In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

MAXXAM INSURANCE SERVICES INCORPORATED
(the "Agency")

and

ALLAN WILFRED TOLSMA
(the "Nominee")

ORDER

As Council made an intended decision on February 9, 2016, pursuant to sections 231 and 236 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 March 23, 2016; 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 and 236 of the Act, Council orders:

1. The Agency is fined $10,000.00.
2. The Nominee is fined $2,000.00.
3. A condition is imposed on the Agency's general insurance licence that requires it to pay the above-ordered fine no later than **July 12, 2016**. If the Agency does not pay the ordered fine in full by this date, the Agency's general insurance licence is suspended as of **July 13, 2016**, without further action from Council and the Agency will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

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4. A condition is imposed on the Nominee's general insurance licence that requires him to pay the above-ordered fine no later than **July 12, 2016**. If the Nominee does not pay the ordered fine in full by this date, the Nominee's general insurance licence is suspended as of **July 13, 2016**, 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.

This order takes effect on the **12th day of April, 2016**.



Brett Thibault
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

MAXXAM INSURANCE SERVICES INCORPORATED
(the "Agency")

and

ALLAN WILFRED TOLSMA
(the "Nominee")

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

As part of Council's investigation, on December 7, 2015, a Review Committee (the "Committee") met with the Nominee, and the accountant at the Agency (the "Accountant") to discuss allegations that the Agency failed to notify Council within five business days of the withdrawal of a licensee's authority to represent ("ATR") the Agency, in contravention of Council Rule 7(3)(b).

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

The Committee's report, along with the aforementioned investigation report, were reviewed by Council at its February 9, 2016 meeting, where it was determined the matter should be disposed of in the manner set out below.

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PROCESS

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

FACTS

The Agency has been licensed as a general insurance corporation since August 2007. The Nominee has been licensed for approximately 32 years and has been the Nominee of the Agency since March 2010.

Between May 1, 2008 and June 27, 2015, the Agency failed, on eight separate occasions, to notify Council within five business days following the termination of a licensee's ATR with the Agency.

Council sent reminder letters to the Agency and the Nominee in September 2011, and in October 2012, as well as to the Agency's former nominee in March 2009, reminding the Agency of its obligations under Council Rule 7(3). After the third reminder letter in October 2012, there were six subsequent breaches of Council Rule 7(3).

In October 2014, the Nominee wrote to Council to explain that the Agency had a lack of proper monitoring and reporting when a licensee ceased to represent the Agency, but that the Agency had now implemented new procedures to prevent any further violations. There were two subsequent breaches of Council Rule 7(3) after the Nominee wrote to Council.

Some of the breaches of Council Rule 7(3) occurred because a former employee at the Agency, who was responsible for ensuring Council was notified when a licensee's ATR was withdrawn, had left the Agency. There were no other procedures in place to ensure the Agency complied with Council Rule 7(3) or that the procedure was being followed.

The Nominee stated it has now implemented new procedures to avoid any further breaches of Council Rule 7(3)(b). These procedures make the Accountant responsible for ensuring Council receives notification, in a timely manner, when a licensee's ATR is withdrawn. Notification to Council will form part of the Agency's process when a licensee departs the Agency.

The Nominee acknowledged that he has not yet developed an audit process to ensure the new procedure will be followed going forward.

ANALYSIS

Council found that the Agency failed to notify Council in accordance with Council Rule 7(3) on eight occasions. Council determined this occurred because there was a lack of procedures and proper oversight in place at the Agency. Council found the Agency's breaches particularly aggravating because the most recent breaches occurred after it had received multiple reminder letters from Council.

Further, the two most recent breaches occurred after the Nominee had assured Council, in October 2014, that a process was in place to prevent further breaches. In fact, there were no procedures in place. Although the Agency has now taken steps to implement a new process to prevent future breaches, this action does not mitigate the past breaches.

Council noted the Agency, which has 43 licensees, received three reminder letters regarding its obligations under Council Rule 7(3), and breached Council Rule 7(3) on eight occasions. Six breaches occurred after the Agency received reminder letters, and two of these breaches occurred after the Nominee assured Council that procedures were in place to prevent future breaches.

Accordingly, Council determined that disciplinary action was warranted against the Agency for the multiple breaches of Council Rule 7(3)(b), as well as against the Nominee for his failure to have appropriate procedures in place, particularly in light of his assurances to Council in October 2014.

In its determination of an appropriate disposition, Council considered its prior decisions of *The Insurance Services Department Of London Drugs Limited*, *World Financial Group Insurance Agency of Canada Inc.*, *BCAA Insurance Agency Ltd.*, *Aon Reed Stenhouse Inc.*, as well as *S. Phillips and ClaimsPro LP*.

INTENDED DECISION

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

1. Fine the Nominee $2,000.00.

2. Fine the Agency $10,000.00.

The Nominee and the Agency are advised that should the intended decision become final, the fines 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 fine 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 fine is paid in full.

The intended decision will take effect on **April 12, 2016**, 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 and/or the Agency wish to dispute Council's findings or its intended decision, the Nominee and/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 and/or the Agency must give notice to Council by delivering to its office written notice of this intention by **April 11, 2016**. 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 and/or the Agency do not request a hearing by **April 11, 2016**, 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

Dated in Vancouver, British Columbia, on the **23rd day of March, 2016**.

For the Insurance Council of British Columbia



Gerald Matier
Executive Director
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gmatier@insurancecouncilofbc.com

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