

In the Matter of

The *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the “Act”)

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

DON WOTHERSPOON & ASSOCIATES (VANCOUVER) LTD.
(the “Agency”)

and

TROY JOHN WOTHERSPOON
(the “Nominee”)

ORDER

As Council made an intended decision on June 15, 2015, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Agency and the Nominee with written reasons and notice of the intended decision dated July 16, 2015; and

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

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

1. The Nominee is fined \$1,000.00.
2. The Agency is assessed Council’s investigative costs of \$875.00.
3. A condition is imposed on the Nominee’s general insurance licence that requires him to pay the above-ordered fine no later than **November 5, 2015**. If the Nominee does not pay the ordered fine in full by this date, the Nominee’s general insurance licence is suspended as of **November 6, 2015**, without further action from Council and the Nominee will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

Order
Don Wotherspoon & Associates (Vancouver) Ltd. and Troy John Wotherspoon
9023832-11770 and 62493-11770
August 5, 2015
Page 2 of 2

4. A condition is imposed on the Agency's general insurance licence that requires it to pay the above-ordered investigative costs no later than **November 5, 2015**. If the Agency does not pay the ordered investigative costs in full by this date, the Agency's general insurance licence is suspended as of **November 6, 2015**, without further action from Council and the Agency will not be permitted to complete any annual filing until such time as the ordered investigative costs are paid in full.

This order takes effect on the **5th day of August, 2015**.



Brett Thibault
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

DON WOTHERSPOON & ASSOCIATES (VANCOUVER) LTD.
(the “Agency”)

and

TROY JOHN WOTHERSPOON
(the “Nominee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Nominee and the Agency acted in compliance with the requirements of the Act.

As part of Council’s investigation, on April 13, 2015, a Review Committee (the “Committee”) met with the Nominee and a licensee employed at the Agency (the “Licensee”) to discuss allegations that the Nominee and the Licensee, after being alerted by Council, failed to remove a website advertising an entity engaged in insurance activities that was neither a trade name for the Agency nor licensed in British Columbia.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Nominee and the Licensee, an investigation report was distributed for review. A discussion of this report took place at the meeting, and the Nominee and the Licensee were provided an opportunity to make further submissions. Having reviewed the investigation materials, and after discussing this matter with the Nominee and the Licensee, the Committee prepared a report of its meeting for Council.

The Committee’s report, which included a recommended disposition, along with the aforementioned investigation report, were reviewed by Council at its June 15, 2015 meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

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

FACTS

The Agency has held a general insurance licence since November 30, 1993.

The Nominee has held a general insurance licence since April 3, 1987. He became an Agency director on November 4, 2003, and the Agency's nominee on January 10, 2005.

The Licensee was first licensed as a Level 1 general insurance salesperson in October 2000. She became a Level 3 general insurance agent in September 2007, and joined the Agency on June 12, 2008.

During a May 2012 inspection at the Agency, Council staff advised the Licensee and the Nominee of concerns with a website, Insurance On The Go, belonging to the Licensee. In July 2012, both the Licensee and the Nominee were advised, in writing, by Council that the website was purporting to engage in insurance activities without an insurance licence. The letter to the Licensee stated that the use of the name Insurance On The Go must cease immediately. The letter to the Nominee restated the concern, and noted that the Nominee was responsible for the insurance activities of the Agency's licensees.

The Licensee advised that her ex-husband had full rights and control of the website. The Licensee stated that she spoke with her ex-husband and understood that he would remove the website. The Nominee submitted that, at some point after the May 2012 inspection, he searched for the website and could not find it, so he assumed it had been removed.

During a follow-up inspection of the Agency on November 14, 2014, the website was found to still be functional. The Nominee stated that he had mentioned it to the Licensee, but never followed up. The Nominee provided assurances that he would request that the Licensee take down the website.

The website remained active until February 10, 2015, at which time the Licensee had the website removed. The Licensee advised that she subsequently learned that the website provider had been inadvertently reactivating the website each year when she paid her annual fee for the maintenance of her email program.

The Nominee submitted that he was not “*tech savvy*” and should have taken more steps to look into the status of the website.

Due to a separation from her ex-husband, who controlled maintenance of the website, the Licensee had not been able to gain access to the website until recently.

ANALYSIS

With respect to the Licensee, Council accepted her submissions that she believed the website had been removed after November 2012, and noted that she acted immediately when she became aware it was still functioning in February 2015. The Committee determined that disciplinary action was not warranted against the Licensee.

However, Council determined that the Nominee’s reaction to Council’s concern about the Licensee’s website was insufficient, given the improper content of the website and the Nominee’s responsibility to ensure that the Agency’s licensees acted in accordance with the usual practice of the business of insurance.

Council found that the Nominee failed to take any steps between November 2014 and February 10, 2015 to deal with the matter. Council determined that the Nominee should have been diligent and ensured the website was removed, but in fact it appeared he did not take Council’s concerns seriously.

Council determined that a fine against the Nominee would be appropriate in the circumstances, and that the Agency should bear Council’s investigative costs.

INTENDED DECISION

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

1. Fine the Nominee \$1,000.00.
2. Assess the Agency Council’s investigative costs of \$875.00.

The Nominee and the Agency are advised that should the intended decision become final, the fine and investigative costs will be due and payable within 90 days of the date of the order.

The Nominee is advised that failure to pay the fine within the 90 days will result in the automatic suspension of his general insurance licence, and the Nominee will not be permitted to complete any annual filing until such time as the fine is paid in full.

The Agency is advised that failure to pay the investigative costs within the 90 days will result in the automatic suspension of its general insurance licence, and the Agency will not be permitted to complete any annual filing until such time as the investigative costs are paid in full.

The intended decision will take effect on **August 5, 2015**, subject to the Nominee's and the Agency's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Nominee or the Agency wishes to dispute Council's findings or its intended decision, the Nominee or the Agency may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Nominee or the Agency must give notice to Council by delivering to its office written notice of this intention by **August 4, 2015**. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director.

If the Nominee or the Agency does not request a hearing by **August 4, 2015**, the intended decision of Council will take effect.

Even if this decision is accepted by the Nominee and the Agency, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464
Fax: 250-356-9923
Email: FinancialServicesTribunal@gov.bc.ca

Intended Decision

Don Wotherspoon & Associates (Vancouver) Ltd. and Troy John Wotherspoon

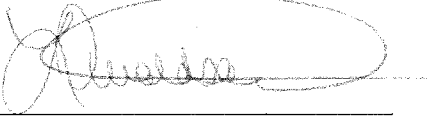
9023832-I1770 and 62493-I1770

July 16, 2015

Page 5 of 5

Dated in Vancouver, British Columbia, on the **16th day of July, 2015.**

For the Insurance Council of British Columbia



Gerald Matier

Executive Director

604-695-2001

gmatier@insurancecouncilofbc.com

GM/gh