that Council be given the right to approve the person put forward as the replacement nominee.
51. The Licensee and the Agencies submitted that the combination of the maximum fines, and the two-year prohibition would ensure the protection of the public and would also provide for a penalty decision in British Columbia that is consistent, coherent and harmonious with the manner in which the same misconduct had already been addressed in Ontario.

DECISION OF THE HEARING COMMITTEE

52. As noted at the outset of this decision, there was no dispute between the parties with respect to most of the key aspects of this proceeding. The Licensee and the Agencies accepted that misconduct had occurred, as alleged in the Notice of Hearing, and took no issue with an order imposing the maximum fines available in the Act, as well as a two-year period of licence suspension.
53. The only issue on which the parties did not agree was with respect to the need for a more fulsome prohibition on the Licensee acting as a controlling shareholder of a licensed agency, or a partner, director or officer of such an entity.
54. The Hearing Committee wants to emphasize at the outset that the Licensee’s misconduct in this matter was quite serious. The Licensee and the Agencies misappropriated funds that had been paid to them by the Insurance Company that were due and owing to the Agents. This was not the Licensee’s money and the fact that the Licensee and the Agencies may have been having certain financial difficulties during the material period provides no excuse for the misconduct.
55. The Licensee acted contrary to many foundational professional obligations, as set out in both the Rules and the Code. Although it can be noted that the Licensee has

advised that he is taking steps to ensure that the Agents get paid, this is still a matter where the penalty ordered by Council must send a strong message to the public, as well as the insurance industry.

56. It is also important to note the amount of money that was taken by the Licensee. The Licensee and the Agencies misappropriated approximately \$265,000 of Agent monies that they had absolutely no entitlement to. This was a considerable amount of money and the Hearing Committee sees this as being an aggravating factor in terms of the assessing the appropriate penalty.
57. There are a number of very important provisions of the Code and the Rules that are germane to the Licensee's misconduct. As set out in section 3 of the Code, licensees are required to be trustworthy and to conduct all professional activities with integrity, reliability and honesty. Section 4 of the Code further requires licensees to carry on the business of insurance in good faith, which includes important components of honesty and decency of purpose and a sincere intention on the part of the licensee to act in a manner that is consistent with a client's best interest.³ The Hearing Committee has no hesitation in agreeing with the parties that the Licensee and the Agencies breached these provisions. It goes without saying that licensee's must never take money to which they are not entitled. That is a foundational professional obligation of all licensees.
58. Council is responsible for protecting the public and ensuring that licensees are trustworthy, competent, financially reliable and also carry on the business of insurance in accordance with the usual practices in the industry and in keeping with the provisions set out in the Rules and the Code. The primary purpose of the Act is the protection of the public.
59. It is with a view to the public interest that the Hearing Committee must assess the appropriate penalty for the misconduct in this matter. Professor James T. Casey, in his leading text *The Regulations of Professions in Canada*, refers to some of the factors to be taken into account with respect to establishing an appropriate penalty in a professional regulatory matter:

³ Note that Mr. Fuller's misconduct also breaches other provisions of the Code, as well. Sections 5.3.2 (e) and (f) of the Code require licensees to properly handle and account for money and property and to maintain proper and adequate books and records of insurance transactions and related financial affairs. Section 6 of the Code requires that a licensee must be financially reliable. In particular, Section 6.3.3 provides that where a licensee collects or receives funds on behalf of an insurer, they must not use or apply the funds for purposes other than as described in the agreement with the insurer and pay the insurer all funds collected or received less any deductions authorized by the insurer.

A number of factors are taken into account in determining how the public might best be protected, including specific deterrence of the member from engaging in further misconduct, general deterrence of other members of the profession, rehabilitation of the offender, punishment of the offender, isolation of the offender, denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members, and ensuring that the penalty imposed is not disparate with penalties imposed in other cases.

60. In *Financial Services Commission v. The Insurance Council of British Columbia and Maria Pavicic*, November 22, 2005, the Financial Services Tribunal (the "FST") held that the factors to be considered in sentencing include: (1) the need to promote specific and general deterrence and thereby protect the public; (2) the need to maintain the public's confidence in the integrity of the... profession; and (3) the range of sentencing in other similar cases.
61. Finally, in light of the nature of the misconduct in this instance, which involves dishonesty and a breach of trust by the Licensee, the Hearing Committee also accepts that it is appropriate in assessing the penalty to also be guided by the considerations noted in *Financial Institutions Commission v. Insurance Council*, Decision No. 2017-FIA-002(a)-008(a), in which the FST stated:

[104] Trust in the licensee lies at the foundation of the grant of the licence. Repeated conduct that calls into question the trustworthiness of a licensee can only reasonably be addressed by a regulator taking action on the licence. Subject only to mitigating factors evident in the record before the Council at the time of the intended decision or after a hearing, it is only licensing action in the form of a suspension, cancellation or conditions (in addition to whatever other conditions the regulator may wish to attach) that can adequately protect the public, secure its confidence, achieve general deterrence and express the denunciation that such conduct warrants.

62. In addition to the foundational principles set out above, the Hearing Committee has also reviewed and considered the prior decisions presented by Council in its written submissions. The Hearing Committee recognizes that it is not bound by these decisions, but agrees with Council that the two decisions of the most assistance in terms of establishing a potential range of penalty for the Licensee and the Agencies appear to be *International Insurance Agencies Ltd. and Theodore (Ted) Young Lee*

(May 2012); and *Fransen Insurance Services Ltd. dba Sea to Ski Insurance Services and Antony Ronald Fransen* (January 2019).

63. In *Lee* (May 2012), a nominee and the agency were found to have failed to remit insurance premiums to insurers and to also have used the premiums to pay the agency's expenses. As a result of the misappropriations, forty clients of the agency had their property insurance premiums cancelled for non-payment of premiums. In *Lee*, Council prohibited the licensee (then a former licensee) from holding any insurance licence for two years; permanently prohibited him from holding a Level 3 general insurance agent's licence; and prohibited him from being a controlling shareholder, partner, officer or director of an insurance agency for a period of ten years. The licensee and the agency were also each fined \$5,000 and were jointly and severally liable for investigative costs of \$2,125.
64. *Fransen* (January 2019) was another matter involving a former licensee who had been the nominee of an agency. Mr. Fransen and the agency failed to remit insurance premiums in accordance with insurer agreements and improperly used the funds for other purposes. Council found the licensee to not be suitable to hold any insurance licence for three years; permanently prohibited him from holding a Level 3 general insurance licence; and ordered that he not be a controlling shareholder, partner, officer or director of any licensed insurance agency.
65. Unfortunately, the decisions in *Lee* and *Fransen* do not provide any analysis as to why there was seen to be a need for the orders prohibiting the licensees from being a shareholder, partner, officer or director of a licensed agency. In *Fransen*, the hearing committee had not included that order in its recommendations to Council, but it was added as a term of the order after the report was considered by Council. The decision in *Lee* appears to have been an intended decision where the licensee had the opportunity to review and comment on the proposed action to be taken by Council, but did not take issue with the proposed orders. With respect to the broad prohibition on Mr. Lee being involved in the ownership and/or management of a licensed entity, the decision appears to link those orders in large part to concerns about Mr. Lee's lack of competency and poor administrative practices.
66. Submissions were made by both parties at the hearing with respect to circumstances that could potentially be seen as aggravating or mitigating in terms of the appropriate penalty for the Licensee and the Agencies. The Hearing Committee regards the Licensee's experience in the insurance industry as an aggravating factor in this matter. The Licensee has been involved in the industry for decades and has been

licensed with Council for over 20 years. He is also the nominee of both Agencies. An experienced licensee in such a position of authority and responsibility ought to have known that he should not misuse funds that had been entrusted to him for the specific purpose of paying the Agents. This would have been obvious to the Licensee. In these circumstances, the Licensee allowed his own personal interests to usurp the interests of the Agents.

67. The impact of the Licensee's misconduct on the Agents must also be considered with respect to assessing the penalty. The Licensee misappropriated \$265,000 that was intended to be paid to the Agents. Based on the FSRA minutes of settlement, as at January 2022, there are still dozens of Agents who are owed money by the Licensee and the Agencies. Most of the Agents appear to be owed less than \$1,000, but there are some who are still waiting to be paid significant amounts. Again, these individuals are owed this money because the Licensee took the money that had been paid to the Agents by the Insurance Company to address his own business debts.
68. This is serious misconduct and it raises significant concerns about the Licensee's trustworthiness, financial reliability and honesty. To a lesser extent, there may also be reason to question the Licensee's competence.
69. During the course of submissions, Council also submitted that, throughout the investigation, the Licensee had attempted to deflect responsibility for his misconduct and blamed the Insurance Company for alleged delays in payment of certain funds due and owing to the Agents. The Hearing Committee did identify some instances in the materials, when responding to the three investigations, where the Licensee appeared to suggest that there were factors beyond his control that caused or contributed to the non-payment of the Agents. That being said, there were also many occasions where the Licensee accepted responsibility for these events during the investigations undertaken by Council, the Insurance Company and the FSRA. On balance, the Hearing Committee does view the Licensee's responses during the investigation as being a somewhat aggravating factor in terms of the penalty, but is mindful of the fact that his cooperation and acceptance of responsibility during the hearing must also be considered.
70. The Hearing Committee has no hesitation in concluding that this is an appropriate case for the Licensee to receive the maximum fine available under the Act.
71. With respect to the Agencies, the Hearing Committee is also of the view that it is

appropriate for the Agencies to be fined in addition to the Licensee. The misappropriated funds directly benefited the Agencies, as the Licensee admitted to using the monies for business purposes. Further, the failure of the Agencies to competently manage advisor commissions was a central aspect of the misconduct at issue in these proceedings. The Hearing Committee agrees with the parties that an appropriate penalty for the Agencies is also the maximum available fine in the Act.

72. There is also agreement that it is appropriate for the Licensee's life agent licence to be suspended for a period of two years from the date of the order. The Hearing Committee accepts that a suspension of such a length is appropriate, is in the interests of the public and is consistent with the length of suspensions imposed on licensees in prior decisions, including *Lee* and *Fransen*.
73. Any misconduct that involves the misuse of money – in this case, funds that had been paid to CLI to then be forwarded to the Agents – is a serious matter. The penalty that results must be appropriate to protect the public interest and must also send a strong message to licensees and others involved in the insurance industry. In this matter, the Hearing Committee believes that the combination of maximum fines for the Licensee and the Agencies, together with a two-year licence suspension for the Licensee, is an appropriate outcome.
74. The Hearing Committee was not inclined to order the broader prohibition sought by Council that was intended to restrict the Licensee's activities as a shareholder, director or officer of the Agencies (or any other licensed agency). While the Agencies' governance may allow the authority for a shareholder, director or officer to appoint their choice of a licensee as candidate for approval as a replacement nominee while the Licensee is suspended, the Hearing Committee is of the view that the public is protected by the fact that Council will still ultimately determine if the individual designated meets the criteria set out in the Act and Rules (which perhaps may even require the nominee to be an officer, director or partner of the Agencies).
75. Council Rule 2(11) states that "Every insurance agency or adjusting firm must designate an individual who meets the following criteria to act as a nominee: (a) An individual applying to act as a nominee for an insurance agency or adjusting firm must be: (i) an officer, director or partner of the insurance agency or adjusting firm; (ii) a senior manager in the Province; or (iii) approved by Council." Furthermore, Council Rule 7(6) and the Code (section 5.3.3) mandate that nominees are responsible for all activities of an agency and are to ensure that the agency and its

employees are properly supervised and operate in accordance with any conditions and restrictions on their licences.

76. The Hearing Committee appreciates and understands why Council asked for further restrictions on the Licensee, but has concluded that the public interest will be appropriately protected without specific restrictions on the Licensee's role in the ownership and governance of the Agencies while suspended. In addition to the protections afforded by the Council Rules and Code, the Hearing Committee also weighed the risks that might flow from the Licensee's retention of some corporate governance authority within the Agencies against the possibility that ownership restrictions during the period of suspension could cause a disposition or liquidating event for the Agencies that would be prejudicial to the interests of the Agents and creditors who are owed restitution at this time. On balance, the Hearing Committee concluded that it was not necessary to make the additional orders sought by Council.
77. With respect to the Licensee, there has already been a prohibition order made by the FSRA that will see the Licensee replaced in Ontario as the designated agent of CLLI during the period of suspension in that jurisdiction. The Hearing Committee has concluded that a similar order is appropriate in British Columbia, with the restriction relating to the Licensee's role as the nominee for both of the Agencies.
78. Therefore, during the period of licence suspension, the Licensee will not be permitted to act as a nominee of any licensed agency, and a new nominee must be immediately appointed with respect to the Agencies. As noted above, any person put forward as the replacement nominee will be required to meet the criteria set out in the Act and Council Rules.
79. Council also sought an order that the Licensee and the Agencies pay its investigation costs, as well as the costs of the hearing. The investigation costs were set out as being \$1,937.50. Information with respect to the investigation costs was provided to the Licensee and the Agencies in advance of the hearing and there was no opposition to such an order being made by the Hearing Committee.
80. With respect to hearing costs, the Hearing Committee asked the parties to provide written submissions on that issue following the hearing. Council provided a three-page written submission in support of its claim for \$9,049.90 in hearing costs, as calculated based on Council's Hearing Cost Assessment Schedule. The Licensee and the Agencies replied to that submission and took no issue with respect to the quantum

of the costs being sought by Council.

81. An order with respect to hearing costs is a discretionary matter. Guidance on the issue is set out in Council's policy J.21 – Assessing Investigation Costs and Hearing Costs. Council's Hearing Costs Assessment Schedule provides costs for legal counsel preparation for each day of the hearing; legal counsel's attendance for each day of the hearing; preparation of written argument, allotment for correspondence, instructions and conferences; disbursements for court reporters and travel expenses; and Council member per diems for members of the Hearing Committee.
82. Having reviewed the costs sought by Council, it appears that the \$9,049.90 was assessed in accordance with Council's hearing costs policies and schedules and the Hearing Committee has no hesitation in concluding that it is appropriate in this matter for the Licensee and the Agencies to bear the burden of these costs.
83. The Licensee and the Agencies had asked for an extended period of time to pay both the fines and the costs, in part because the Licensee advised that he was still taking steps to repay the Agents. In light of the Licensee's commitment to pay the Agents, the Hearing Committee has concluded that a longer than usual timeline for payment in this matter is not contrary to the public interest.

ORDERS OF THE HEARING COMMITTEE

84. In light of the above, the Hearing Committee makes the following orders:
 - (a) The Licensee's life agent licence be suspended for a period of two (2) years, beginning on the date of this order;
 - (b) The Licensee is prohibited from being a nominee of any licensed agency in British Columbia for a period of two years, beginning on the date of this order;
 - (c) The Licensee is fined \$10,000, due and payable within 180 days of the date of this order, and which must be paid in full prior to the Licensee's licence suspension being lifted;
 - (d) The Agencies, jointly and severally, are fined \$20,000, due and payable within 180 days of the date of this Order, and which must be paid in full prior to the Licensee's licence suspension being lifted;

- (e) The Licensee and the Agencies, jointly and severally, are ordered to pay Council's costs associated with the investigation of this matter, in the amount of \$1,937.50;
- (f) The Licensee and the Agencies, jointly and severally, are ordered to pay Council's costs associated with the hearing, in the amount of \$9,049.90;
- (g) The investigation and hearing costs are due and payable within 180 days of the date of this Order, and must be paid in full prior to the Licensee's licence suspension being lifted; and
- (h) A condition is imposed on the Agencies' corporate Life Agent licences that failure to pay the fine or the investigation and hearing costs by the deadline will result in suspension of those licences, and they will not be permitted to complete their next annual filing until such time as the fine and costs are paid in full.

Dated in Vancouver, British Columbia, on the 24 day of August, 2022.



Brett Simpson
Chair of the Hearing Committee