

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

SHEILAH ELIZABETH EGAN
(the "Licensee")

ORDER

As Council made an intended decision on January 15, 2013, 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 February 7, 2013; 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. A condition is imposed on the Licensee's general insurance licence that restricts her to only representing Coast Capital Insurance Services Ltd. until such time as she has accumulated an additional 12 months of active licensing.
2. The Licensee is fined \$2,500.00.
3. The Licensee is assessed Council's investigative costs of \$650.00.
4. A condition is imposed on the Licensee's general insurance licence requiring that she pay the above-ordered fine and investigative costs no later than **May 28, 2013**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's general insurance licence is suspended as of **May 29, 2013**, 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.

Order
Sheilah Elizabeth Egan
131936-1986
February 28, 2013
Page 2 of 2

This order takes effect on the **28th day of February, 2013.**



C. David Porter, LL.B., FCIP, CRM
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

SHEILAH ELIZABETH EGAN
(the “Licensee”)

INTRODUCTION

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

As part of Council’s investigation, on December 10, 2012, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss allegations that she contacted a Level 1 general insurance salesperson (the “Salesperson”) at an insurance agency where she was formerly employed (the “Former Agency”), and both requested and provided confidential client information without proper authorization.

The Committee was comprised of one voting member and three non-voting members of Council. 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 and the aforementioned investigation report were reviewed by Council at its January 15, 2013 meeting. At the conclusion of its meeting, Council accepted the Committee’s recommended disposition and 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 of the action it intends to take under sections 231, 236, and 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

The Licensee has been authorized to represent Coast Capital Insurance Services Ltd. ("Coast Capital") as a Level 2 general insurance agent since September 2010. She is paid a set income at Coast Capital as well as commissions. Previously, between July 2002 and September 2010, the Licensee represented the Former Agency. She was first licensed with Council as a Salesperson in 1997.

Around January 2011, the Licensee received a broadcast email from Coast Capital's call centre advising of a client (the "Client") who was interested in insurance. The broadcast email, which was sent to Coast Capital producers, identified the Client as a client of the Former Agency.

On January 14, 2011, the Licensee contacted the Salesperson at the Former Agency, via email, regarding the Client. When the Licensee was employed at the Former Agency, she supervised the Salesperson's activities related to Insurance Corporation of British Columbia ("ICBC") business.

In the email, the Licensee asked the Salesperson to provide the renewal premium and insurer information on the Client's insurance coverage that had been placed by the Former Agency. The Licensee requested the information as she was interested in pursuing the Client's business and wanted to impress her new employer. The Licensee did not know the Client.

Approximately one hour later, the Salesperson responded to the Licensee by email with the Client's renewal premium and the name of the insurer on risk. Approximately 45 minutes after that, the Licensee sent another email to the Salesperson asking for the value of the buildings on the Client's property. The following morning, the Salesperson provided the Licensee with the requested information.

On January 16, 2011, the Licensee sent another email to the Salesperson, this time providing information about the Client's risk that she had obtained from Coast Capital's broadcast email. She also advised the Salesperson that, based on this information, she felt the Client may require a commercial policy.

The Licensee reported she did not obtain authorization from the Client allowing the Former Agency to release file information to her. She also did not obtain authorization from the Client to release the information obtained from the broadcast email to the Salesperson. Upon exchanging emails with the Salesperson, the Licensee realized what she was doing was wrong, and she did not take any further steps to pursue the Client's business.

Coast Capital Procedures

The Licensee's conduct, which was contrary to Coast Capital's procedures on client confidentiality, was admonished by Coast Capital. Since the incident occurred, the Licensee has taken ethics and privacy training through tutorials administered by Coast Capital. Council was satisfied with Coast Capital's procedures and response to this incident.

ANALYSIS

Council determined the Licensee intentionally requested confidential client information from a former colleague, to which she knew she was not entitled. Council found the Licensee's reason for doing so was the prospect of impressing her new employer, and the potential for financial gain through securing the new business. Aggravating the matter was that the Licensee sought out information from the Salesperson, who had taken direction from her in the past and, in doing so, put the Salesperson in an awkward position.

Council concluded the Licensee's actions were intentional and inappropriate, were not in accordance with the usual practice of the business of insurance or Council's good faith requirement, and warranted a punitive measure in the form of a \$1,500.00 fine.

Council also determined the Licensee breached the Client's privacy by sharing information pertaining to the Client's risk with the Salesperson that had been communicated by Coast Capital to the Licensee in the broadcast email. Council did not find this act to have been intentional, but rather one that arose inadvertently during the course of the Licensee's exchange of emails with the Salesperson.

Council's position is that client confidentiality is one of the cornerstones of the insurance industry and any breach in this regard cannot be tolerated. Accordingly, Council determined that a punitive measure was also warranted, although one that was reflective of negligent misconduct rather than intentional misconduct. Council concluded a \$1,000.00 fine would be appropriate for this breach.

In arriving at the above dispositions, Council considered the precedents *M. Crowe* and *G. Yeung* in which licensees were found to have negligently breached client confidentiality and privacy requirements.

In *M. Crowe*, the licensee created and distributed marketing material that contained confidential information related to clients who had not approved the use of the information to the extent represented in the material. Council found that although the licensee did not set out to breach consumer privacy, and he mistakenly assumed he had the required approval to use consumer information in the manner that he did, he nonetheless breached confidentiality requirements. Council fined him \$1,000.00 for each breach of consumer confidentiality.

In *G. Yeung*, the licensee was fined \$1,000.00 after he mistakenly placed insurance records containing confidential client information in the recycling bin of his residential condominium building. Council accepted that the licensee did not intentionally dispose of the documents in an inappropriate manner. Nonetheless, he acted negligently and failed to demonstrate sufficient competence.

Council also reviewed the decision *B. Ketchen* in relation to the Licensee's intentional unauthorized request for client information. In *B. Ketchen*, the licensee accessed and used client information from his agency's and ICBC's databases for the purpose of prospecting new business, and was fined \$500.00.

Although the Licensee has been licensed with Council for more than 10 years, her behaviour suggested that she failed to appreciate the importance of proper practices. Accordingly, Council determined she ought to be subject to direct oversight and further training. Council considered that requiring the Licensee to be directly supervised for a period of one year and take ethics and privacy education may be one way to address the concerns with her practices. However, it felt that a better approach would be to restrict the Licensee to representing only Coast Capital, where it appears she will receive appropriate training and education respecting ethics and privacy, and where she will also be subject to direct oversight by an insurance agency that is familiar with this matter and has already addressed her conduct.

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 Licensee's general insurance licence that restricts her to only representing Coast Capital until such time as she has accumulated an additional 12 months of active licensing.
2. Fine the Licensee \$2,500.00.
3. Assess the Licensee Council's investigative costs of \$650.00.

Council noted that should the Licensee not meet the first licence condition or seek to represent another insurance agency during the period set out in the licence condition, she will be required to first meet with a Committee of Council to determine what, if any, action is required before being permitted to represent another insurance agency.

The Licensee is advised that should the intended decision become final, the fine and costs which form part of the order will be due and payable within 90 days of the date of the order. In addition, failure to pay the fine and costs within the 90 days or failure will result in the automatic suspension of the Licensee's licence until the conditions are met.

The intended decision will take effect on **February 28, 2013**, 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 **February 27, 2013**. 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 **February 27, 2013**, the intended decision of Council will take effect.

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

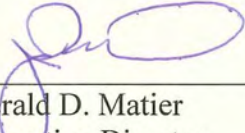
Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Intended Decision
Sheilah Elizabeth Egan
131936-1986
February 7, 2013
Page 6 of 6

Dated in Vancouver, British Columbia, on the 7th day of February, 2013.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cp