

In the Matter of

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

and

The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
("Council")

and

GILBERT GOWL-CHUEN YEUNG
(the "Licensee")

ORDER

As Council made an intended decision on October 19, 2010, pursuant to sections 231, 236 and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated November 24, 2010; and

As the Licensee has 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 Licensee is fined \$1,000.00;
2. the Licensee is assessed Council's investigative costs of \$1,031.25; and
3. as a condition of this Order, the Licensee is required to pay the fine and investigative costs no later than **March 21, 2011**. If the Licensee does not pay the fine and investigative costs in full by this date, the Licensee's general insurance licence will be suspended as of **March 22, 2011**, without further action from Council and the Licensee 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 **21st day of December, 2010**.



Barbara MacKinnon, CAIB
Chairperson, Insurance Council of British Columbia

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)
respecting
GILBERT GOWL-CHUEN YEUNG
(the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether there was compliance by the Licensee with the requirements of the Act.

As part of Council’s investigation, on August 9, 2010, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss the Licensee’s improper disposal of insurance records.

The Committee was comprised of one voting and two non-voting members of Council, all of whom have significant experience in the insurance business. Prior to the Committee’s meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee was provided an opportunity to clarify the information contained therein and make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Committee made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee’s findings and recommended disposition, along with the aforementioned investigation report, was presented to Council at its October 19, 2010 meeting. At the conclusion of its meeting, Council accepted the Committee’s recommended disposition and determined that the matter should be disposed of in the manner set out below.

INTENDED DECISION PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231, 236 and/or 241.1 of the Act before taking any such action. The Licensee 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.

FACTS

Based on the information contained in the investigation report, Council made the following findings of fact:

Licensing and Employment Information:

1. the Licensee was first licensed with Council as a Level 1 general insurance salesperson on December 29, 2003;
2. the Licensee acquired a Level 2 general insurance agent's licence on June 8, 2004, and is presently licensed in that capacity;

Disposal of Insurance Records:

3. on December 24, 2009, a municipal recycling depot contacted the Insurance Corporation of British Columbia ("ICBC") to advise that they had found a bag of ICBC documents in a recycling bin located at a residential condominium complex in Richmond, British Columbia;
4. approximately 409 pages were found with information relating to 196 ICBC customers. The documents included vehicle registrations, copies of customers' identification, credit card slips and banking information;
5. the documents pertained to files from transactions completed between 2000 and 2006;
6. the documents were traced back to an insurance agency that was sold in December 2008;
7. the Licensee worked for the insurance agency associated with the documents at the material time;
8. the Licensee resides at the residential condominium complex where the documents were found;
9. after advising ICBC that the documents had been retrieved, the municipal recycling depot delivered the documents to ICBC;
10. ICBC stored and reviewed the documents and notified each of the affected clients about the matter;

11. at the time the insurance agency was sold and moved its operations to another location, the Licensee cleaned his workspace, removing his personal items and some of his clients' insurance records, all of which he took to his apartment;
12. the Licensee submitted that the insurance records were mainly ICBC Autoplan documents that clients had given him or which he had copied from transactions he processed for the clients while at work;
13. approximately one month after taking the records home, the Licensee cleaned his apartment and took four garbage bags out of his apartment. Two of the bags contained clothes and incidentals he planned to drop off at his mother's place. One of the bags contained personal documents that he intended to take to a recycling bin at his apartment building. The fourth bag contained the insurance records which he planned to take to his work for shredding;
14. the Licensee submitted that he placed three of the garbage bags in the trunk of his car and carried the fourth, which he believed contained his personal documents, to the recycling bin in his apartment building;
15. the Licensee submitted that he mistakenly placed the bag containing the insurance records in his apartment building's recycling bin. He did not realize the mistake until he arrived at work the same day and discovered he had brought the garbage bag filled with his personal documents;
16. the Licensee submitted that he called his wife at home and asked her to check the apartment building's recycling bin to see if the bag was still there. When he was told that the bag was gone, the Licensee contacted the recycling depot where the building's recycling bin would have been taken. He was subsequently told that the records could not be retrieved;
17. the Licensee believed that he could not do anything further. In his view, his client's privacy had not been compromised because the documents containing personal information had been recycled;
18. the insurance agency was unaware the Licensee had removed insurance documents from its office prior to moving locations and it understood that all ICBC documents had been properly transferred to the new owners of the agency;
19. the Licensee only learned that the documents had been found and returned to ICBC when a customer contacted him in January 2010, and mentioned that he had received a letter from ICBC regarding the disposal of his personal information;

20. after learning about the matter, the Licensee also contacted all of the affected customers;
21. there have not been any reported privacy or identity related issues arising out of the document disposal; and
22. the Licensee confirmed that he had been trained on proper care, control and disposal of customer information. He acknowledged that he had acted contrary to what he was taught. Early in his career, the Licensee maintained paper copies of all his insurance transactions for his own reference and at the request of certain customers. He submitted that he has since made an effort to become more "paperless".

LEGISLATION

Council Rule 7(8)
Licence Conditions
Applicable to All Classes of Licences

- (8) A licensee must comply with the Council's Code of Conduct, as amended from time to time.

Section 231 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Council may suspend, cancel or restrict licences and impose fines

- (1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee
- (a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,
 - (b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,
 - (c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
 - (d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,
 - (e) has contravened section 79, 94 or 177, or
 - (e.1) has contravened a prescribed provision of the regulations,

then the council by order may do one or more of the following:

- (f) reprimand the licensee or former licensee;
- (g) suspend or cancel the licence of the licensee;
- (h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
- (i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
- (j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;

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- (k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount
 - (i) not more than \$20 000 in the case of a corporation, or
 - (ii) not more than \$10 000 in the case of an individual.
- (2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.
- (3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.
- (3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.
- (4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
 - (a) were employed by that agent or adjuster at the time of the suspension, and
 - (b) remain employees of that agent or adjuster at the time of reinstatement, are also reinstated without the necessity of the council taking any action.

Section 236 of the Act

Part 7 – Administration of the Regulation of Financial Institutions

Division 2 – Insurance Council of British Columbia

Power to impose conditions

- (1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization permit or licence may
 - (a) impose conditions that the person considers necessary or desirable in respect of
 - (i) an order referred to in section 235(1),
 - (ii) a consent referred to in section 235(2),
 - (iii) a business authorization,
 - (iv) a permit issued under section 187(1), or
 - (v) a licence issued under Division 2 of Part 6, and
 - (b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.
- (2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.
- (3) Except
 - (a) on the written application or with the written permission of the holder, or
 - (b) in the circumstances described in section 164, 231 or 249(1), a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
 - (c) a business authorization is exercisable only on or before its issue date, or
 - (d) a permit under section 187(1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue datewith effect on and after that date.

Section 241.1 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Assessment of Costs

- (1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, or either or both of the following in accordance with the regulations:
 - (a) an investigation;
 - (b) a hearing.
- (2) Costs assessed under subsection (1)
 - (a) must not exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and
 - (b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing.
- (3) If a person fails to pay costs as ordered by the date specified in the order or by the date specified in the order made on appeal, if any, whichever is later, the commission, superintendent or council, as the case may be, may file with the court a certified copy of the order assessing the costs and, on being filed, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the court.

ANALYSIS

Council found the above mentioned facts constituted a breach of section 231(1)(b) of the Act in that the Licensee failed to act in a competent manner and in accordance with the usual practice of the business of insurance as required by Council Rule 7(8). In particular, Council found that the Licensee improperly disposed of insurance records and placed his client's personal information at risk in doing so.

Council concluded that the Licensee was responsible for placing insurance records in the recycling bin of a residential condominium building. As a result, the documents were discovered by a municipal recycling depot. ICBC was alerted to the matter immediately and it appears that no harm has been suffered by the clients implicated in the records. Council accepted that the Licensee had not intentionally disposed of the documents in an improper manner. However, Council found that the Licensee had acted negligently by failing to exercise sufficient care in handling the insurance records.

The Licensee knew of the importance of disposing insurance records properly. He had been trained to shred documents, avoid printing duplicate copies of transactions unnecessarily, and had enough experience in the business to appreciate the significance of protecting the privacy of his clients. Council believed that he was careless in placing copies of client documents from his office in an unmarked garbage bag and into his car with other unmarked garbage bags. Council determined that the Licensee ought to have known that his actions could lead to the risk of exposing confidential customer information.

Based on the above noted findings of fact, Council concluded that the Licensee had failed to demonstrate sufficient competence in this instance and found that his actions were not consistent with the usual practice of the business of insurance. As it relates to dealing with clients, usual practice requires a licensed agent to protect his or her client's interests and privacy. To that end, the Code of Conduct specifically requires the Licensee to hold all information acquired in the course of his professional relationship concerning the personal and business affairs of a client, in strict confidence. Council concluded that the Licensee had acted wholly outside of the usual practice in this regard.

Council also felt that the Licensee should have brought the matter to the attention of his former employer at the agency, where the documents had been produced. The Licensee was fortunate that the recycling depot made the discovery and immediately advised ICBC, such that no client appears to have suffered harm as a result of his error. Regardless of the outcome, Council determined the Licensee acted improperly by failing to notify the agency about the incident and as such, the agency did not have an opportunity to take any measures it deemed necessary to protect its customers.

In considering an appropriate disposition, Council reviewed its approach in cases involving insurance licensees who failed to maintain errors and omissions insurance as required. In those instances, Council had no tolerance for the misconduct as they felt the absence of errors and omissions insurance caused undue risk to the public. Further, even where the misconduct was isolated in nature and unintentional, Council imposed a fine, albeit at the lower end of the scale.

Council reasoned that this aforementioned perspective could be applied to this situation. Specifically, the Licensee put client information at risk through his carelessness and although it was unintentional and isolated behaviour, it should not be tolerated by Council. On this basis, Council felt that in order to address the deterrence principles, a fine should be imposed on the Licensee that would balance the need to send a message to the industry about the importance of protecting the privacy of client information, with the need to take into consideration the isolated nature of the Licensee's misconduct, that it was unintentional, and that no harm appeared to have occurred in the matter.

INTENDED DECISION

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

1. fine the Licensee \$1,000.00; and
2. assess the Licensee Council's investigative costs of \$1,031.25.

The Licensee is advised that should the intended decision become final, the above fine and costs which form part of the order, will be due and payable within 90 days of the date of the order. If the Licensee does not pay the ordered fine and costs by this date, the Licensees general insurance licence will be suspended without further action from Council.

The intended decision will take effect on **December 21, 2010**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Licensee wishes 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 **December 20, 2010**. 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 Licensee does not request a hearing by **December 20, 2010**, the intended decision of Council will take effect.

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Even if this decision is accepted by the Licensee, 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 www.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 **24th day of November, 2010.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

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