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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

STEPHEN CRAIG HILL
(the "Former Licensee")

and

SEPTEN FINANCIAL LTD.
(now TCL WESTERN WEALTH MANAGEMENT INC.)
(the "Former Agency",
together with the Former Licensee, the "Former Licensees")

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Former Licensee to dispute an intended decision of Council dated August 27, 2021.

The Hearing Committee heard the matter on March 14 – 16, 2022.

The Hearing Committee then prepared its Reasons for Decision, dated September 12, 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 Former Licensee is prohibited from making any insurance licence application to Council for a period of four (4) years, beginning on September 12, 2022 and ending at midnight on September 12, 2026;

(b) At his own expense, the Former Licensee is required to successfully complete the Council Rules Course, as well as the Ethics and the Insurance Professional course offered by the Insurance Institute, as a requirement of any future application to Council for a licence;

(c) The Former Licensee is fined $7,500, due and payable by March 13, 2023;

(d) The Former Agency is fined $15,000, due and payable by March 13, 2023;

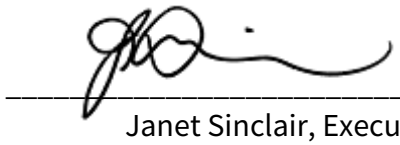
(e) The Former Licensees, jointly and severally, are ordered to pay Council's costs associated with the investigation of this matter in the amount of $2,062.50;

(f) The Former Licensee is ordered to pay Council's costs associated with the hearing in an amount to be determined;

(g) The investigation and hearing costs are due and payable by March 13, 2023, and must be paid in full prior to any future applications to Council for a licence; and

(h) Council is to provide the Former Licensee with the amount of hearing costs it seeks within five days of the delivery of these Reasons for Decision. If, upon receiving the amount of hearing costs from Council the Former Licensee disputes the amount of hearing costs and cannot arrive at an agreement with Council on the amount, the Former Licensee may make further written submissions on the quantum of costs to the Hearing Committee within 10 days of Council providing the Former Licensee with the amount of costs it is seeking.

This order takes effect on the 12th day of September, 2022.



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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

STEPHEN CRAIG HILL
(the "Former Licensee")

and

SEPTEN FINANCIAL LTD.
(now TCL WESTERN WEALTH MANAGEMENT INC.)
(the "Former Agency")

Date:	March 14, 15 and 16, 2022 9:30 a.m.	
Before:	Chamkaur Cheema Gary Barker Calvin Joe	Chair Member Member
Location:	By video-conference Insurance Council of British Columbia 1400 – 745 Thurlow Street Vancouver, BC	
Present:	David McKnight and Cory Song (Articled Student)	Counsel for Council
	Matt Stainsby	Counsel for the Former Licensee
	Stephen Craig Hill	In Person
	Septen Financial Ltd. (TCL Western Wealth Management Inc.)	No Appearance
	Elizabeth J. Allan	Counsel for the Hearing Committee

REASONS FOR DECISION OF THE HEARING COMMITTEE

BACKGROUND AND ISSUES

1. On July 13, 2021, Council made an intended decision, pursuant to sections 231, 236 and 241.1 of the Act, relating to allegations that the Former Licensee and the Former Agency (collectively, the "Former Licensees") had failed to comply with Council's Rules and the Code of Conduct (the "Code") by engaging in the illegal trafficking of life insurance policies.

2. On or about August 27, 2021, Council provided the Former Licensees written reasons and notice of the intended decision, pursuant to section 237(2) of the Act.

3. On or about August 30, 2021, the Former Licensee requested a hearing to dispute the intended decision, as provided for in section 237(3) of the Act.

4. In or about October 2021, the hearing was set for December 17, 2021.

5. On November 10, 2021, a Notice of Hearing was issued with the hearing date of December 17, 2021. At this time, the Former Licensee was not represented by legal counsel.

6. On or about December 10, 2021, the hearing was adjourned by consent.

7. In or about January 2022, the hearing was reset for March 14 – 16, 2022.

8. On February 17, 2022, an Amended Notice of Hearing was issued to address the changes to the hearing dates. By this time, the Former Licensee was represented by legal counsel.

9. The hearing proceeded by video-conference over the course of three days, on March 14, 15 and 16, 2022.

10. The Amended Notice of Hearing alleged that the Former Licensees failed to act in good faith and in a trustworthy 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:

a) engaging in the trafficking of life insurance policies and transactions where the Former Licensee was in a conflict of interest;

b) arranging for the transfer of ownership of existing life insurance policies from the Former Licensee's clients where the transferee was a company owned by the Former Licensee and his spouse;

c) contravening section 152 of the *Insurance Act*, R.S.B.C. 2012, c. 1, as amended;

d) breaching their duties to act in accordance with Council Rule 7(8) (compliance with the Code of Conduct) and Council Rule 7(9)[1] (to properly record insurance transactions and related financial affairs);

e) failing to comply with Code of Conduct sections 4 (Good Faith), 7 (Usual Practice: Dealing with Clients), 8 (Usual Practice: Dealing with Insurers) and 13 (Compliance with Governing Legislation and Council Rules);

f) failing to comply with the Code of Conduct Conflict of Interest Guidelines for Insurance Agents, Adjusters and Salespersons; and

g) in any other manner.

11. The Notice of Hearing and the Amended Notice of Hearing each contained the following standard language:

> Council is required, in accordance with section 239 of the Act, to have its hearings open to the public. As such, if any member of the public is interested in attending this virtual hearing, please contact…

[1] The Amended Notice of Hearing refers to Council Rule (9) but it is clear from the submissions of the parties and the reference in parentheses that it is intended to be Council Rule 7(9).

12. 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.

13. In terms of penalty, Council took the position that, if the allegations were proven, the Former Licensee should be subject to a prohibition on licensing for a period of four years, subject to remedial education prior to becoming re-licensed and a fine in the amount of $10,000 payable within 180 days.

14. Council submitted that the Former Agency should be subject to a fine of $20,000 payable within 180 days.

15. Council submitted that the Former Licensees together should be responsible on a joint and several basis for the costs of the investigation and that the Former Licensee should be required to pay costs of the hearing in an amount to be determined.

16. The Former Licensee took the position that none of the allegations were proven but, if they were, the conduct does not warrant any sanction. If a sanction is imposed by the Hearing Committee, the Former Licensee submitted that there should be a supervisory period of one year and a fine of $2,500. The Former Licensee expressed interest in additional education whether or not he decided to apply to become re-licenced in the future.

17. The Former Licensee took the position that, if any penalty is imposed on the Former Agency, it should be a fine of $5,000.

18. With respect to costs, the Former Licensee took the position that, if the original penalty had been less severe, a hearing may not have been necessary and that no costs were warranted and, if they were ordered, they should be reduced to the amount originally proposed and that costs should be paid in equal proportion between the Former Licensees.

19. As set out above, the Former Agency neither requested nor participated in the hearing and therefore took no position on any penalty.

20. 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

21. There was no agreed statement of facts between the parties. All the facts of this matter were presented through exhibits entered during the course of the hearing and through the testimony of witnesses.

Exhibits

22. The following exhibits were entered by consent at the commencement of the hearing:

Exhibit 1 Council's Book of Documents (43 tabs of materials)

Exhibit 2 Former Licensee's Book of Documents (24 tabs of materials)

Witnesses

23. Council called three witnesses in its case at the hearing: E.S., a Compliance Specialist with ivari; S.M., a Senior Compliance Officer with Manulife; and P.P., an Investigator with Council, all of whom were cross-examined by counsel for the Former Licensee.

24. The Former Licensee testified in his own defence and was cross-examined by counsel for Council. The Former Licensee did not call any other witnesses. The Former Licensee entered a series of reference letters from clients/former clients and family members of clients/former clients within Exhibit 2, which correspondence is addressed further below.

Submissions

25. At the conclusion of the hearing, Council and the Former Licensee each provided the Hearing Committee with a written submission and authorities in support of their respective positions.

26. Following the conclusion of the hearing, the Hearing Committee requested supplemental submissions on the applicable legislation and the meaning of the term "trafficking" as used in the Amended Notice of Hearing. Council provided

submissions on this issue on April 8, 2022, the Former Licensee provided a response on April 25, 2022, and Council provided a reply on May 2, 2022.

Facts

The Licensee and the Transactions

27. By way of background, the Former Licensee has an undergraduate degree in the Arts, an Honours Business Administration degree and 35 years' experience in the financial industry selling insurance and investment products.

28. Beginning in 1997, the Former Licensee owned and operated the Former Agency, until he sold it on or about May 28, 2021. At all material times, the Former Licensee was the nominee of the Former Agency. The Former Agency only ever had two directors and officers, the Former Licensee and his wife, C.M.M., who is not a licensee with Council.

29. Council licensed the Former Licensee as a life and accident and sickness insurance agent between 1997 and May 2021, when the Former Licensee voluntarily resigned all of his licences and registrations across Canada, including those with Council. The Former Licensee emphasized in his testimony that his licence with Council was not terminated but that he resigned.

30. S&C Hiller Family Holdings Ltd. ("S&C Hiller") is a holding company owned by the Former Licensee and his wife, who were also the company's only directors and officers. Their children are preferred non-voting shareholders. At all material times, S&C Hiller owned the Former Agency.

31. During the course of the hearing, and in the documentation, there was another entity referenced, the S&C Hiller Family Trust. On cross-examination, the Former Licensee said that there was no such entity. There was only a Stephen Hill Family Trust, and any reference to anything else was an error. He further stated that all cheques and documentation related to the policies at issue at the hearing should have been in the name of S&C Hiller.

32. The Former Licensee worked with Manulife for approximately 30 years and ivari for more than 30 years. Over the course of his career, the Former Licensee had

contractual relationships with three or four managing general agents ("MGAs") including BridgeForce at the time of the resignation of his licence with Council, and IDC Worldsource ("IDC") prior to that.

33. There were six transactions at issue whereby S&C Hiller became the owner, beneficiary and/or payor of insurance policies as follows:

Transfer Date	Original Owner	Issued	Insurer	Notes
January 2008	M.T.	August 2000	ivari[2]	Death benefit paid out to S&C Hiller in November 2016
June 2009	C.M.	March 1997	ivari	C.M. is the Former Licensee's mother-in-law
January 2013	R.C.	Unknown	BMO	
March 2018	D.D.	December 2007	Manulife	Owner was D.D. Co. when S&C Hiller became the owner
February 2019	P.R.	December 2016	ivari	
March 2019	R.C.[3]	August 2000	ivari	Flagged by ivari, request for transfer partially denied

34. While a policy involving R.C., the Former Licensee, S&C Hiller and the Bank of Montreal ("BMO") was referred to during the course of the hearing, the circumstances of that policy coming into existence or the changes that were made to it were not substantively explored during the course of the hearing or in closing submissions by the parties.[4]

[2] The M.T. and C.M. policies were Transamerica policies, which company ivari purchased at some point.
[3] This is the "R.C. policy" referred to in these Reasons for Decision, not the policy from BMO.
[4] P.P., a staff investigator with Council called as a witness by Council, confirmed in cross-examination that the BMO policy was not part of the initial complaints that were made to Council (and, in turn, his original investigation), but that documentation related to the R.C. BMO policy was produced by the Former Licensee following the Review Committee Meeting in March 2021. Council did not make specific submissions on this BMO policy and what the Hearing Committee could find with respect to it in its closing submissions, nor did the Former Licensee specifically respond to this issue.

35. The Hearing Committee has considered the facts that were in evidence with respect to the BMO policy, but has not considered the Former Licensee's involvement with respect to that BMO policy in determining whether or not the allegations in the Amended Notice of Hearing have been proven on a balance of probabilities. The subject of Council's investigation, the witnesses and the vast majority of the time at the hearing and the parties' closing submissions in their entirety were focused on the four ivari policies and the one Manulife policy, each of which are addressed in further detail below.

36. The central issue was whether in completing these five other transactions the Former Licensees engaged in the trafficking of life insurance policies.

37. The circumstances which led to this hearing were that, in or about March 2019, ivari commenced an investigation into the Former Licensees when its internal system "flagged" a request to transfer the owner and beneficiary on the R.C. policy to S&C Hiller.

38. On or about July 31, 2019, during the course of this investigation, ivari informed IDC that it was looking at the potential viatical insurance involvement of the Former Licensees in other policies (those of M.T., C.M. and P.R. in addition to R.C.'s policy which was flagged in March 2019).

39. At or about this same time, IDC terminated the Former Licensees' MGA contract. At different points during the hearing, this termination was referenced as being for reasons unrelated to ivari's investigation and because of ivari's concerns with respect to the four policies. The Hearing Committee was unclear if it was for one or the other or perhaps both reasons, but for the purposes of the hearing and determining the allegations in the Amended Notice of Hearing, nothing turns on why IDC terminated the Former Licensees' contracts. The Hearing Committee is to make determinations on whether Council has proven the allegations in the Amended Notice of Hearing on a balance of probabilities based on the evidence before it, and the reasons for IDC's termination of contracts (or, for that matter, any internal determinations of ivari or Manulife), do not impact the Hearing Committee's task in this regard.

40. When IDC terminated its contracts with the Former Licensees, it contacted Manulife to inform it of this change in status and of ivari's investigation. It was at this time

that Manulife terminated its contracts with the Former Licensees and commenced its own investigation.

41. On September 6, 2019, Manulife informed Council that it had investigated whether the Former Licensee, acting through the Former Agency, had been involved in viatical insurance transactions and trafficking of life insurance policies where the Former Licensee was in a conflict of interest in respect of any Manulife policies.

42. Council initiated its own investigation upon receiving this information from Manulife.

43. On or about October 8, 2019, when Council's investigation into the Former Licensees was already underway due to the information received from Manulife, ivari informed Council of its investigation and concerns with the suitability of the advisor,[5] namely conflict of interest with clients. By this time, ivari had suspended its contracting with the Former Licensees pending the outcome of the proceedings with Council.

The ivari Investigation

44. The ivari investigation was the first investigation into the Former Licensees and concerned the policies of M.T., C.M., P.R. and R.C., which was the last policy to be transferred and was the policy which initiated ivari's investigation.

45. E.S., an experienced Compliance Specialist Investigator for the ivari Compliance Specialist Investigation and Analysis Unit, was called by Council as a witness to give evidence with respect to the investigation conducted by ivari. She conducted ivari's investigation and identified documents obtained by ivari during the course of its investigation.

46. E.S. confirmed that, at the time of ivari's suspension of contracting with the Former Licensees, they had been contracted with ivari for over 20 years, most recently through the MGA IDC.

[5] The word "advisor" was used interchangeably with "agent" by witnesses and counsel throughout the hearing. The Hearing Committee has tried to replicate the witnesses' words where possible but has used the terms interchangeably in its Reasons for Decision.

47. ivari's investigation commenced in approximately March 2019, when ivari became aware of a transfer request on the R.C. policy to change the owner and beneficiary to S&C Hiller, which ivari identified as a company owned by the Former Licensee, who was indicated as the advisor to R.C. There was also a request to change the payor to "S&C Hiller Family Trust".

48. The transaction was "flagged" in ivari's system and was brought to the attention of the business unit processing the transaction. Upon review, the business unit identified three other similar transfers (M.T., C.M. and P.R.), at which point the file was sent to the compliance department.

49. ivari identified the R.C. policy transaction as a potential conflict of interest. It ultimately declined to complete the transfer request for the change of owner and beneficiary on the policy to S&C Hiller, but accepted the request to change the payor to "S&C Hiller Family Trust".

50. E.S. agreed that, as a Compliance Specialist Investigator, sometimes as part of her investigations she would reach out to the policyholders, but in this case she did not. She did however contact the Former Licensee and request that he provide comments on the four ivari policies at issue, which comments are included in Exhibit 1. She agreed that the Former Licensee was very forthcoming with information during ivari's investigation and that he answered all of her questions and requests for documentation.

51. E.S. testified that ivari determined in its investigation that the Former Licensee declared his involvement with S&C Hiller to ivari on the M.T. and C.M. policies, but did not declare his involvement with S&C Hiller to ivari on the P.R. and R.C. policies. On cross-examination, E.S. agreed that, according to the paperwork in the file, the Former Licensee did declare his involvement with S&C Hiller on all four transactions, and that she and/or the processing team may not have seen all of the paperwork that was submitted in support of the requests for transfer in arriving at the conclusion that the appropriate declaration was not made on the P.R. and R.C. policies.

52. E.S. stated that, on the M.T. and C.M. policies, there were notes on file that the Former Licensee was president and secretary of S&C Hiller, but that the internal system may have shown the Former Agency as the advisor on file. E.S. suggested it was likely that the processor of the transfer did not make the connection between the

Former Licensees and S&C Hiller, even though the fax from the Former Agency requesting the transfer listed the advisor as the Former Licensee.

53. On each of the four policies, the Former Agency was the servicing agent and the Former Licensee was the writing agent. The Former Agency was the agency of record.

54. On the M.T. and C.M. policies, the directions came to ivari from the MGA. On the P.R. and R.C. policies, the directions came to ivari from the Former Licensee.

55. E.S. learned during the end of ivari's investigation that Manulife was also investigating the Former Licensees. She did not speak with anyone at Manulife about its investigation, but she did speak to IDC in July 2019, after it had terminated its contracts with the Former Licensees. Her recollection was that IDC's termination of its contracts with the Former Licensees was "something to do with mutual funds and a sister company of IDC" – in other words, not because of any allegations of conflicts of interest or trafficking.

56. ivari had discussions with Bridgeforce as a potential alternative MGA for the Former Licensees, but ivari made the decision to "suspend contracting" when it learned of Manulife's investigation with respect to a potential conflict of interest or trafficking and that Manulife had reported the matter to Council.

57. E.S. identified ivari's Code of Ethics Market Conduct which is attached to advisor's contracts with ivari and had been in place since prior to 2015. The language with respect to conflict of interest reads as follows:

> Advisors shall disclose in writing to our customers all personal, business, commercial or financial conflicts of interest with that customer, whether actual, perceived, or potential, without delay.
>
> …
>
> Advisors must make timely disclosure in writing to ivari of personal, business, commercial, or financial interest that is in conflict, whether actual, perceived, or potential, with ivari or any of our customers.

58. E.S. testified that the Former Licensees had not made any such disclosures to ivari.

59. E.S. stated that, when IDC terminated its contracts with the Former Licensees, ivari also needed to terminate its contracts; however, when determining whether or not to re-contract with the Former Licensees through a different MGA, it elected to "suspend contracting" due to the ongoing investigations.

60. The outcome of ivari's investigations was that there was a conflict of interest between the Former Licensee and his clients and the transfers of ivari policies which had occurred.

61. On or about October 8, 2019, E.S. informed Council of ivari's concerns with the suitability of the advisor, namely conflict of interest with clients, by way of letter with attached life agent reporting form.

The Manulife Investigation

62. S.M., an experienced Senior Compliance Officer for the market conduct team at Manulife, was called as a witness by Council to give evidence with respect to the investigation conducted by Manulife. She conducted Manulife's investigation and identified documents obtained by Manulife during the course of its investigation.

63. S.M. confirmed that the Former Licensees were contracted to Manulife through IDC between approximately 2015 and 2019, at which point their contracts were terminated by both IDC and Manulife. At the time of termination there were approximately 830 active policies.

64. Manulife's investigation commenced upon L.P., National Compliance Officer for IDC, informing Manulife that IDC would be terminating its contract with the Former Licensee due to allegations of trafficking as identified by ivari. L.P. informed S.M. that ivari was investigating the Former Licensee and had identified at least four ivari policies where S&C Hiller had been made either the payor, owner, or beneficiary on policies originally held by the client. IDC later sent S.M. a copy of its termination notice to the Former Licensee which stated that the contract was being terminated on a without-cause basis.[6]

[6] As stated above, E.S. indicated that she recalled IDC's termination of the contracts was for reasons unrelated to ivari's investigations. Council did not call a witness from IDC. IDC's reasons for termination

65. As a result of this information from L.P. at IDC, S.M. conducted a review of the Former Licensees' book of business with Manulife and identified one policy that she labelled as trafficking, a policy for client D.D., a resident of Ontario. D.D. was the insured and D.D. Co, a personal holding company owned by D.D., was the owner prior to S&C Hiller becoming the owner.

66. In S.M.'s investigations, if the advisor is active, S.M. would reach out to the MGA with any questions and the MGA would then contact the advisor. In this case, as the advisor was not active, she did not reach out to the MGA.

67. The evidence from S.M. on the D.D. Co. policy was that it was originally an individual insurance term policy for $1,000,000. D.D. sought to transfer the entire value from himself to D.D. Co. and to convert $375,000 of the term insurance from D.D. Co. to a universal life insurance policy.

68. In addition, the Former Agency submitted a transfer of ownership request form seeking that $625,000 from the current owner, D.D. Co., be transferred to S&C Hiller. On this form, a box was checked to indicate that there was no money or other consideration exchanged for this transfer of ownership, and it was signed by both D.D. and the Former Licensee.

69. The paperwork submitted to Manulife to accompany the transfer of ownership included an email chain from B.L. (D.D.'s insurance advisor in Ontario) to D.D. and a beneficiary designation form stating that, upon the death of the insured, D.D., 100% of the proceeds ($625,000) are to be paid to S&C Hiller. The beneficiary designation form was signed by the Former Licensee and witnessed by an employee of the Former Agency, A.M., which form indicated that the Former Licensee was the advisor with his Manulife advisor code included although it had been crossed out.

70. In addition to those documents, during the course of S.M.'s investigation she also obtained a copy of an email dated January 11, 2018 from A.M., the employee of the Former Agency, and D.D. In this email chain A.M. informed D.D. that the transfer of ownership was underway and asked D.D. to sign a change of agent form "as a last step" so that the Former Agency can "communicate better with Manulife on the status

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are not necessary for the Hearing Committee to determine the allegations in the Amended Notice of Hearing and accepts that IDC's termination was without cause.

of the transfer". The form had the Former Licensee indicated as being the new advisor of record. Evidently, the form was completed as the Former Licensee did become the advisor on record.

71. For clarity, the Hearing Committee understands that the timeline for the various changes to the D.D./D.D. Co. policy was approximately as follows:

Date	December 2007 – November 22, 2017	November 23, 2017[7] – December 14, 2017	December 15, 2017[8] – January 11, 2018	January 12, 2018[9] - March 2018	March 2018 - Present
Insured	D.D.	D.D.	D.D.	D.D.	D.D.
AOR[10]	B.L.	B.L.	B.L.	B.L. to Former Licensee	Former Licensee
Owner	D.D.	D.D. to D.D. Co.	D.D. Co. to S&C Hiller	D.D. Co. to S&C Hiller	S&C Hiller

72. S.M. explained that this chain of events likely occurred because, at the time that the transfer of ownership paperwork was submitted to Manulife, B.L. was still the advisor on record. Manulife would have processed that transfer of ownership on that information. In her testimony, S.M. acknowledged that the Former Licensee had declared on the forms his involvement with S&C Hiller. The agent of record change paperwork was not received by Manulife until January 2018, which paperwork went to a different team than that which processed the transfer of ownership requests. S.M. surmised that each of the two teams were not aware that the other process was taking place.

[7] There is an email dated November 23, 2017 from B.L. to D.D. copying the Former Licensee stating that the transfer of ownership to D.D. Co. is underway.
[8] The paperwork for the transfer of ownership from D.D. Co. to S&C Hiller is signed December 14, 2017 and faxed to Manulife by A.M. of the Former Agency the morning of December 15, 2017 and is marked "URGENT !!!".
[9] There is an email from A.M. to D.D., copying the Former Licensee, dated January 11, 2018 noting that the transfer of ownership is underway and asking D.D. to sign a change of agent form to change the agent to the Former Licensee. It is not clear that D.D. signed and returned the form and the Former Agency provided the signed form to Manulife that same day, but it was returned to Manulife at some point as the transfer was effective by March 2018.
[10] Advisor of Record.

73. Prior to the transfer being finalized, in December 2017, Manulife had issued a termination warning to D.D. that the policy would lapse if Manulife did not receive a premium payment. In response to this warning, in January 2018, S&C Hiller paid $6,150 by way of cheque to Manulife in satisfaction of the premium owing at that time.

74. Upon investigating this transaction, Manulife terminated its contracts with the Former Licensees. S.M. provided the reason for the termination of Manulife's relationship with the Former Licensees to be a business decision to decline the Former Licensee's request to obtain a new contract[11] as a result of his violation of Manulife's code of conduct for advisors and business practice policies in regard to trafficking. She later clarified in cross-examination that Manulife's termination of the contracts was due only to IDC's termination and not as a result of any allegation of trafficking. On re-direct, she stated that Manulife's decision not to renew the contract was based upon S.M.'s investigation of the Former Licensee with respect to conflict of interest and viatical trading.

75. The Hearing Committee understands that, when IDC terminated its contracts, this necessitated the insurers to terminate their existing contracts because licensees require an MGA. The Hearing Committee further understands that, following the termination of the contracts because of IDC's decision, there was an opportunity for the Former Licensees to contract with Manulife through a different MGA, and that Manulife declined to do so because of the conclusions it made during its internal investigations.

76. Manulife's business practice policy on trafficking states that, under no circumstances are advisors to engage in any activity in any way related to trafficking in life insurance, regardless of registrations or licensing. S.M. testified that this policy was in place at least as of 2016, and is available for all Manulife advisors online and that Manulife expects its agents to have knowledge of and adhere to the policy.

77. Manulife's code of market conduct for advisors sets out Manulife's position on conflicts of interest. S.M. testified that this document was provided to advisors at least as of 2011 when they are first contracted with Manulife and, in addition, the document is available online. Manulife is required to comply with the code of market conduct, which requirement is outlined in Manulife's advisor agreements.

[11] This was also described in cross-examination as a contract switch request.

78. On cross-examination, S.M. clarified that all Manulife advisors, whether or not they are the advisor on record for the specific client or policy at issue, are expected to act within Manulife's business practice policy and code of market conduct for advisors. The wording of the policy is broad and is as follows:

> "client means current or prospective applicants, claimants, beneficiaries, clients, or any person who is currently engaged with the advisor in their capacity as an advisor, or, where applicable, members of the public"

79. S.M. confirmed that the Former Licensee did not take any steps to advise Manulife of any conflicts of interest or apparent conflicts of interest that were created by transferring ownership from D.D. Co. to S&C Hiller, and that she could not envision a scenario within the bounds of Manulife's internal policies where Manulife would have knowingly permitted the Former Agent to facilitate a transfer of the D.D. Co. policy to S&C Hiller while acting as D.D. Co. or D.D.'s Manulife advisor.

80. At the conclusion of the investigation, S.M. completed a report on her investigation and recommended that Manulife not renew the Former Licensee's contract. That recommendation went to her supervisor, then the market conduct review committee, which accepted her recommendation.

81. Upon the conclusion of Manulife's investigation, S.M. was also the individual at Manulife who reported its investigation to Council on September 6, 2019. She completed the life agent reporting form in order to report the Former Licensee for conflict of interest and trafficking of policies.

82. S.M. readily agreed in cross-examination that during the course of the investigation she did not speak to B.L. (original advisor on the policy), D.D. (directing mind of D.D. Co.,) or the Former Licensee. D.D. was not the complainant and Manulife only contacts licensees through MGAs and, if the MGA had terminated its relationship with the licensee, a relatively unusual situation, that Manulife would not contact the licensee directly. In this case, the information that she required for her investigation was already in the file.

83. When cross-examined on the relatively quick pace at which she had completed her investigation, she agreed that without needing to contact the MGA and wait for a response perhaps the investigation had proceeded at a quicker than normal pace.

84. When it was suggested to S.M. that the Former Licensee may have had a "business-type" relationship with D.D. (and thus, in essence, D.D.'s interests were being advanced when the purpose of the Manulife policies was to protect the client's interests), S.M. stated that, if that were the case, that information may have been helpful to Manulife's investigation, but that Manulife's code of conduct and conflict of interest guidelines state that advisors cannot have business relationships with clients.

Council's Investigation

85. P.P. is a life agent by training and an experienced staff investigator with Council's professional conduct department. He conducted Council's investigation into the Former Licensees and identified documents obtained by Council during the course of its investigation.

86. In September 2019, Council received information from Manulife about allegations that the Former Licensee had trafficked a life insurance policy where there was a conflict of interest as he had transferred the policy ownership to S&C Hiller, a company of which he and his wife were directors and owners and which owned the Former Agency through that company.

87. In approximately October 2019, P.P received the file and commenced his investigation. He contacted the Former Licensee that month, possibly the day of, or the day after, receiving the file, to let the Former Licensee know that the file had been referred to him for further investigation.

88. During the course of the investigation, P.P received a summary from S.M. at Manulife about its investigation into the D.D. Co. policy, and also came to learn that there were four ivari policies in question, those originally owned by M.T., C.M., P.R. and R.C. P.P. engaged in email correspondence with S.M., communicated with E.S. from ivari and B.W. from IDC.

89. The Former Licensee participated in Council's investigation, including by way of emails with P.P., an interview on January 22, 2020, and the Life Insurance Review Committee Meeting on March 30, 2021 ("Review Committee Meeting"). The Former Licensee was represented by counsel at the Review Committee Meeting and provided additional information and documentation following that meeting.

90. In P.P.'s testimony, he relayed much of the information that S.M., E.S., B.W. and the Former Licensee told him during his investigation, which is not necessary to summarize here.

91. In cross-examination, P.P. agreed that he did not speak with anyone related to M.T. or to C.M., D.D., P.R. or R.C. P.P. further offered that, as an investigator, he would reach out to the client for an interview or to request further information if the client were the complainant, but that otherwise the necessity of reaching out to the client was assessed on a case-by-case basis. In this case, he did not reach out to clients (or, in the case of M.T., members of her family) as he felt that the information he had received from Manulife, IDC, ivari and the Former Licensee was sufficient for Council's purposes.

92. P.P. agreed that he had spoken to the Former Licensee multiple times, by phone and email, and the Former Licensee was very forthcoming with information and documents and indicated he wanted to resolve the matter quickly.

93. Following the Review Committee Meeting, Council obtained documentation from the Former Licensee related to a BMO policy, owned by R.C., whereby there was a change of ownership from R.C. to S&C Hiller, with the relationship between R.C. as the insured and S&C Hiller as the new owner as "lender", and beneficiary to the Former Licensee and his wife. In Exhibit 2, there is a copy of certain documentation with respect to this BMO policy, including a copy of a cheque from "S&C Hiller Family Trust" provided to BMO in late 2012 or early 2013, in support of pre-authorized debit payments.

The Former Licensee's Evidence

94. The Former Licensee gave evidence on the circumstances of the transfer of ownership of each of the five policies at issue.

The ivari Policies

The M.T. Policy

95. The Former Licensee testified that M.T. and her family were longtime clients of his in insurance and investments. The circumstances that led to M.T. purchasing the policy in issue were that, in about 2000, M.T. sought to enhance the value of her estate.

96. In approximately 2007 or early 2008, M.T.'s son-in-law, J.O., sought to join the Former Agency. The Former Licensee stated that J.O. "was arranging that with my former partner [F.D.] and they entered into some sort of a partnership arrangement".

97. M.T. advanced $25,000 to the Former Agency as part of a partnership buy-in for J.O.; however, J.O. accepted a consulting job instead of joining the Former Agency and, at about the same time, the Former Licensee's partner F.D. left the Former Agency. The Former Licensee said that he was "stuck" holding a $25,000 loan to M.T.

98. The Former Licensee and J.O. came to an arrangement, on the Former Licensee's suggestion, that S&C Hiller would become the owner, beneficiary and payor of the M.T. policy because the family no longer wanted her to pay the premiums on it. If M.T. passed away before the loan was repaid, the proceeds of the policy would go to S&C Hiller so that the Former Agency could repay the loan.

99. He stated that J.O. was a client of the Former Agency, specifically of his former partner, F.D., and that M.T. was "secondary" to the agreement.

100. This arrangement was effected in January 2008, with the transfer of the policy to S&C Hiller through the MGA. In submitting this paperwork, the Former Licensee had identified that he had an interest in S&C Hiller, but the paperwork also stated that S&C Hiller's relationship to M.T. was "partner" (which was not the case).

101. At the time of the transfer, M.T. had paid approximately $40,000 in premiums on the policy. S&C Hiller took a $36,000 loan from the cash value of the policy for investment purposes and invested it for the benefit of S&C Hiller, with S&C Hiller making the interest payments on that loan.

102. The Former Licensee stated that the loan was repaid and eliminated prior to M.T.'s death in October 2016. At the end of the day, S&C Hiller had paid approximately $160,000 in premiums under the policy.

103. S&C Hiller received the proceeds of the policy of approximately $101,000, and subsequently distributed $30,000 of those proceeds to MT's three children, the former beneficiaries under the policy. The Former Licensee testified that they were each "pleased" with the results of the transaction.

104. J.O. confirmed in an email to the Former Licensee that M.T.'s family agreed with what the Former Licensee had set out in his email, that is, that all loans and monies were paid to M.T. in full as per the agreements, all payments were made to the beneficiaries in full as per the agreements, all payments on the insurance were made in full and distributed as per the agreements, all agreements were complete and satisfactory to the family, beneficiaries and heirs, and there were no outstanding issues on M.T.'s estate as between them.

105. The Former Licensee emphasized that he lost approximately $30,000 - $40,000 on this transaction, which numbers were confirmed by ivari's documentation on premium payments received, and that he had the best interest of his clients at heart.

106. The Former Licensee acknowledged that he received tax benefits from paying interest on the loan that he took on the policy. In response to a question from the Hearing Committee, he stated that S&C Hiller received the death benefit tax free by way of a capital dividend account, and then that sum was paid out tax-free to him personally. He did not know whether the tax benefits offset the loss on the cash deposit to the policy.

107. On cross-examination, the Former Licensee agreed that his arrangement with M.T. (or, perhaps more accurately, J.O.) was verbal, and that there was no documentation on it.

The C.M. Policy

108. The Former Licensee testified that C.M. is his mother-in-law and he has known her for 30 years. He described her as his "hero", and that she had successfully navigated the very difficult circumstance of losing her husband at a young age and paying her mortgage and raising two children on her own in the 1950s and 1960s.

109. C.M. was the first employee of the Former Agency in 1997, and later provided childcare so the Former Licensee and C.M.M. could grow the business.

110. Four years ago, C.M. moved into the Hill's family home due to her ailing health, and the Former Licensee and C.M.M. provide care to C.M.

111. The circumstances that led to C.M. purchasing the policy were that she wanted to provide protection to her children in the event of her premature death, namely, to cover the mortgages that each of her children held at the relevant time.

112. The Former Licensee testified that, at some point in time, C.M. became dissatisfied with the policy and wanted C.M.M. to take over as policyholder. The Former Licensee said that he put this off for a number of years and then "finally relented" in 2009, transferring the ownership, payment and beneficiary of the policy to S&C Hiller. He did not provide an explanation as to why the policy was not cancelled when his client first became dissatisfied with the product.

113. He testified that he discussed with C.M. at the time that the transfer would be to S&C Hiller, the family holding company, and that he believed that C.M. was aware that that he and C.M.M. were the directors and officers of that company.

114. On cross-examination, he agreed with his statement during the Review Committee meeting that he and C.M.M. felt that C.M.M. and S&C Hiller were one and the same, even though S&C Hiller benefitted him and their children as well.

115. On the documentation submitted to ivari in support of this transfer, it shows the relationship between C.M. and S&C Hiller as partners. He agreed this was an error and that C.M. was never a partner of S&C Hiller or the Former Agency.

116. The Former Licensee's comments to ivari on this policy included that S&C Hiller "took over the policy to satisfy these obligations [that C.M. lent the Former Licensee and his wife money to purchase their home and that C.M. lives in their home and is completely dependent on them for care]" and that "the insurance policy is used as security for the loans we had with [C.M.]".

117. The Former Licensee testified that while C.M. "probably" has early stage Alzheimer's Disease and dementia that has arisen in the last one to two years, she was living independently in 2009 and had no health issues at that time.

118. On cross-examination, the Former Licensee stated that C.M. has had these health issues for the last six to 12 months. He agreed that, during the Review Committee Meeting in March 2021, one year ago, he had stated then that C.M. had Alzheimer's Disease and probably would not recall the transactions.

119. The Former Licensee identified a typed letter dated September 16, 2021, signed by C.M., which stated:

> I have been a client of Stephen Hill, my son-in-law, for the past twenty-five years. He has done a fantastic job of managing my accounts, and I attribute my current good financial health largely to his efforts on my behalf.
>
> After owning my Ivari Life Insurance policy for a number of years, I decided that I no longer wanted to continue the coverage. I wanted my daughter and her family to benefit from this policy. I happily transferred it to her Family HoldCo, and she has consistently made the payments on said policy. There has been no loss or harm to me or my family, and I am very happy with the outcome. To be clear, I am aware that the policy was transferred to her Family HoldCo, and this is in accordance with the wishes of everyone involved, including myself.

and a second typed letter dated October 14, 2021, signed by C.M., which stated:

> It has come to my attention that my son-in-law of the past 28 years, Stephen Hill is the victim of false and untrue accusations regarding his business dealings with me. I am sickened by the scope and viciousness of these attacks.
>
> Stephen Hill has been a Godsend to me and my family. His honesty, integrity and high moral standards have been beyond reproach. I have never complained about his treatment of me or my affairs in any way, nor would I. I have nothing but gratitude for his constant and steady support of myself, my affairs, and my family.

> Any claims to the contrary are false and spurious, and I hope that anyone involved in spreading these lies is held to account.

The Former Licensee testified that C.M.M. had "assisted" C.M. with these typed letters by having a conversation with C.M.M. where C.M. expressed "disgust" with "her information being sent to Council erroneously" and therefore had C.M.M. write the letters on her behalf.

120. In the circumstances, the Hearing Committee had concerns with the preparation of the letters and the language in them being the words of C.M.

121. The Former Licensee stated that C.M. is "quite pleased" with the arrangement in that she no longer has to make premium payments on the policy. He estimated that the premium payments made by S&C Hiller over the years are probably equal or greater value to the death benefit.

122. On cross-examination, he agreed that the arrangement with C.M. was verbal and that there was no documentation on it.

The P.R. Policy

123. The Former Licensee testified that P.R. and her family were longtime clients and that he managed all of her investments and retirement strategy. The circumstances that led to P.R. purchasing the policy in issue were that, at the time of her retirement in approximately December 2016, she took a single-life payment to maximize on her pension and opted to take an insurance policy to protect her husband, G.R.

124. At the time that P.R. took the insurance, the Former Licensee encouraged her to take a $25,000 rider to deposit surplus funds as cash value. P.R. accepted this recommendation and, according to the Former Licensee, was pleased with the arrangement.

125. At some point, P.R. and G.R. attempted to cancel the rider. The Former Licensee received a conversation notice from ivari requesting that he speak to them because P.R. and G.R. would be forfeiting the cash value of the policy if they proceeded with the transaction as the surrender charges were greater than the cash value.

126. The Former Licensee testified that to cancel the rider would be to cancel the entire policy, and that he encouraged P.R. and G.R. to keep the entire instrument in place. This is consistent with his notes to ivari on this policy in which he states "I pushed for them to keep the rider". The Former Licensee stated that G.R. responded something to the effect of "If you believe in it so much, why don't you pay for it". So, in early 2019, the changes were made to have S&C Hiller become the payor and beneficiary on the rider and the Former Licensee later arranged for S&C Hiller to pay the lump sum premium on the rider which, at that time, was $1,500.

127. The Hearing Committee was concerned with this exchange as on the Former Licensee's own evidence, it appeared that the client did not want to keep the rider.

128. The letter of direction from the Former Agency to ivari dated January 31, 2019 with the request to update the beneficiary on the $25,000 universal life coverage to S&C Hiller has P.R. as the client, with her signature, and the Former Licensee as the advisor, with his signature.

129. The letter of direction from the Former Agency to ivari dated March 21, 2019 with the annual payment of the $1,500 has P.R. as the client, with her signature, S&C Hiller as the payor, with the Former Licensee's signature and the Former Licensee listed as the advisor, with no corresponding signature. The enclosed cheque is from "S&C Hiller Family Trust".

130. In the end, P.R. remained the owner of the $250,000 term policy and payor of the premiums of approximately $80 per month and G.R. remained the beneficiary. S&C Hiller became the payor and the beneficiary of the $25,000 rider. The Former Licensee testified that, a few months after this transfer took place, P.R. called him to express relief that they had not cancelled the policy like G.R. had wanted because she had a health scare and was glad to have the potential benefit of the policy.

131. The Former Licensee testified that P.R. had not made a subsequent premium request since he made the $1,500 payment in February 2019.

132. On cross-examination, the Former Licensee acknowledged that he had neglected to sign the transfer paperwork as the advisor of record and signed only on behalf of S&C Hiller, but denied that he did so in order to deceive ivari. He stated that he did not know why that signature was missed.

133. On cross-examination the Former Licensee agreed that his arrangement with P.R. was verbal and that there was no documentation on it.

The R.C. Policy

134. The Former Licensee testified that R.C. and his family were longtime clients of his in terms of insurance and investments. The circumstances that led to R.C. owning the policy in issue were apparently that R.C.'s mother had opened it in 2000 and when she passed away it was transferred to R.C. It was a universal life policy with three insureds (R.C.'s sisters).

135. At some point in time, R.C. withdrew $80,000 from the policy to lend to his nephew (the son of one of the insureds). The nephew was not able to repay the loan to R.C. and the policy began to lose cash value.

136. The first step that the Former Licensee took was to reduce the coverage from $250,000 to $125,000 in order to reduce the premium. After a period of time the policy was still losing cash value and was being put in jeopardy and R.C. told the Former Licensee that he could not and did not want to continue to pay for it.

137. The Former Licensee testified that the "proposed solution" was for him to become the owner and make the payments on the policy. The Former Licensee testified in cross-examination that this, like all of the transfers, was his idea. This is consistent with the comments that he provided to ivari which were that "I offered to take over the policy and protect it from lapse; [R] agreed". The Former Licensee stated in evidence that R.C. could "buy the policy back or have the policy back" after refunding the Former Licensee the cost of the premiums. He later stated that he told R.C. that his company, S&C Hiller, would make the payments on the policy until R.C. was able to repay the payments and that if RC wanted the policy back he could have it at any time.

138. The paperwork in support of the transfer of ownership shows the relationship to the insured was being "business partners" and the relationship to the current owner as "business partners". Neither of these descriptions are accurate.

139. Where he had indicated that the purpose of the insurance was "partnership", he stated that was an error and that he should have indicated the relationship as "lender" or something else.

140. Indeed, in response to questions in cross-examination on the BMO policy, the Former Licensee offered that this transfer of S&C Hiller being owner, beneficiary and payor in place of RC was done on his understanding that he was lending the funds to R.C. to pay the premiums and, in the future, R.C. would pay those amounts back and assume control of the policy once again. He agreed that in this scenario R.C. is a debtor to S&C Hiller because S&C Hiller was paying the premiums. He stated that S&C Hiller continues to honour this arrangement with R.C.'s BMO policy.

141. The Former Licensee explained that, although the paperwork showed that S&C Hiller Family Trust was the payor, there was no such entity and that it was S&C Hiller which was the payor. He also stated that his staff had prepared the paperwork for the transfer which was then submitted to the MGA.

142. The Former Licensee acknowledged that there was no insurable interest between S&C Hiller and the three insureds and that, when the paperwork was submitted to ivari in January 2019 and partially rejected he "agreed" with ivari and "concluded" that the transfer of ownership and beneficiary to S&C Hiller should not be completed on this basis.

143. The transfer of payee was completed. The Former Licensee testified that S&C Hiller was currently the payor on the policy and was still making the premium payments, and that R.C. was still alive and the owner and beneficiary on the policy.

144. The Former Licensee stated that he was thankful that the transfer had been made as one of the insureds passed away and R.C. and his family received a $125,000 payout from ivari following this event which "protected the wealth of the family" and permitted a family member of R.C. to purchase a home with the proceeds. It did not appear that the insurance payout was used to refund the cost of the premiums to the Former Licensee.

145. The Former Licensee stated that R.C. was very pleased with the payout and, if R.C. could not have made the premium payments, the policy would have lapsed and R.C. and the family would have never received the $125,000 from ivari.

146. The Former Licensee did not agree that, even if the transfer as originally proposed had gone through, this would have been security for a loan, a conflict of interest or a viatical transfer. He saw it as protecting R.C. and his family.

147. On cross-examination, the Former Licensee agreed that the arrangement with R.C. on the ivari policy was verbal and there was no documentation on it.

The D.D./D.D. Co. Manulife Policy

148. The Former Licensee testified that D.D. is a retired health care professional residing in Ontario. He was initially connected with D.D. by D.D.'s investment advisor, J.B., because D.D. had a $1,000,000 term policy that was "driving him crazy". It was unclear to the Hearing Committee whether the Former Licensee had a previous relationship with J.B., or if J.B. cold-called the Former Licensee for assistance and, if so, how J.B. came to learn of the Former Licensee.

149. In any event, J.B. asked the Former Licensee to look at the policy and make some recommendations on it. The Former Licensee looked at the policy and passed recommendations to J.B., including the recommendations that the policy owner transfer the policy from D.D. personally to D.D. Co., and that the entire value of the policy was also transferred accordingly.

150. J.B. apparently took those recommendations to B.L., the original advisor on the policy. The Former Licensee worked with the accountant of D.D. and D.D. Co. on the recommendation to transfer the policy from D.D. to D.D. Co., but D.D. elected to convert only $375,000. The Former Licensee then recommended that the remaining value of $625,000 be donated to charity. The Former Licensee testified that throughout this process he was speaking with J.B., B.L. and D.D./D.D. Co.'s accountant.

151. The Former Licensee testified that he personally met D.D. for the first time in 2017, when he and C.M.M. were passing through Toronto on their way to a Manulife conference in Malta. During this stopover, they arranged to meet D.D. and D.D.'s wife, who was from Malta, at their golf course, to discuss Malta and the Former Licensee's plans while he and C.M.M. were there.

152. The Former Licensee and C.M.M. went to Malta and liked it there. They formed the view that it would be a good location to purchase a retirement property. On the way home from Malta, they once again passed through Toronto and arranged to meet D.D. and his wife at their home. During this second meeting, the Former Licensee learned

that D.D. had been unable to find a charity to which he could donate the remaining value in the policy. Upon learning this information, there was discussion of "the possibility of purchasing a condo together, shared ownership, in - - in Malta. And that's when the discussion became that we could use the $625,000 as part of a shareholders' agreement between the [Ds] and the - - the Hills on the purchase of a property in Malta" through their respective holding companies.

153. As D.D. was the oldest among the four individuals, the premiums on his policy were going to increase substantially, the conversion privilege on the policy was going to end, and the policy was going to lapse at some point in the near future, they decided to "preserve the policy in advance of us purchasing a property together in Malta".

154. At some point after this conversation, D.D. and the Former Licensee took steps to transfer the ownership, beneficiary, and payor of the remaining $625,000 under the policy from D.D. Co. to S&C Hiller. The paperwork was signed December 14, 2017, and submitted to either Manulife or IDC by A.M., an employee of the Former Agency, on an urgent basis.

155. On the transfer paperwork, the Former Licensee agreed that he had indicated that there was no money or other consideration exchanged between the new owner and current owner for the ownership change. His evidence in cross-examination before the Hearing Committee was that there was no consideration paid and he did not consider the transfer of the value of the policy to be consideration.

156. On December 26, 2017, Manulife wrote to D.D. Co. with a termination warning on the policy.

157. On January 11, 2018, A.M. emailed D.D., with a copy to the Former Licensee, with a change of agent form requesting that D.D. sign the form indicating that the Former Licensee is the new advisor on record for "us to better communicate with Manulife on the status of the transfer". D.D. signed and returned that form, and A.M. submitted it to Manulife or IDC.

158. On cross-examination, the Former Licensee stated that he "didn't even know that it [the change of agent form] went through" and that A.M. "took it upon himself to facilitate a process in order that he could communicate better with Manulife to satisfy the transfer of ownership". He stated that he took full responsibility for the

document, but that he did not sign it and A.M. was doing this to find out why the transfer was not happening.

159. On January 24, 2018, S&C Hiller paid the approximately $6,150 premium to Manulife so that the policy would not lapse.

160. The transfer completed in March 2018.

161. The Former Licensee characterized it as D.D.'s choice to let the $625,000 expire, donate it to charity or enter into a partnership with him and D.D. The first two options were discussed prior to the Former Licensee travelling to Malta, and the third option arose after travelling to Malta. D.D. then chose to transfer the policy to him.

162. There were apparently three trips planned to Malta following this transfer to further the purchase of property: one in 2019, pre-pandemic, which was cancelled due to D.D. falling ill, and two in 2020, which were cancelled due to the COVID-19 pandemic. The Former Licensee and C.M.M. never did travel back to Malta, and the Former Licensee was unsure whether D.D. and his wife had travelled to Malta since the conversation at their home in 2017.

163. The Former Licensee testified that he did not believe he was in a conflict of interest with respect to this policy as D.D. was never a client of his, the Former Licensee was never D.D.'s advisor or agent, and that he had no relationship with D.D. Co. and was never its advisor either. D.D. was a "potential business partner" and nothing more. In support of these statements, he took the Hearing Committee to an email from D.D.'s wife which stated:

> No we are not clients of yours and we were not clients of yours in the past. We conduct all our insurance through another insurance broker and all of our investments are with [J.B.] who is [Ontario] [sic].

164. The Former Licensee consistently repeated that D.D./D.D. Co. were never clients of his. When faced in cross-examination with his statements to the Chair of the Review Committee that "I'm guessing for the period of time between the transfer and the ownership change, he [D.D.] would have been a client for a day or two, yes", he stated that "according to the documentation and according to Council's definition of

what a client relationship was" the policy did show that the advisor of record was the Former Agency, but, again D.D. was never a client.

165. When the statement to the Chair of the Review Committee was put to him a second time in cross-examination, he said that there he was "guessing" that D.D. "might have been a client for a day or two, sure".

166. In cross-examination, the Former Licensee agreed that there was no documentation related to this potential business arrangement with D.D. and that this transfer, like all the transfers at issue, was his idea. He agreed that if D.D. "would like to have his policy back, S&S Hiller would have to facilitate that – that transaction, yes". He further agreed that, if D.D. died, under the current arrangement the proceeds of the policy totaling $625,000 would be paid directly to S&C Hiller.

Other Evidence of the Former Licensee

167. The Former Licensee stated in cross-examination that, while he was aware of Council's Rules and Code and that he was bound by them as the nominee of the Former Agency and as a licensee, he had never reviewed them on Council's website and could not be certain if he had ever reviewed them at all; however, he was aware generally that he had an obligation to keep records and act in a trustworthy manner, in the best interests of his clients, in good faith and competently.

168. The Former Licensee stated in cross-examination that he had never reviewed Council's Conflict of Interest Guidelines, but that he may have received a copy of Manulife's Code of Market Conduct for advisors and viatical policy, and, if he did receive them, he would have reviewed them. He gave similar evidence with respect to ivari's Code of Ethical Market Conduct and agreed that it may have been on the ivari portal, but if it were, he did not review it there as he believed that he complied with the insurer's requirements.

169. He testified that he did not believe, and still does not believe, in conducting the contested transactions that he was in a conflict of interest.

170. He testified that he was aware of section 152 of the *Insurance Act* and that he does not believe that in conducting the contested transactions he engaged in trafficking or

trading of insurance policies as they were never bought or sold and he never held himself out to buy or sell insurance policies.

171. He agreed that ownership or the beneficiary of at least some of the policies was transferred for the purposes of securing a debt, but did not agree that those circumstances amounted to trafficking.

172. Finally, the Former Licensee testified at various points that he would never put a client in harm's way and that he was always acting in the best interests of his clients; he was never anticipating any harm to clients.

173. He testified that initially he did not reach out to any former clients about his disciplinary matter, but that when some of his former clients heard what was happening with Council, they volunteered to write character and reference letters. He was touched and moved by this gesture and so he "expanded" it and he is still receiving recommendation letters and letters of support from his client base. These letters were included in Exhibit 2.

174. On cross-examination, the Former Licensee agreed that he had requested many of the letters from his former clients included in Exhibit 2 (which the letters acknowledge), and agreed that he had provided "a sample reference letter" for former clients to use when providing their own correspondence. Council pointed out that many of the letters contained in Exhibit 2 use similar or identical language, including the closing sentiment that:

> Not only do we appreciate Stephen, we also respect him greatly. We feel honoured to be asked to provide his character reference and hope that the information we provided helps you understand what an outstanding individual Stephen Craig really is, professionally and personally.

175. The Former Licensee stated that he assumed the MGA was also acting in the best interest of clients and was supporting him in doing so as well. He stated that he received assistance from the MGA and ivari to complete the contracts, and that they helped him facilitate the transactions. It was not until the transaction with R.C. in 2019 that he realized that ivari had a concern.

176. He stated that at all times he provided ivari, Manulife and Council with everything that they requested during the course of their investigations and that he was always truthful, honest and open, including declaring his involvement with S&C Hiller.

177. The Former Licensee stated that it was "unfortunate" that ivari did not "catch" the M.T. transfer in 2008, because then the subsequent transactions probably would not have been attempted and ivari "allowed" it to go through.

178. He never advised any of M.T., C.M., D.D./D.D. Co., P.R. or R.C. to seek independent insurance, legal or tax advice, as he did not think it was necessary. He did not seek pre-approval from ivari, Manulife or IDC for any of the transactions, as he did not think it was necessary. He stated that the clients had benefitted in every circumstance.

179. The Former Licensee expressed frustration with the length of time that it took to investigate these matters and come to a hearing and that "all the information that we have here today existed two and a half years ago. And why it took two and a half years is beyond me…the damages to my clients because of this delay are exorbitant". He expressed that he felt that no one cared about the millions of dollars lost by his clients because of the delay of the process and that he did everything he could to facilitate things.

180. In cross-examination, the Former Licensee agreed that he had never reviewed the information posted about Council's disciplinary process on Council's website and he was unaware that Council states that it takes approximately 450 days to complete an investigation.

SUBMISSIONS OF COUNCIL

181. As noted above, Council and the Former Licensee provided a written submission on the final day of the hearing which reviewed the facts and outlined a number of authorities for the Hearing Committee to consider with respect to determining the appropriate penalty in this matter.

182. Council provided a recitation of the background facts, the evidence of its witnesses and the key facts with respect to each of the five policies of M.T., C.M., D.D., P.R. and R.C. in its written submissions.

183. Council submitted that the Licensee's actions amounted to a breach of his duties set out in 7(6)(8) and (9) of Council's Rules that were in effect at the time, section 152 of the *Insurance Act*, R.S.B.C. 1996, c.1, and sections 3, 4, 5, 7, 8 and 13 of Council's Code in effect at the time.

184. It was Council's position that the Former Licensee consistently demonstrated a lack of appreciation for Council's concerns about the public interest and has refused to admit obvious professional shortcomings, instead attempting to shift blame to ivari and Manulife. Council submitted that his inability to appreciate this, and/or unwillingness to acknowledge the risk posed to his clients, raises a serious concern about harm to the public.

185. 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 each of the Former Licensees, as well as a significant period of prohibition on the Former Licensee becoming re-licenced.

186. To that end, Council sought an order that the Licensee be prohibited from making any insurance application to Council for a period of four years, successfully complete remedial education, and be fined $10,000 which amount shall be payable within 180 days.

187. Council also sought that the Former Agency be fined $20,000, payable in 180 days and that the Former Licensees together be responsible for the costs of the investigation and the Former Licensee be responsible for the costs of the hearing.

SUBMISSIONS OF THE FORMER LICENSEE

188. The Former Licensee's position was, broadly speaking, that he did not do anything wrong as he was only looking out for the best interests of his clients, and no actual harm accrued to any of them. His position was that his actions did not violate his professional obligations, breach the Code or put him in a conflict of interest.

189. The Former Licensee also emphasized that IDC, ivari and Manulife as applicable completed the requested transactions and that he was not aware that anything was possibly offside until ivari "flagged" the request on the R.C. policy. As the insurers had full knowledge throughout, it cannot be said that he breached any obligations to the insurers.

190. In terms of sanction, the Former Licensee stated that, if any breaches were found, there should be no sanction.

191. If the Hearing Committee found breaches and imposed a sanction, the sanction sought by Council was not in line with the applicable authorities as the conduct was not as serious as the conduct in the decisions relied upon by Council (e.g. misappropriation of funds and denial of relationships leading to conflicts of interest).

192. The sanction proposed by the Former Licensee was a supervisory period of one year, the completion of Council's Rules and Ethics and Insurance Professionals course, a $2,500 fine and no costs, or, in the alternative, costs reduced to the amount "originally proposed"[12] and paid in equal proportions between the Former Licensees.

193. The Former Licensee agreed that the fines, if any, ought to be paid before he becomes re-licenced with Council.

194. The Former Licensee also submitted that the fine to the Former Agency ought to be in the amount of $5,000.

DECISION OF THE HEARING COMMITTEE

195. Before addressing the allegations in the Amended Notice of Hearing, the Hearing Committee feels that it is important to address the issues of the timing and sufficiency of investigations, the timing of the hearing and the privacy of non-party individuals, all of which were repeatedly raised by the Former Licensee during the hearing and in written submissions.

[12] This amount was not identified to the Hearing Committee.

Timeline and Sufficiency of Investigations

196. The Hearing Committee acknowledges the Former Licensee's apparent frustration with this disciplinary process beginning with the internal investigations at ivari and Manulife which led to complaints to Council.

197. The Hearing Committee acknowledges the Former Licensee's evidence, and that of the representative of ivari and Council's investigator, that he was at all times cooperative and forthcoming with information during the investigations. The Hearing Committee has also reviewed the email correspondence between the Former Licensee and Council's investigator where he was, at times, forcefully advocating for the investigation to conclude, alleging harm accruing to his former clients stating in December 2020 that "Client losses are now totally in the millions of dollars…These losses are on the Insurance Council not me. This has to end and it has to end soon".

198. Having said that, there was no specific allegation by the Former Licensee of procedural unfairness at any stage of the investigation(s)/hearing or an application or submissions seeking any associated relief related to this issue before the Hearing Committee. The recent case of *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 sets out the analysis which now must be undertaken in this type public interest proceeding if there is an allegation of procedural unfairness, including one amounting to an abuse of process, and identification of actual prejudice accruing to the licensee, as well as the test which was in place prior to *Abrametz,* none of which was before the Hearing Committee.

199. It is worthwhile to review the timeline leading to the hearing. Council's investigation commenced in early October 2019, very soon after receiving information from Manulife. The Former Licensee was interviewed a few months later, in January 2020, as part of this investigation.

200. On March 18, 2020, P.P. notified the Former Licensee due to public health guidelines related to the COVID-19 pandemic, Council had closed its offices and postponed arranging Review Committee Meetings. A Review Committee Meeting took place in March 2021 (which apparently was set for an earlier date on at least one occasion, but was rescheduled for reasons which are unknown to the Hearing Committee), during which the Former Licensee was represented by counsel.

201. Once the investigation was concluded, an intended decision was issued in July 2021, and provided to the Former Licensee in August 2021, at which point he requested a hearing, which was set before the end of the year.

202. Again, although there were no specific allegations of procedural unfairness or an application or submissions before the Hearing Committee seeking associated relief, the Hearing Committee takes this opportunity to note that the timeline from commencement of Council's investigation in this matter to issuing an intended decision appears to be in the range of 22 months (October 2019 to July 2021), about seven months longer than Council's published average of 450 days to complete an investigation (15 months). The Hearing Committee also notes that the Former Licensees resigned their licenses with Council during this time period (May 2021, 20 months into the process).

203. Clients are often in a vulnerable position in a professional relationship, and place great trust in the services of a professional. The purpose of professional disciplinary bodies is to protect the public, to regulate the profession, and preserve public confidence in the profession. Investigations and disciplinary proceedings proceed in the public interest and there are good reasons why investigations and prosecutions need to proceed in a timely way. Inordinate delay can be harmful. Having said that, timelines are not dictated by licensees and the time requirements of these types of proceedings can vary significantly.

204. While Council's investigation and intended decision does appear to have taken longer than average, the 15-month timeline is just an average; some investigations take less time and some take more time. Given that this issue of delay was not something that was before the Hearing Committee, the Hearing Committee does not need to decide this issue and makes no specific findings; however, given the comments of the Former Licensee in communications and during the hearing, the Hearing Committee is of the view that in the circumstances of a two-plus year global pandemic and the involvement of several third parties (Manulife, ivari and IDC), the timing on this matter is not an inordinate delay and furthermore there was no evidence of actual prejudice suffered by the Former Licensee as a result of this timing.

205. In terms of sufficiency of the investigation, according to section 231 of the Act, the

Hearing Committee can make a determination and impose a penalty after "due investigation".

206. The Former Licensee took issue with the fact that none of the original policy owners (or, where applicable, their family members) were interviewed by Council during the course of its investigation (or, for that matter, by ivari or Manulife during the course of their investigations). This was the subject of several questions in cross-examination.

207. It is also worthwhile to note that none of the individuals identified as persons who were not interviewed by Council were called as witnesses by the Former Licensee to give evidence at the hearing. The Hearing Committee acknowledges the email from D.D.'s wife, the email from J.O. (M.T.'s nephew), a letter from C.M.M., and the two letters from C.M. (typed by C.M.M. and signed by C.M.) which were entered into evidence.

208. The Hearing Committee is of the view that, considering the issues that were brought to Council's attention by Manulife and ivari, on the evidence presented by P.P. about his investigation, and the evidence of the Former Licensee, while the Former Licensee had concerns with the investigation there was nothing to suggest that there was not "due investigation" of the issues as required under the Act.

209. The Hearing Committee makes its decision on the information that was tendered as evidence by the parties during the course of this proceeding on the allegations that are in the Amended Notice of Hearing, which are set out in paragraph 10 of these Reasons for Decision.

Timing of the Hearing

210. In terms of the timing of the hearing, the Hearing Committee's knowledge of the timeline of events is limited to what is set out in the Notice of Hearing, the Amended Notice of Hearing, and requests for availability to set this matter for a hearing, all of which are set out at paragraphs 1 – 9 of these Reasons for Decision, and what was said by the parties during the course of the hearing. The Hearing Committee acknowledges the sentiment expressed by the Former Licensee that he was frustrated by the timing of the hearing.

211. The Hearing Committee notes that a one-day hearing, considering the schedules of

three committee members, two legal counsel, the Former Licensee and Council staff, was set within four months of the Former Licensee requesting one; and that hearing was subsequently adjourned by consent of the parties (at the request of the Former Licensee). In those circumstances, it is difficult to include any period post-December 2021 as part of any calculation of possible delay.

212. A three-day hearing, incorporating the schedule of three committee members, now three legal counsel, the Former Licensee and Council staff was then set within three months of that adjournment.

213. The hearing consumed all three days that had been set aside and required further submissions, which submission schedule completed in early May 2022.

214. Again, there was no specific allegation of delay amounting to abuse of process or submissions or an application before the Hearing Committee seeking associated relief with respect to the timing of the hearing requiring the Hearing Committee to make any findings; however, given the Former Licensee's comments during the hearing, the Hearing Committee takes this opportunity to note that a multi-day contested hearing was set and completed within seven months of the Former Licensee requesting same, which in this Hearing Committee's view is not an inordinate delay.

215. It is possible that the hearing could have proceeded and completed earlier but for the adjournment and/or even a partial agreed statement of facts reducing hearing time. Even if the agreed statement of facts simply set out uncontested matters such as dates, names, policy numbers, corporation names with directors and officers, timelines, etc. this would have assisted in focusing the issues. While the parties are obviously at odds with what the Hearing Committee can determine with respect to the facts, there did not appear to be a substantial amount of disagreement on the basic underlying facts which led to the events at issue. This may have saved some hearing time, and the Hearing Committee would have found this useful during the course of the hearing and in arriving at its decision.

Privacy of Non-Party Individuals

216. At the conclusion of the cross-examination of the Former Licensee, he raised a concern with respect to the full names of his clients being used throughout the hearing, which was open to the public, stating that the individuals were "quite upset"

that their personal information was being disclosed and their medical histories and financial well-being were the subject of discussion without their permission.

217. The Hearing Committee then invited submissions from the parties on how they proposed to address the matter, which were received by the Hearing Committee from Council on March 18, 2022 and the Former Licensee on March 21, 2022. The Hearing Committee provided a response to the proposal on March 25, 2022.

218. In sum, the Hearing Committee responded that, pursuant to subsection 239(1) of the Act, disciplinary hearings must be open to the public. Under subsection 239(2) of the Act, a closed hearing may proceed, in whole or in part, if a public hearing would be unduly prejudicial to a party or witness.

219. The language of subsection 239(1) is referenced in Notice of Hearing and Amended Notice of Hearing, both of which were delivered to the Former Licensee or his counsel well in advance of the hearing dates.

220. In addition, the issue was touched upon at the commencement of the hearing, when Council identified that there were public members in attendance at the hearing and the Hearing Committee made an order excluding witnesses. This issue was also touched upon in the submission of exhibits by consent, which had been exchanged between the parties prior to the commencement of the hearing, which were not redacted or anonymized in any way.

221. Once the testimony of witnesses commenced, there was no attempt by the parties to refer to individuals by initials or to generalize personal and private information considering that there were some non-witness members of the public still in attendance.

222. There is no equivalent of a publication ban in these disciplinary matters. If a party wishes to proceed with a closed hearing, even in part, an application seeking this relief needs to be made so there can be consideration as to whether an open hearing would be unfairly prejudicial to a party or witness or whether any directions or modifications to the hearing procedure can and should be made. By the very nature of the order or request, this needs to be addressed prior to the commencement of the hearing, or certainly prior to the evidence concluding.

223. As set out in the Hearing Committee's response to the parties' proposal, consistent with Council's policy on publication in recent years, non-party witnesses and individuals have been referred to by their initials in the Reasons for Decision and, where possible, personal and private or identifying information has been generalized. If it is not possible to generalize such information without compromising the clarity or intention of the Reasons for Decision, the information will be redacted from the published Reasons for Decision.

Analysis

224. Each of the allegations from the Amended Notice of Hearing are addressed in turn below.

225. At the outset, the Hearing Committee finds that, as a former licensee, the Hearing Committee has jurisdiction over this matter pursuant to the language of section 231(1) of the Act.

226. Further, the Hearing Committee finds that, as the nominee of the Former Agency, pursuant to Council Rule 7(6), the Former Licensee is responsible to Council for all activities of the Former Agency and carries a substantial responsibility as a nominee.

227. The Hearing Committee emphasizes that a licensee should always have the best interests of the client in mind, and best interests are not defined by whether or not any actual harm eventually occurs at the end of the day. The Hearing Committee is not persuaded that the Former Licensee understands and appreciates this fundamental principle. The concept of the best interests of the client is at the heart of the usual practice of the business of insurance.

> *1(a) Failed to act in good faith, and/or a trustworthy manner, and/or in accordance with the usual practice of the business of insurance by engaging in the trafficking of life insurance policies and transactions where the former licensee was in a conflict of interest*

228. There are three elements to the first paragraph in the Amended Notice of Hearing.

229. The first point that the Hearing Committee must determine is whether or not the Former Licensee engaged in the trafficking of life insurance policies.

230. The Hearing Committee requested supplemental submissions on the meaning of the term "trafficking" as it is used in the Amended Notice of Hearing, and has reviewed those in making its determination on this issue. Counsel were not able to point the Hearing Committee to any precedential disciplinary or judicial guidance on what trafficking of life insurance policies means, except to a brief reference in an Ontario Superior Court decision where viatical settlements were discussed as a form of trafficking.

231. Considering the allegation in this subparagraph of the Amended Notice of Hearing, the Hearing Committee is not bound by, but has reviewed, the wording of section 152 of the *Insurance Act*, R.S.B.C., 1996, c. 1 which states:

> Any person, other than an insurer or its authorized agent, who advertises, or holds himself or herself out, as a purchaser of life insurance policies or of benefits under them, or who traffics or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation of them to himself or herself or any person, commits an offence against this Act.

232. The Hearing Committee has reviewed the definitions of "traffic" and "trafficking" in *Blacks Law Dictionary,* 9th ed., which states:

> n. (16c) 1. Commerce; trade; the sale or exchange of such things as merchandise, bills and money. 2. The passing or exchange of goods or commodities from one person to another for an equivalent in goods or money.
>
> …
>
> vb. To trade or deal in (goods, esp. illicit drugs or other contraband)
>
> …
>
> The act of transporting, trading, or dealing, esp. in people or illegal goods.

233. The Hearing Committee finds that the Former Licensee engaged in the trafficking of

life insurance policies in the transfers of policies owned by each of M.T., C.M., P.R. and D.D.

234. Although the Former Licensee said that he did not view the transactions as being a purchase or involving any form of consideration, consideration is simply something, including an act, forbearance, or return promise, bargained for and received by a promisor from a promise.[13]

235. The Hearing Committee sees that in each scenario, the Former Licensee, with his company S&C Hiller, made an offer to assume benefits of a policy by way of transfer, which the client accepted, and there was an exchange of something of value in the process. The Hearing Committee does not think that there needs to be cash paid for a policy in order for it to constitute trafficking. The transfer of benefits and consideration for each scenario which constituted this trafficking were as follows.

236. With M.T., she no longer wanted to pay the premiums on the policy. The Former Licensee offered, and M.T., through J.O., accepted, that S&C Hiller would pay the premium. The Former Licensee offered this in exchange for M.T. as policy owner, transferring the ownership and benefits of the policy to S&C Hiller because S&C Hiller, as the owner of the Former Agency, owed M.T. $25,000. In addition, as owner of the policy, S&C Hiller was able to take a loan from the cash value of the policy and invest it, which it did. If M.T. passed away before the Former Agency repaid M.T., the benefits of the policy would be used to repay that loan to her estate (and the remainder would presumably stay with S&C Hiller and/or the Former Licensee). If the Former Agency repaid the loan prior to her passing away, S&C Hiller would receive the benefits of that policy tax-free, which could flow through to the Former Licensee personally, which it did.

237. With C.M., she also no longer wanted to pay the premiums on the policy, although there was an additional factor of C.M. wanting her daughter to retain the benefits of the policy. The Former Licensee offered, and C.M. accepted, that S&C Hiller would pay the premium. The Former Licensee offered this in exchange for C.M., as policy owner, transferring the ownership and benefits of the policy to S&C Hiller because S&C Hiller, with the Former Licensee and his wife as directors and officers, would benefit from this arrangement. In addition, the Former Licensee and his wife owed

[13] *Blacks Law Dictionary,* 9th ed. It is also "that which motivates a person to do something, esp. to engage in a legal act".

C.M. money as a result of a personal loan to make a home purchase and the Former Licensee and his wife were C.M.'s caregivers. When C.M. passes away, S&C Hiller will receive the benefits of that policy, potentially tax-free if the necessary election is made, which could flow through to the Former Licensee personally.

238. With P.R., she wanted to keep the policy but no longer wanted to pay premiums on the $25,000 rider. In attempting to cancel the rider, it was discovered: (1) that the surrender charges were greater than the cash value; and (2) to cancel the rider would be to cancel the entire policy. The Former Licensee offered, and P.R. accepted, that S&C Hiller would pay the premium on the rider. The Former Licensee offered this in exchange for P.R., as policy owner, transferring the benefit of the rider to S&C Hiller. S&C Hiller paid the premium of $1,500 in February 2019 and has not paid anything since that time. When P.R. passes away, S&C Hiller will receive the benefit of the rider, potentially tax-free if the necessary election is made, which could flow through to the Former Licensee personally.

239. With D.D., he did not want to pay the soon-to-be increased premiums on the policy. After a series of events, the Former Licensee offered, and D.D. accepted, that S&C Hiller would pay the premium. The Former Licensee offered this in exchange for D.D. Co., D.D.'s holding company, transferring ownership and benefits of the policy to S&C Hiller because S&C Hiller intended on purchasing foreign property with D.D. Co. and the benefit of the policy would form the basis of a shareholders agreement. When D.D. passes away, S&C Hiller will receive the $625,000 benefit of that policy, potentially tax-free if the necessary election is made, which could flow through to the Former Licensee personally.

240. The Hearing Committee does not find that the Former Licensee engaged in the trafficking of life insurance policies in the transaction for R.C. Although the Former Licensee attempted to have S&C Hiller become the owner and beneficiary, he ultimately did not do so. S&C Hiller became payor, which is a transaction where there is conflict of interest as discussed further below, but the Hearing Committee does not find this to be trafficking.

241. The second point for the Hearing Committee's determination is whether the Former Licensees engaged in transactions where the Former Licensee was in a conflict of interest. The Hearing Committee finds that the Former Licensee was in a clear conflict of interest with each of the five transactions (including with the R.C. policy). The Hearing Committee has addressed this under paragraph 1(e), below. If the

Hearing Committee is incorrect in its understanding of the meaning of trafficking, in the alternative it finds that under 1(a) the Former Licensee engaged in the transactions of life insurance policies for M.T, C.M., P.R., D.D./D.D. Co. and R.C. where the former licensee was in a conflict of interest.

242. The third point is whether or not in engaging in trafficking of life insurance policies was not in good faith, in a trustworthy manner and/or in accordance with the usual practice of the business of insurance.

243. It does not matter that the Former Licensee says that he did not think he was trafficking policies, or that clients obtained some benefit from his actions, or that no harm (to date) has come to his clients. None of this is necessary to make the finding that Council has proven the allegation in paragraph 1(a) of the Amended Notice of Hearing.

244. The Hearing Committee does not accept that the Former Licensee believed he was acting in the best interests of his clients when he completed the transactions. The Hearing Committee finds that the Former Licensee failed to act in good faith or in a trustworthy manner in trafficking these policies and breached sections 3 and 4 of the Code in doing so.

245. The Hearing Committee is troubled that, on the Former Licensee's own evidence, M.T.'s policy was transferred in accordance with an arrangement with J.O., with M.T. being "secondary" to the arrangement. Then, C.M. sought to cancel the policy for "years" before he "finally relented". Similarly, P.R., the client, wanted to cancel the rider and her husband, G.R., said to the Former Licensee something along the lines of "If you believe in it so much, why don't you pay for it". The arrangements that the Former Licensee eventually orchestrated in these cases was not in accordance with the client's expressed intentions. His actions were in his interests and he used his position and knowledge as a licensee to accomplish this.

246. The Former Licensee's own evidence was that it was his idea to transfer the policies in each of the five transactions. At the very least, there ought to have been a comprehensive needs analysis involving information about the client's income, debt, tax liabilities, goals, risk tolerance, etc. and then options presented by the advisor ranging from outright cancellation of the policy to ways to reduce premiums to recommendations for alternative products or investments to transfer to someone (other than the Former Licensee or S&C Hiller). This is a simple, fundamental

principle and basic obligation of an advisor. The absence of this step is conspicuous.

247. The Hearing Committee expects that an experienced, sophisticated advisor like the Former Licensee would be well-versed on the potential benefits of transfers of this nature and would know whether it was a net benefit or loss to him and his company at the end of the day. It was not convinced by the Former Licensee's explanation and evidence on this point and did not accept that the transfers were only in the clients' interests or that was his overriding concern. The Hearing Committee understands that the personal and corporate benefit in terms of S&C Hiller making an election on its capital dividend account is one of the primary benefits to incorporating and having a corporate entity as the owner and beneficiary of a policy as was the case in these types of transactions. These arrangements benefitted the Former Licensee and his family.

248. The failure to conduct a complete and comprehensive needs analysis and present multiple options to the client and instead, at the Former Licensee's initiation, present an option which also benefitted the Former Licensee (and, with the exception of D.D., sometimes the only option) is not trustworthy and not in good faith. The failure to document the arrangements, which also does not benefit the client, supports this as well.

249. The Hearing Committee also finds that the Former Licensee failed to act in accordance with the usual practice of the business of insurance in trafficking policies and arranging for the transfer of ownership of an existing life insurance policy from a client to a company owned by the Former Licensee and his spouse. These are highly unusual transactions that benefitted the Former Licensee and created potential problems for the clients. Furthermore, the way in which the Former Licensee went about conducting these transactions is questionable. In addition to the failure to offer alternatives and complete a needs analysis which is a fundamental step in the process, the Former Licensee did not encourage clients to receive the necessary independent advice or create, let alone keep, any documentation on these arrangements. This is discussed more comprehensively under paragraph 1(e) and breach of sections 7 and 8 of the Code, below.

250. Accordingly, allegation 1(a) is proven. The Hearing Committee denounces the Former Licensees' conduct in the strongest possible terms.

1(b) Failed to act in good faith, and/or a trustworthy manner, and/or in accordance with the usual practice of the business of insurance by arranging for the transfer of ownership of existing life insurance policies from the former licensee's clients where the transferee was a company owned by the Former Licensee and his spouse

251. The Hearing Committee finds that the Former Licensee arranged for the transfer of ownership of an existing life insurance policy from R.C., a client, where the transferee was S&C Hiller, a company owned by the Former Licensee and his spouse C.M.M.

252. With the other four policies, that of M.T., C.M., P.R. and D.D./D.D. Co., the Former Licensee arranged for those transfers to S&C Hiller; however, as those transfers all completed, they are more appropriately addressed under 1(a), above (or, in the alternative, under 1(e), below).

253. In arranging for the transfer of the R.C. policy from R.C. to S&C Hiller, the Former Licensee failed to act in good faith, in a trustworthy manner and in accordance with the usual practice of the business of insurance for the reasons set out at paragraphs 233 and 235 – 238, above.

1(c) Failed to act in good faith, and/or a trustworthy manner, and/or in accordance with the usual practice of the business of insurance and/or in accordance with Council's Code of Conduct by contravening section 152 of the Insurance Act, R.S.B.C. 2012, c. 1, *as amended*

254. Section 152 of the *Insurance Act,* R.S.B.C. 2012, c. 1 states as follows:

> Trafficking
> 152 Any person, other than an insurer or its authorized agent, who advertises, or holds himself or herself out, as a purchaser of life insurance policies or of benefits under them, or who traffics or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation of them to himself or herself or any person, commits an offence against this Act.

255. The Hearing Committee has found two potential issues with this allegation in the Amended Notice of Hearing. First, based on the timing of the subject transactions,

only the D.D., P.R. and R.C. transactions possibly could be in issue under this section of the *Insurance Act* (and, as noted above, the R.C. transaction never completed except for S&C Hiller becoming payor).

256. The Hearing Committee asked for supplemental submissions from the parties on what, if any, impact the M.T. and C.M. transactions pre-dating 2012 had on potential findings by the Hearing Committee in this case.

257. Council submitted that the applicable section for the M.T. and C.M. transfers was section 26 of the *Insurance Act*, R.S.B.C. 1996, c. 226, which contains nearly identical language to section 152 of the 2012 *Insurance Act*. Council did not apply to further amend the Amended Notice of Hearing to refer to this section, but submitted in its supplemental submissions that similar sections had been in force in British Columbia since 1950 and "the fact that the 2012 *Insurance Act* was not in force at the time of those transfers should have no impact on the Committee's findings that the Former Licensee engaged in illegal transfers of the policies [M.T. and C.M.] in this case."

258. In response, the Former Licensee stated that the provisions with respect to trafficking have changed "substantially" since 2008, and further stated that the claims regarding M.T. and C.M. were filed out of time, according to the limitation period of two years set out at section 153 of the *Insurance Act*, R.S.B.C. 2012, c. 1.

259. Although neither party directly addressed this, the Hearing Committee is troubled by the potential unfairness in a regulator alleging a different section of a different act than the one which was identified in the Amended Notice of Hearing. When the allegation was not clearly alleged in the Amended Notice of Hearing, and when the Hearing Committee has not been presented with any authority that permits it to look at previous versions of the legislation, the Hearing Committee declines to make a finding on anything other than that which has been formally alleged.

260. Second, counsel could not point to any decision in this province or any other Canadian jurisdiction where a court or a hearing panel such as the Hearing Committee had found that a licensee had breached that section of the *Insurance Act* or a similar section of equivalent legislation.

261. On the facts and the arguments before it and given the way that the allegation is

worded in the Amended Notice of Hearing (instances of trafficking as defined in legislation being breaches of the Code), the Hearing Committee is not able to sufficiently distinguish the findings sought in paragraph 1(c) from the findings sought in paragraphs 1(a) and (b) of the Amended Notice of Hearing.

262. The Hearing Committee has already found that the allegations in paragraphs 1(a) and (b) are proven by Council on a balance of probabilities with respect to all five policies (M.T., C.M., P.R. and D.D. under 1(a) and R.C. under 1(b)). In the Hearing Committee's view, to find that the Former Licensee also failed to act in good faith, and/or a trustworthy manner, and/or in accordance with the usual practice of the business of insurance and/or in accordance with the Code (possibly by breaching section 13 of the Code) by breaching section 152 of the *Insurance Act* with respect to the policies of D.D. and P.R. (or R.C.) would be duplicative and, even if the finding were made, should not be considered in terms of any sanction.

263. In the particular circumstances of this case and for the reasons set out above, the Hearing Committee does not find that Council has proven paragraph 1(c) of the Amended Notice of Hearing to the requisite standard.

1(d) Breaching duties to act in accordance with Council Rule 7(8) (Compliance with the Code of Conduct)

264. As set out below, the Hearing Committee has found that the Former Licensee did not comply with the Code. In doing so, he breached Council Rule 7(8); however, the Hearing Committee has not considered the breach of Council Rule 7(8) in its sanction of the Former Licensee as to do so would be duplicative.

1(d) Breaching duties to act in accordance with Council Rule 7(9) (To Properly Record Insurance Transactions and Related Financial Affairs)

265. The Former Licensee admitted that the arrangements with M.T., C.M., D.D./D.D. Co., P.R. and R.C. were verbal arrangements and there was no documentation.

266. The Hearing Committee notes that the email from J.O., M.T.'s nephew, begins by stating "As per the signed agreement, all aspects of the agreement were satisfied", suggesting that there was documentation on that arrangement, at least at one point in time. The Hearing Committee also notes that, according to the Former Licensee, upon M.T.'s death the Former Agency's file was shredded in the ordinary course.

267. The Former Licensee did provide some file notes on M.T., C.M., P.R. and R.C., which he described to P.P. as "thin". The Hearing Committee agrees – there were a few, sparse notes documenting meetings with clients, but nothing on the details of what was explained or the terms of the transactions.

268. Even if the subject transactions were permissible, which this Hearing Committee finds that they were not, the failure to have *any* sort of documentation on file as to the terms of the arrangement is not acceptable. At a minimum, the Hearing Committee expects that there would be written documentation pertaining to the discussion of possible tax implications and strategies and notations of the basic terms of the arrangement, timelines that it would be in place, etc. and anything else pursuant to a comprehensive needs analysis. This is in accordance with the usual practice of the business of insurance.

269. The Hearing Committee finds that the Former Licensee breached his duty to act in accordance with Council Rule 7(9), and did not properly record insurance transactions and related financial affairs with respect to the transfer of owner, beneficiary and payor as applicable to the policies of each of M.T., C.M., D.D./D.D. Co., P.R. and R.C. This is a significant failing of his obligations as a licensee.

1(e) Failing to comply with the Code of Conduct Section 4 (Good Faith)

270. As set out above, the Hearing Committee found that the Former Licensee failed to act in good faith in trafficking the policies of M.T., C.M., P.R. and D.D. and arranging for the transfer of ownership of R.C.'s policy to S&C Hiller, a company owned by the Former Licensee and his spouse. This is a breach of section 4 of the Code which has already been addressed.

1(e) Failing to comply with the Code of Conduct Section 7 (Usual Practice: Dealing with Clients)

271. The Code at section 7 states that licensees, as fiduciaries, are required to put the best interests of the client as their first concern and when dealing with clients, licensees must protect clients' interests and disclose all material information.

272. The Hearing Committee finds that the Former Licensee did not protect client's interests and did not disclose the potential personal financial benefit that he was receiving to his clients, which was material information.

273. Section 7 also states that a conflict of interest exists when a licensee's loyalty to, or representation of, a client could be materially or adversely affected by your interest or duty to another party, and that a conflict of interest may be real, potential or apparent. Section 7 incorporates the Conflict of Interest Guidelines included at Appendix "A" of the Code, which is comprehensive guidance to licensees on identifying and navigating conflicts of interest.

274. Here, there was a question for the Hearing Committee as to whether D.D. and D.D. Co. were "clients" of the Former Licensee. The Hearing Committee finds that D.D. and D.D. Co were clients of the Former Licensee and that the Former Licensee was in a conflict of interest.

275. The Former Licensee labelled D.D. as a business associate. The Hearing Committee accepts that the Former Licensee and D.D. were doing business together; however, the relationship was more than that. But for the Former Licensee's experience and professional advice on how D.D. and D.D. Co. should be arranging their affairs, which advice they accepted and from which the Former Licensee and his company stand to benefit, and the Former Licensees procuring and submitting the transfer paperwork, the transaction would not have taken place.

276. The principle of 7.1 of the Code states that "Under the Code, a client includes anyone who might reasonably be expected, in the circumstances, to rely on your professional advice or actions in relation to his or her insurance." The requirement at 7.2 of the Code goes on to say that "When dealing with clients you must protect clients' interests and privacy; evaluate client needs…".

277. The Hearing Committee agrees with and adopts this definition in the circumstances. D.D., through J.B., B.L. and D.D.'s accountant, shared personal, private, and financial information with the Former Licensee. They did so in order to obtain advice on an insurance policy that was "driving [D.D.] crazy", and evidently trusted the Former Licensee as, on his own admission, they largely followed his advice and made the transfers from D.D. to D.D. Co. These are the hallmarks of a client or client-like relationship, and licensees are prohibited from doing business with clients, except in very limited circumstances. No matter what the paperwork said at that time or at a

later point in time, the Hearing Committee is of the view that D.D. and D.D. Co. were clients of the Former Licensee very early on in the relationship where they came to the Former Licensee for advice, he started giving advice, and they accepted and acted upon that advice. Once that relationship was present, the Former Licensee put himself in a very difficult situation by also exploring property ownership using the very policy on which he had recently advised D.D. and D.D. Co.

278. In addition, whether or not the Former Licensee was aware of what his staff, specifically A.M., were doing (and the Hearing Committee notes that the Former Licensee was copied on A.M.'s email requesting the D.D. sign the change of advisor form), on paper, the Former Licensee became the advisor of record and no steps were taken to ever "correct" the situation. The Former Licensee and D.D. entering into the client relationship is more than a technicality, but the Former Licensee cannot escape the fact that, at the end of the day, according to Manulife's paperwork on file, he was the advisor to D.D. Co., of which D.D. was the operating mind.

279. The Hearing Committee acknowledges the emailed statement of D.D.'s wife (not D.D.) that she did not view herself and her husband as clients of the Former Licensee; however, that was in response to the Former Licensee's pointed email stating "The BC Insurance Council believes you to be clients of mine! Can you and [D] please confirm that you were NEVER clients of mine and that you conduct all your insurance and investment business with your brokers in Ontario". It is also the case that the advisor-client relationship is not defined exclusively by whether or not the client views themself as a client.

280. The Hearing Committee finds that the Former Licensee repeatedly breached section 7 of the Code and the incorporated Guidelines. The following are salient passages from the Conflict of Interest Guidelines, with comments regarding the Former Licensee's breaches, as applicable:

- Licensees have a responsibility to avoid conflicts of interest arising between themselves and their clients;
    - (The Former Licensee did not take steps to avoid conflicts of interest. At his suggestion, each of M.T., C.M., D.D., P.R. and R.C. engaged in these transactions)

- When a conflict of interest arises or has the potential to arise, a licensee needs to take appropriate action before acting or continuing to act on behalf of a client;
    - (The Former Licensee continued to deny that any conflict of interest was present)

- A real conflict of interest denotes a situation in which a licensee has knowledge of a personal, private, financial, or professional interest that is sufficient to influence the exercise of his or her duties and responsibilities;
    - (As discussed further below, the Hearing Committee is of the view that there is a real conflict of interest present in each of M.T., C.M., D.D., P.R. and R.C.)

- A potential conflict of interest incorporates the concept of foreseeability, such as when a licensee can foresee that a personal, private, financial, or professional interest may someday be sufficient to influence the exercise of his or her duties;
    - (This can be said to be the case in each of the five transactions)

- An apparent or perceived conflict of interest exists when a reasonable person has an apprehension that a conflict of interest exists. An apparent conflict of interest can exist where it could be perceived, or where it appears, that a licensee's personal, private, financial, or professional interest or access to information could improperly influence the exercise of his or her duties;
    - (If the Hearing Committee is mistaken and there is no real conflict of interest, at the very least there was the potential for one, or for a reasonable person to believe that there was a potential for one in each of the five cases, which is an apparent or perceived conflict of interest)

- Where there is a conflict of interest, or a potential for one, a licensee has a responsibility to address the conflict with the client before the transaction is completed;
    - (This did not occur because the Former Licensee did not recognize the situation for what it was, and did not seek out information or guidance from his MGA, the insurer or Council)

- A licensee has an obligation to provide appropriate disclosure to a client, in sufficient detail, of all real, potential, or apparent conflicts of interest to ensure a client can make an informed decision regarding an insurance transaction;

- (This did not occur because the Former Licensee did not believe and still does not believe that he was in a conflict of interest)

- In all cases, when disclosure is required, it should be made in writing;
  - (This did not occur because the Former Licensee did not believe there to be a conflict of interest. At the very least, he ought to have recognized the potential for one and addressed this with each client and made the appropriate disclosure in writing)

- Where there is a conflict of interest, or the potential for one, a licensee should either not act in the transaction; or where the licensee believes he or she is able to properly represent the client without the conflict having a material or negative effect on the representation of that party, the licensee must act only where express consent to the conflict from the appropriate parties is obtained. In such cases, Council recommends that the…consent be obtained, in writing, or, in the alternative, that the licensee confirm to the appropriate parties, in writing, the discussion that occurred regarding express consent;
  - (Again, the Former Licensee did not appreciate the situation, but if he did, and believed that he could still act (which he may have been able to do), he was required to obtain express consent in writing, which he did not do)

- A licensee must inform the relevant parties of the circumstances and the reasonably foreseeable ways in which a conflict of interest could adversely affect the relevant parties' interests;
  - (The Former Licensee did not do so because he did not believe that there was any conflict of interest, and he took no steps to make inquiries or review Council's published materials to determine whether or not he was correct in his assessment)

- In all cases where a conflict of interest exists, or may exist, a licensee must reasonably believe that he or she is able to represent a client…without the conflict having a material or negative effect on the licensee's representation of, and duty to, the relevant parties. It is recommended that, in such cases, the licensee clearly document why he or she believes that he or she can reasonably represent the relevant parties. This documentation should be provided to the relevant parties and maintained in the licensee's file;
  - (If the Former Licensee believed this, this documentation did not occur)

- An example of a conflict of interest is when a licensee has a personal, private, financial, or professional interest that will, or could, prevent the licensee from being able to objectively exercise his or her duties and responsibilities to a client…A licensee's personal, private, financial or professional interest includes, but is not limited to, a direct or indirect financial interest in the outcome of any transaction or subject matter involving a client or the interests of a family member, employee, business partner, or associate; and

- An example of a conflict of interest is when a licensee engages in other employment, job, or business activity, such as involving a client in investing in an insurance agency or other business activity. Any discussions with a client about investing in, or loaning money to, a life agent, a life agent's insurance business, or another business venture is a conflict of interest. Such discussions should only occur when the client is represented by independent legal and financial advisors. If a client refuses to obtain independent legal advice, the investment or loan should not occur. The same requirements would apply if a life agent were to loan money to, or invest in, a client, a client's business, or a related business venture.
    - (These examples of various conflicts of interest are discussed further below)

281. The Hearing Committee finds that the Former Licensee failed to disclose all material information to M.T., C.M., D.D., P.R. and R.C.; that is, with respect to the real or apparent conflicts of interest that were present and which the Former Licensee was obligated to explain and document. Without this, the clients cannot make an informed decision.

282. The Hearing Committee finds that the Former Licensee was in a real conflict of interest with M.T., C.M. D.D. P.R. and R.C., for the reasons identified in the examples given in the Conflict of Interest Guidelines.

283. M.T., a longtime client of the Former Licensee's, provided a capital contribution for the intended partnership of her nephew, J.O., in the Former Agency. This did not materialize and the Former Licensees were "stuck" with a $25,000 loan. M.T.'s policy was transferred to secure repayment of this loan. As set out in the Conflict of Interest Guidelines:

> Any discussions with a client about investing in…a life agent's insurance business…is a conflict of interest. Such discussions should only occur when the client is represented by independent legal and financial advisors.

284. M.T. was not represented by independent and legal advisors in this transaction, and there are a number of ways in which the transaction could have gone awry. The Hearing Committee accepts that J.O. and the former beneficiaries were satisfied with the payments upon M.T.'s death, but that does not change the fact that there was an actual conflict of interest at the time, and what could have transpired could have been detrimental to M.T. (and her family). The Conflict of Interest Guidelines do not retroactively cease to apply if no harm arises from the conflict.

285. C.M., the Former Licensee's mother-in-law, was also a longtime client of the Former Licensee. She lent the Former Licensee and his wife money to purchase their first home. The Former Licensee told ivari, and stated at the hearing, that the transfer of C.M.'s policy was because she no longer wanted to be responsible for the premiums and the policy transfer was to satisfy the obligations of the loan, and of the care that they were providing to her.

286. Once again, as set out in the Conflict of Interest Guidelines, this can be a conflict of interest and any discussions with a client about loaning money to a life agent is a conflict of interest and should occur only when the client is represented by independent legal and financial advisors. The Hearing Committee accepts that C.M. likely wanted to transfer the benefit of the policy to her daughter (who happens to be the Former Licensee's wife); however, as C.M.'s advisor, in this situation where the policy is also to be security for a loan, certain steps needed to occur to ensure that C.M. fully appreciated what could result from this transfer, and those steps did not take place.

287. Furthermore, as set out in the Conflict of Interest Guidelines, there is a conflict of interest when a licensee has a personal, private, financial, or professional interest that will, or could, prevent the licensee from being able to objectively exercise his or her duties and responsibilities to a client. A licensee's personal, private, financial or professional interest includes, but is not limited to, a direct or indirect financial interest in the outcome of any transaction or subject matter involving a client or the interests of a family member. C.M. wanting to transfer the policy to her daughter,

the Former Licensee's wife, or it actually being transferred to S&C Hiller, are both situations where the Former Licensee and a family member have a direct financial interest in the outcome of that transaction.

288. Unlike M.T. and C.M., D.D. was a relatively new "business associate" for the Former Licensee at the relevant time. The Hearing Committee appreciates that the Former Licensee did not view D.D. as a client. Council's definition of a client confirms that, upon the Former Licensee providing advice to D.D./D.D. Co., upon which he reasonably expected them to rely, a client relationship was formed.

289. Where a licensee conducts business with a client, such as forming a partnership or other business venture to purchase real property overseas, this creates a conflict of interest under the Guidelines. This is a licensee engaging in a business activity with a client by having him invest in a business activity and such discussions should occur only when the client is represented by independent legal and financial advisors.

290. There is also the problem as outlined above that there never was a purchase of real property and there seems to be no discussion of purchase of real property, D.D. is older, with health problems, and S&C Hiller remains the owner and beneficiary of the policy. At present, if D.D. dies, S&C Hiller will be paid the $625,000 death benefit which, on the Former Licensee's testimony, was not the original intention, and D.D.'s estate will need to take steps, at its expense, to enforce what it says are the terms of the arrangement if there is no agreement with the Former Licensee and his wife as to what should take place.

291. The Hearing Committee notes that the money may not stay with S&C Hiller. It sees a potential that if S&C Hiller is paid the $625,000 death benefit, that the Former Licensee could make an election with respect to the capital dividend account and it would be paid out, tax free, to the Former Licensee personally, as was the arrangement with the M.T. policy as the Former Licensee described to the Hearing Committee in response to its question, or to any other person or entity. Again, this was not the original intention of the arrangement with D.D./D.D. Co and it is potentially a substantial personal and financial benefit to the Former Licensee which could be a very strong motivation for a licensee to seek out these types of arrangements. This is not in the public interest and should be strongly discouraged.

292. The Hearing Committee is unclear as to what would happen if the Former Licensee and his wife, the operating minds of S&C Hiller, predecease D.D.

293. P.R.'s spouse, G.R., wanted to cancel the policy; the Former Licensee "pushed" for P.R. to keep it, which she did, with S&C Hiller becoming payor and beneficiary. As set out above, the Hearing Committee was concerned with this as it is not operating in a client's best interests or in good faith and in a trustworthy manner to disregard your client's wishes. Pushing for a client to do something is different than providing appropriate guidance and advice and letting the client choose how they want to proceed, which is the usual practice of the business of insurance. The Former Licensee expressed that P.R. could have the policy back (and perhaps wanted her to take it back). This is similar to the R.C. situation, discussed below, where it is essentially a no-interest loan and creates numerous problems.

294. The result, where S&C Hiller is the payor and beneficiary on the $25,000 rider, is a situation where the Former Licensee has a conflict of interest because S&C Hiller has loaned money to P.R. without the appropriate independent legal and financial advice, and he has a direct personal and financial interest in the outcome of the transaction.

295. If P.R. once again wanted to become beneficiary and could not or did not want to be payor, S&C Hiller could be in the position of having to continue to be payor with no promise of receipt of a death benefit, which may compromise his duties to P.R.

296. As payor, if S&C Hiller ceases making payments and the policy lapses, this may not be what the client wants and this may adversely affect their interests.

297. There was some suggestion that S&C Hiller is no longer the payor, but is now the beneficiary. This could lead to a situation, for example, where the Former Licensee continues to push for P.R. to keep the policy, as he stands to benefit when he is no longer incurring any cost and is looking to recover the costs incurred to date when this may not be in P.R.'s best interests, which is also potentially problematic.

298. In the case of R.C., the Former Licensee told ivari, and stated at the hearing, that by virtue of the proposed transaction S&C Hiller was essentially lending R.C. money at 0% interest. Loaning a client money is an actual conflict of interest and a situation where the client should have independent legal and financial advice, which did not occur here. The Hearing Committee notes that the transfer (loan) did not complete

due to ivari's intervention, but the advice, documentation, etc., needed to take place before the paperwork was submitted so R.C. could make an informed decision.

299. With S&C Hiller as payor, potential conflicts still remain. R.C. is unable to make premium payments and is relying on S&C Hiller, a company owned and controlled by his financial advisor, to make them. There could be negative consequences to R.C. and the beneficiaries if S&C Hiller fails or refuses to pay the premiums, whether it is because the relationship with the Former Licensee deteriorates and the Former Licensee no longer wants to have S&C Hiller make those payments or S&C Hiller encounters financial trouble (whether there are corporate reasons to wind-up the company or a bankruptcy), there is a dispute about when and how R.C. is to repay S&C Hiller, or any number of other scenarios.

300. Even if there were no real conflicts of interest in these cases, there certainly were potential conflicts such that the Former Licensee ought to have seen in each of these situations the potential for his personal and financial interests to influence the exercise of his duties.

301. The Hearing Committee similarly finds that if there were no real or potential conflicts of interest, a reasonable person would have concerns that a conflict of interest may exist when clients of a licensee, at his suggestion, transfer the ownership and eventual value of life insurance policies to his family holding company or, in the case of R.C., assume responsibility for payment.

302. The Hearing Committee finds that if there was no real conflict of interest, the Former Licensee was in potential or apparent/perceived conflict of interest with each of M.T., C.M., D.D., P.R. and R.C.

303. The Former Licensee's unwillingness or inability to understand this serious real, potential or apparent/perceived conflict of interest in these transactions, even during the course of the hearing, is very concerning to the Hearing Committee.

1(e) Failing to comply with the Code of Conduct Section 8 (Usual Practice: Dealing with Insurers)

304. The Code at section 8 states that licensees act as intermediaries between clients, insureds and insurers in a contractual relationship and the insurers' ability to meet their contractual duties is based on a licensee's honest and competence in providing

advice and information. A licensee's duty to insurers includes providing full and accurate information.

305. The Former Licensee acknowledged that there were errors on the paperwork which the Former Agency submitted to ivari and Manulife in support of the subject transactions, most of which he personally signed.

306. With M.T., the transfer forms stated that S&C Hiller's relationship to M.T. was "partner", which was not the case. The transaction was security for a loan to the Former Agency.

307. With C.M., the transfer forms stated that the relationship between C.M. and S&C Hiller was "partners", which was not the case. The transaction was security for a loan to the Former Licensee and his wife personally and in exchange for them taking care of C.M. in her old age.

308. With D.D., the transfer forms indicated that there was no money or other consideration exchanged between the new owner and current owner for the ownership change. While the Former Licensee disagreed that there was consideration, the promise of partnership and the purchase of real property clearly meets the definition of consideration: the transfer was not gratuitous.

309. Furthermore, on the Former Licensee's evidence, it was also an error for A.M. to submit paperwork changing him to the advisor of record on D.D. Co's policy, which error he never corrected.

310. With P.R., the Former Licensee did not sign the transfer paperwork as the advisor of record, which he was, and signed only on behalf of S&C Hiller.

311. With R.C., the paperwork in support of the transfer of ownership shows the relationship to the insured was being "business partners" and the relationship to the current owner as "business partners". Neither of these descriptions are accurate. There was no insurable interest between S&C Hiller and the three insureds, and the Former Licensee agreed that stating that the purpose of the insurance was "partnership" was an error and that he should have indicated the relationship as "lender" or something else (as he did with the R.C. BMO policy), as it was really security for a loan. All of this is problematic when dealing with insurers (in addition

to the potential problems that may arise when lending money to a client which has already been addressed under the conflict of interest discussion, above).

312. There were other errors on the R.C. paperwork as it showed that S&C Hiller Family Trust was the payor, but the Former Licensee's evidence was there was no such entity and that it was S&C Hiller which was the payor.

313. While it sounds like there were internal issues at both ivari and Manulife in processing the transactions when they should not have done so, this does not absolve the Former Licensee of responsibility. The prohibition by the insurance companies on engaging in business with clients and trafficking of policies shows how these transactions are not in the usual practice of the business of insurance.

314. Even if the Hearing Committee accepts the Former Licensee's position that these were errors, this is not a single error or miscommunication. These were multiple mistakes on different types of forms to two insurers over a period of 11 years.

315. While the Hearing Committee accepts that the Former Licensee disclosed his interest in S&C Hiller to ivari and Manulife, it finds that he breached section 8 of the Code by not competently completing the necessary paperwork and providing full and accurate information to insurance companies.

1(e) Failing to comply with the Code of Conduct Section 13 (Compliance with Governing Legislation and Council Rules)

316. The Hearing Committee has already found that the Former Licensee failed to comply with Council Rules, which, in turn, is a breach of section 13 of the Code; however, the Hearing Committee has not considered the breach of section 13 of the Code in its sanctioning of the Former Licensee as to do so would be duplicative.

1(f) Failing to comply with the Code of Conduct Conflict of Interest Guidelines for Insurance Agents, Adjusters and Salespersons

317. The Hearing Committee has already found at 1(e) that the Former Licensee failed to comply with the Code at section 7, which incorporates the Conflict of Interest Guidelines for Insurance Agents. To find a separate breach of the Conflict of Interest Guidelines would be duplicative.

1(f) Failing to Comply with the Code of Conduct Sections 3 (Trustworthiness) and 5 (Competence)

318. In closing submissions, Council advanced that the Former Licensee had also generally breached other sections of the Code, namely section 3 (Trustworthiness) and 5 (Competence).

319. "Trustworthiness" is identified in the wording of paragraph 1 of the Amended Notice of Hearing and has been addressed in the findings of paragraphs 1(a) and (b), above.

320. "Competence" was not identified in the wording of paragraph 1 of the Amended Notice of Hearing. The Hearing Committee finds that the wording of paragraph 1(g), that the hearing is to determine whether the Former Licensees failed to act in accordance with Council's Code "in any other manner", is not sufficiently detailed or particularized such that the Hearing Committee can fairly determine the issue.

321. The Hearing Committee acknowledges and agrees with 5.2 of the Code that competent conduct is characterized by the application and of knowledge and skill in a manner consistent with the usual practice of the business of insurance in the circumstances, and that licensees must continue education in insurance to remain current in skills and knowledge.

322. The Hearing Committee had concerns with aspects of the Former Licensee's practice as set out above, namely advancing a transaction for R.C. where there was no insurable interest, failing to document the terms of the policy transfers and payment of premiums, failure to read Council's Rules or Code, errors on paperwork and failure to supervise employees of the Former Agency; however, a breach of section 5 of the Code was not specifically charged and, furthermore, given the Hearing Committee's findings with respect to paragraphs 1(d) and (e) of the Amended Notice of Hearing, to find a breach of this section may be duplicative.

Conclusions on Findings

323. In sum, the Hearing Committee finds that with respect to the allegations in the Amended Notice of Hearing, the Former Licensee:

    i. breached the Code at sections 3 (Trustworthiness) and 4 (Good Faith) by engaging in the trafficking of life insurance policies for M.T., C.M., P.R.

and D.D./D.D. Co., or in the alternative, engaging in transactions for M.T., C.M., P.R. and D.D./D.D. Co. where the Former Licensee was in a conflict of interest;

ii. breached the Code at sections 3 (Trustworthiness) and 4 (Good Faith) by arranging for the transfer of ownership of R.C.'s existing life insurance policies to S&C Hiller, a company owned by the Former Licensee and his spouse;

iii. breached Council Rule 7(9) (to properly record insurance transactions and related financial affairs);

iv. breached the Code at section 7 (Usual Practice: Dealing with Clients), including the Conflict of Interest Guidelines; and

v. breached the Code at section 8 (Usual Practice: Dealing with Insurers),

and, in turn, breached Council Rule 7(8) (compliance with the Code) and the Code at section 13 (Compliance with Governing Legislation and Council Rules).

324. The Hearing Committee accepts that the Former Licensee has likely provided strong advice and performed well for many happy clients over the years. The reference letters included at Exhibit 2 speak to this. Unfortunately, he fell short of Council's requirements with his advice and his actions on these five particular transactions. The glowing reviews of other clients do not assist the Former Licensee on findings as with respect to Council's requirements on the transactions involving M.T., C.M., D.D./D.D. Co., P.R. and R.C.

325. Even if M.T., C.M., D.D., P.R. and R.C. were happy and to date there has been no actual harm, the transactions were prohibited because of the potential risk and potential harm. The Former Licensee ought to have been aware of this, and the Hearing Committee is troubled by the fact that even at the conclusion of the hearing he did not seem to appreciate this. The lack of actual harm is a lack of aggravating factor that the Hearing Committee has considered in assessing penalty.

326. The Hearing Committee strongly encourages the Former Licensee to extricate himself from this situation immediately, whether that is seeing that the policies are cancelled, returned to the original owners, payors and beneficiaries and/or ensuring that C.M., D.D./D.D. Co., P.R. and R.C. get the necessary independent legal and financial advice as set out in Council's conflict of interest guidelines. If the clients

do not want the policies or to get the necessary advice, the Former Licensee will have to decide how to handle the situation, which may prove to be difficult as he is no longer licensed.

Penalty

327. The Hearing Committee was not persuaded by the Former Licensee's submission that if it found breaches as alleged that there should not be any sanction imposed. This is not consistent with the principles of sentencing or the facts of this case.

328. The Hearing Committee assesses the appropriate penalty for the misconduct in this matter in the public interest. Professor James T. Casey, author of *The Regulations of Professions in Canada*, refers to some of the factors to be considered with respect to establishing an appropriate penalty in a professional regulatory matter which is routinely relied upon by hearing committees appointed under the Act:

> 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.

329. Similarly, 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.

330. Although the penalties and range of sentencing in other cases is a consideration, at the same time the Hearing Committee is not bound by precedent.

331. Council identified several aggravating factors in assessing penalty, the central ones being the age and experience of the Former Licensee and the number of breaches over a lengthy period of time.

332. Council also argued that the Former Licensee's lack of admission or acknowledgement of wrongdoing and failure to keep apprised of Council's Rules should be aggravating factors. but the Hearing Committee's view is that the absence of any admissions or remedial education are more properly characterized as a lack of mitigating factors.

333. The Hearing Committee accepts that there are also some mitigating factors present in assessing penalty, the central ones being that the Former License has no disciplinary history, has a long unblemished record of professional service and tendered evidence of his good character. Having said that, the Hearing Committee has given the reference letters limited weight considering that the authors did not speak to them and at least some of them were prepared in accordance with a template or sample letter distributed by the Former Licensee.

Prohibition on Application

334. The Former Licensee has not been licenced with Council since May 2021, when he resigned his licences across Canada.

335. Council sought an order that the Former Licensee be prohibited from reapplying for any licence with Council for a period of four years. The precedent decisions presented by Council (*Braun,* December 2019; *Matthews,* 2008; *Phovixayboulom,* February 2018; *Gan,* January 2021; and *Johl*, April 2015) ranged from supervision for a period of 24 months (*Johl*), suspension for one year (*Phovixayboulom*) to cancellation of a licence for five years (*Braun*). The hearing committee in *Matthews* found that the licensee was unsuitable to hold a licence and concluded it would not consider an application from her for a period of three years, and in *Gan* the licensee was subject to supervision for a period of 24 months.

336. The Former Licensee argued that there was no actual harm to clients and that there should not be a prohibition on application but rather a period of supervision if/when he reapplies to Council for a licence. The cases submitted by the Former Licensee which he argued were more applicable than Council's cases, *Cheng* and *Ip,* both intended decisions from March 2022, did not include any period of supervision,

suspension, cancellation or prohibition on reapplying. The more serious cases of *Wong,* an intended decision from January 2022, and *Kandola*, an intended decision from February 2022, included a period of cancellation with no reapplication for three years and a prohibition on application for three years, respectively.

337. The Hearing Committee agrees that, to date, there does not appear to be actual harm to clients; however, that is not the determinative factor. There was, and remains, a potential risk to C.M., D.D., P.R. and R.C. and the Former Licensee has committed multiple breaches over a period of 11 years. The fact that he was not aware of his wrongdoing, or that the insurers did not stop him, does not mean that he is not in breach of Council's Rules and requirements.

338. To fulfil the objectives of professional discipline and consistent with the authorities which were presented, the Hearing Committee finds that in this case there is conduct worthy of sanction and there should be a period of time which the Former Licensee is prohibited from re-applying for a licence with Council. A period of supervision should he choose to reapply is not sufficient. There needs to be specific and general deterrence and the need to maintain public confidence that licensees are not permitted to simply do what they think is best, even if it results in a net gain for clients, particularly when some of those actions are in direct contradiction to Council's requirements and benefit a licensee. Council's Rules and Code are in place for a reason and licensees must follow them to protect clients from the risk of harm, even if that harm has not yet materialized or may never materialize.

339. The Hearing Committee orders that the Former Licensee is prohibited from making any insurance licence application to Council for a period of four years from the date of this order. The Hearing Committee acknowledges that this is a significant period of time. It is of the view that this period of time is necessary in order to satisfy the principles of sentencing.

340. The Hearing Committee notes that should the Former Licensee choose to reapply after a period of four years, he will not automatically be granted a licence. He will need to meet the requirements of licensure at the applicable time.

Remedial Education

341. There was no real dispute between the parties that the Former Licensee should complete remedial education prior to any future application to Council for a licence.

342. Council identified the Rules course offered by Advocis and Ethics and the Insurance Professional course offered by the Insurance Institute and the Former Licensee agreed with these selections and expressed an interest in doing so whether or not he ever reapplied for a licence.

343. Given the Hearing Committee's findings on the Former Licensee's breach of Council's Rules, his statement that he had not reviewed Council's Rules, and the Hearing Committee's findings with respect to conflicts of interest and the Former Licensee's lack of understand as to why the arrangements were problematic, the Hearing Committee finds that the courses identified by Council are appropriate courses for the Former Licensee to take prior to any application to become re-licenced with Council. The Hearing Committee encourages the Former Licensee to take them whether or not he intends to become relicensed to better understand the issues as identified by the Hearing Committee. If taken, these courses are to be at the Former Licensee's expense.

Fine Against the Former Licensee

344. Council submitted that the Former Licensee ought to be subject a fine of $10,000, the maximum fine permissible under the Act at the relevant time. In support of this submission, Council identified five precedent cases (*Braun,* December 2019; *Matthews,* 2008; *Phovixayboulom,* February 2018; *Gan,* January 2021; and *Johl*, April 2015), two of which assessed a fine against the licensee in the amount of $5,000 (*Phovixayboulom* and *Johl*); and three of which assessed a fine against the licensee in the amount of $10,000 (*Braun*, *Matthews,* and *Gan*).

345. The Former Licensee argued that there should not be a fine, but if there is, it should be $2,500 which is "more appropriate in the circumstances" as Council's precedent authorities concerned more serious conduct. The Former Licensee provided two intended decisions (*Cheng,* March 2022 and *Ip,* March 2022) where the licensees were fined $2,000, and which the Former Licensee submitted were more comparable to the circumstances in this matter.

346. The Hearing Committee has reviewed the precedent decisions provided by Council and the Former Licensee. None are exactly on point and, in any event, as with all aspects of assessing penalty, the Hearing Committee is not bound by precedent.

347. The Hearing Committee finds that the Former Licensee ought to be fined for his involvement in the five transactions, but that the conduct is not so egregious as to warrant the maximum possible fine under the Act. The Former Licensee was wrong about his obligations to clients, insurers and to Council, and he took steps which benefitted himself.

348. The Hearing Committee finds that $2,000 is not a significant enough fine considering the number of transactions that were offside and the number of breaches committed by the Former Licensee.

349. In *Cheng,* there was a single policy at issue. In *Ip,* there were two policies at issue.

350. In Council's precedent cases, the conduct was, in most cases, more egregious than the conduct here as it concerned actual harm to clients, findings of intent to mislead, etc.

351. The Hearing Committee acknowledges the mitigating factors present in this case, which are largely balanced with the aggravating ones.

352. The Hearing Committee assesses a fine against the Former Licensee in the amount of $7,500, payable within 180 days of this order.

Fine Against the Former Agency

353. With respect to the Former Agency, it did not request or participate in this hearing. Council submitted that the Former Agency ought to be subject to a fine separate and apart from any fine assessed against the Former Licensee and that the Former Agency ought to be fined $20,000, the maximum permissible under the Act.

354. Council submitted, and the Hearing Committee accepts, that the conduct of the staff of the Former Agency in the five transactions was problematic in some respects.

355. Council did not make any submissions or identify any authority which supported the assessment of the maximum possible fine under the Act.

356. The Former Licensee took the position that the Former Agency ought to be fined $5,000. No authority was supplied for this position, or submissions on how it compared to the $2,500 fine that the Former Licensee submitted should be assessed

against himself.

357. It was slightly unusual for the Former Licensee to be making submissions on behalf of the Former Agency when the Former Licensee had sold it and the Former Agency was not represented at the hearing, but the Hearing Committee acknowledges the general submission that something less than the maximum fine ought to be assessed as against the Former Agency.

358. The Hearing Committee is of the view that it is appropriate for the Former Agency to be fined in addition to the Former Licensee. The Former Agency and its employees were involved in these problematic transactions and benefitted from them.

359. The Hearing Committee does not accept Council's position that the maximum possible fine under the Act is appropriate as against the Former Agency in the circumstances. It agrees with the Former Licensee's submission that the Former Agency has culpability alongside the Former Licensee's blameworthiness. The Hearing Committee finds that although in this case the Former Licensee and the Former Agency were essentially one and the same by virtue of the ownership and employment structure, the Former Agency is a distinct legal entity and had an important supervisory and oversight function and its staff were involved in these problematic transactions. It was equally, if not more so, culpable in the transactions as the Former Licensee.

360. The Hearing Committee assesses a fine against the Former Agency in the amount of $15,000, which is double the amount of the fine assessed against the Former Licensee. It is payable within 180 days of the date of this order.

Costs

361. Council also sought an order that the Former Licensees pay its investigation costs and that the Former Licensee pay the costs of the hearing.

362. The investigation costs were identified by Council as being $2,062.50. The Former Licensee did not take any issue with this amount. The Hearing Committee accepts this amount as Council's investigative costs and orders that the Former Licensees shall pay them on a joint and several basis within 180 days of this order and as a requirement of any future application by the Former Licensee to Council for a licence.

363. With respect to hearing costs, Council sought them in an amount "to be determined", payable by the Former Licensee within 180 days of the order and as a requirement of any future application to Council for a licence.

364. The Former Licensee responded that the sanctions in the intended decision were overly harsh and punitive and had the penalty been less severe, a hearing may not have been necessary and no costs were warranted. The Former Licensee also sought that hearing costs be payable in equal proportions between the Former Licensees.

365. There evidently have been discussions between the parties with respect to costs and this amount was not identified to the Hearing Committee.

366. As 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.

367. As the Former Agency did not request or participate in this hearing, it is not fair that it bear the burden of any costs associated with it.

368. The Former Licensee has not identified any issues with respect to hearing costs, or identified any hardship associated with paying the hearing costs.

369. The legislation permits the Former Licensee to request a hearing following an intended decision. He exercised that right, and there are costs associated with doing so. The members of the industry who have not committed any misconduct ought not to bear the full costs of this contested, multi-day hearing.

370. The Hearing Committee orders that the Former Licensee is to be responsible for the costs of the hearing, in accordance with the Hearing Costs Assessment Schedule and as a requirement for any future application to Council for a licence.

371. The amount of hearing costs is unknown to the Hearing Committee. Given the

Former Licensee's submission about a reduction in costs to the amount originally proposed (which amount is also unknown to the Hearing Committee), Council is to provide the amount of hearing costs it is seeking to the Former Licensee within five days of delivery of these Reasons for Decision. If for some reason the Former Licensee disputes the amount of costs sought by Council and cannot agree with Council as to the sum owing, the Former Licensee may make written submissions to the Hearing Committee on the quantum, which written submissions shall be provided to the Hearing Committee within 10 days of Council providing the amount of hearing costs to the Former Licensee.

ORDERS OF THE HEARING COMMITTEE

372. In light of the above, the Hearing Committee makes the following orders:

(a) The Former Licensee is prohibited from making any insurance licence application to Council for a period of four years from the date of this order;

(b) At his own expense, the Former Licensee is required to successfully complete Council's Rules course currently offered by Advocis and the Ethics and the Insurance Professional course offered by the Insurance Institute as a requirement of any future application to Council for a licence;

(c) The Former Licensee is fined $7,500, due and payable within 180 days of the date of this order;

(d) The Former Agency is fined $15,000, due and payable within 180 days of the date of this order;

(e) The Former Licensees, jointly and severally, are ordered to pay Council's costs associated with the investigation in the amount of $2,062.50;

(f) The Former Licensee is ordered to pay Council's costs associated with the hearing in an amount to be determined;

(g) 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 any future applications to Council for a licence; and

(h) Council is to provide the Former Licensee with the amount of hearing costs it seeks within five days of the delivery of these Reasons for Decision. If, upon receiving the amount of hearing costs from Council the Former Licensee disputes the amount and cannot arrive at an agreement with Council, the Former Licensee may make further written submissions on the quantum of costs to the Hearing Committee within 10 days of Council providing the Former Licensee with the amount of costs it is seeking.

Dated in Vancouver, British Columbia, on the 12th day of September, 2022.

Chamkaur Cheema
Chair of the Hearing Committee