

In the Matter of

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

and

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

and

**PETER MACDONALD INSURANCE AGENCIES LTD.
(the “Agency”)**

and

**PETER SUTHERLAND MACDONALD
(the “Licensee”)**

and

**SYLVIA MACDONALD
(the “Nominee”)**

ORDER

As Council made an intended decision on December 16, 2014, 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, Nominee, and Licensee with written reasons and notice of the intended decision dated January 15, 2015; and

As neither the Agency, Nominee, nor Licensee 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. A condition is imposed on the Nominee’s general insurance licence that requires the Nominee to successfully complete Council’s Level 3 seminar available through the Insurance Brokers Association of British Columbia (“IBABC”), as well as an errors and omissions (“E&O”) course acceptable to Council, on or before **May 4, 2015**.

Order

Peter MacDonald Insurance Agencies Ltd., Peter Sutherland MacDonald, and Sylvia MacDonald

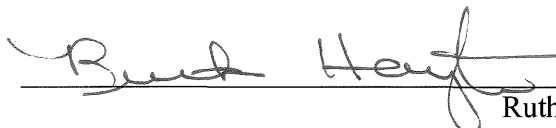
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2. A condition is imposed on the Nominee's general insurance licence that if the Nominee does not successfully complete the above-ordered courses on or before **May 4, 2015**, the Nominee's general insurance licence is suspended as of **May 5, 2015**, without further action from Council and the Nominee will not be permitted to complete any annual filing until such time as the ordered courses are successfully completed.
3. A condition is imposed on the Licensee's general insurance licence that requires him to successfully complete Council's Level 3 seminar available through IBABC, as well as an E&O course acceptable to Council, on or before **May 4, 2015**.
4. A condition is imposed on the Licensee's general insurance licence that if the Licensee does not successfully complete the above-ordered courses on or before **May 4, 2015**, the Licensee's general insurance licence is suspended as of **May 5, 2015**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered courses are successfully completed.
5. The Agency is fined \$7,800.00.
6. The Agency is assessed Council's investigative costs of \$1,475.00.
7. A condition is imposed on the Agency's general insurance licence that requires it to pay the above-ordered fine and investigative costs no later than **May 4, 2015**. If the Agency does not pay the ordered fine and investigative costs in full by this date, the Agency's general insurance licence is suspended as of **May 5, 2015**, without further action from Council and the Agency will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

This order takes effect on the **4th day of February, 2015**.



Ruth Hoyte
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

PETER MACDONALD INSURANCE AGENCIES LTD.
(the “Agency”)

and

PETER SUTHERLAND MACDONALD
(the “Licensee”)

and

SYLVIA MACDONALD
(the “Nominee”)

INTRODUCTION

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

As part of Council’s investigation, on October 20, 2014, a Review Committee (the “Committee”) met with the Licensee and Nominee to discuss allegations that a Level 1 general insurance salesperson at the Agency (the “Agency Salesperson”) had acted contrary to her licence restrictions; the Agency was holding itself out in a manner that could be misleading to clients; and the Agency failed to maintain the minimum errors and omissions (“E&O”) insurance required by Council Rules.

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

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The Committee's report, which included a recommended disposition, along with the aforementioned investigation report, were reviewed by Council at its December 16, 2014 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 Licensee, Nominee, and Agency of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Licensee, Nominee, and 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 Licensee, Nominee, and Agency.

FACTS

The Agency has been licensed in British Columbia since November 1981. The Agency originally held both a general insurance licence and a life and accident and sickness insurance licence until November 1999, after which the Agency has only held a general insurance licence.

The Nominee has been continually licensed, with authorization to represent the Agency, for general insurance since 1995. The Nominee also held a life and accident and sickness insurance licence from 1981 to 1999. She has always been a nominee at the Agency, and is one of its two directors. The Nominee works at the Agency two days a week and is semi-retired. She relies on the Licensee for the day-to-day management of the Agency, although she is still involved in all major decisions and employee training.

The Licensee was first licensed as a Level 1 general insurance salesperson, with authorization to represent the Agency, in October 1997. He obtained a Level 2 general insurance agent licence in January 2002, and a Level 3 general insurance agent ("Level 3 agent") licence in January 2005. The Licensee is the Agency's manager.

The Agency Salesperson was first licensed in February 2007, and has worked solely for the Agency.

Council received a complaint in December 2013 from a former Agency employee that the Agency was allowing the Agency Salesperson to sign binders representing confirmation of insurance, which were sent to lawyers.

Agency Salesperson Activity

An Agency inspection occurred on April 14, 2014. Approximately 30 personal lines files were reviewed during the inspection. On two of these files, the Agency Salesperson was found to have signed the insurance binders that were sent to lawyers.

The files inspected represent a small sample of the Agency's overall business. According to the Licensee, it was a common procedure at the Agency for the Agency Salesperson to sign these types of documents. It was acknowledged that the Agency Salesperson was trained by the Licensee.

The Licensee stated that he believed, and felt his belief was shared within the industry, that the practice of allowing Level 1 general insurance salespersons to sign binders is a "gray area", and that there was never any intention to ignore Council Rules or the licence restriction that exists on all Level 1 general insurance salespersons' licences. The Agency no longer permits the Agency Salesperson to sign binders of insurance.

Holding Out

The inspection also identified issues with how the Agency was holding itself out to the public. Material contained on the Agency's website and invoices, as well as in the Agency's reception area, suggested the Agency was engaged in the solicitation of life and accident and sickness insurance.

The Licensee acknowledged that the Agency has not held a life and accident and sickness insurance licence since 1999. The Agency has a referral agreement with an independent life agent, who leaves business cards in the Agency's client waiting area. The Agency's process is to refer any Agency client seeking information about life insurance on to the independent life agent. Other than the referral process, the Agency does not engage in any life insurance activity.

The Licensee submitted that once it was brought to his attention that items on the Agency website and on its invoices could be viewed as the solicitation of life insurance, the content was removed from both.

E&O Insurance

Council Rule 7(11) requires that:

... a licensee:

- (a) must maintain or be covered by E&O insurance, which extends to all activities as a licensed insurance agent, salesperson or adjuster, with:
 - (i) a minimum limit of \$1,000,000.00 per claim; and**

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(ii) a minimum aggregate limit of \$2,000,000.00;

During the inspection, the Agency's 2014 E&O insurance application and policy were reviewed, and it was found that the policy limits were \$1,000,000.00 per claim, with a \$1,000,000.00 annual aggregate limit, which is below the minimum required by Council Rule 7(11).

The Agency's E&O insurance coverage for the periods ending February 1, 2013 and February 1, 2014 was compliant with Council Rule 7(11).

In accordance with Council Rule 7(11), the Agency's licence was terminated on April 17, 2014, as a result of the Agency not maintaining the minimum required E&O insurance. The Agency immediately addressed the E&O insurance requirements by amending its E&O insurance policy, with it being reinstated retroactive to February 1, 2014. Upon doing so, the Agency reapplied for and was granted a general insurance licence.

The Licensee explained that when he was applying to renew the Agency's E&O insurance for 2014, he improperly selected the wrong aggregate limit on the E&O insurance application, and then did not check the policy when it was delivered.

The Licensee explained that he made a similar mistake in 2012. However, the insurer caught the error and provided the correct coverage.

The Licensee acknowledged that it was his error and responsibility. The Nominee was not involved in overseeing the Agency's E&O insurance applications.

ANALYSIS

Council found that by allowing the Agency Salesperson to sign binders of insurance as confirmation of insurance, the Agency permitted the Agency Salesperson to act in a manner contrary to the restrictions on her licence. Council determined the Agency's conduct in permitting the Agency Salesperson to sign binders of insurance, contrary to a licence restriction, was outside the usual practice of the business of insurance.

Council also found that the way the Agency was holding itself out to the public, by suggesting it was licensed to sell life insurance products when it was not, was contrary to the usual practice of the business of insurance.

Council concluded that a lack of proper policies and procedures at the Agency, and an informal management system, contributed to the Agency's breaches. Council noted that since its inspection, the Agency has commenced a process of implementing training and management systems.

With respect to the Agency's E&O insurance, Council determined the Agency had breached Council Rule 7(11) by failing to have the minimum amount of E&O insurance from February 1, 2014 to April 17, 2014; by failing to notify Council within five business days of the Agency no longer being in compliance with Council Rule 7(11); and by continuing to engage in insurance activities without the required E&O coverage for over two months. Council accepted that the breach was not intentional, but noted that the failure to maintain E&O insurance was a further indication of the lack of oversight and attention to detail at the Agency.

In terms of penalty with respect to the E&O insurance breach, Council found that the penalty of a fine equal to approximately two times the Agency's annual E&O premium is appropriate in the circumstances, and in accordance with Council's precedent on the issue.

In light of the above-mentioned breaches, which appeared to arise from a lack of supervision and oversight, Council was concerned that the Nominee was not sufficiently involved in the oversight of the Agency. Council noted that the Licensee held a Level 3 agent licence, but, based on the above, questioned whether the Licensee was adequately carrying out his responsibilities as the day-to-day manager of the Agency.

To address its concerns, Council concluded it would be beneficial for the Licensee and Nominee to retake Council's Level 3 seminar, available through the Insurance Brokers Association of British Columbia ("IBABC"), as well as an E&O course.

Council determined the Agency should be assessed investigative costs.

INTENDED DECISION

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

1. Impose a condition on the Nominee's general insurance licence that requires her to successfully complete Council's Level 3 seminar, available through IBABC, as well as an E&O course acceptable to Council, within 90 days of the date of Council's order.
2. Impose a condition on the Licensee's general insurance licence that requires him to successfully complete Council's Level 3 seminar, available through IBABC, as well as an E&O course acceptable to Council, within 90 days of the date of Council's order.
3. Fine the Agency \$7,800.00.
4. Assess the Agency Council's investigative costs of \$1,475.00.

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The Nominee and Licensee are advised that should the intended decision become final, failure to successfully complete the required education set out in items 1 and 2 above within 90 days of the date of Council's order, will result in the automatic suspension of the respective insurance licence, and the affected licensee will not be permitted to complete any annual filing until such time as the required education is successfully completed.

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

The intended decision will take effect on **February 4, 2015**, subject to the Agency, Nominee, and Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If any of the licensees wish to dispute Council's findings or its intended decision, the licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the licensee must give notice to Council by delivering to its office written notice of this intention by **February 3, 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 a hearing has not been requested by **February 3, 2015**, the intended decision of Council will take effect.

Even if this decision is accepted by the licensees, 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:

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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 **15th day of January, 2015.**

For the Insurance Council of British Columbia



Gerald D. Matier

Executive Director

604-695-2001

gmatier@insurancecouncilofbc.com

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