

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

KENSINGTON INSURANCE SERVICES LTD.
(the “Agency”)

ORDER

As Council made an intended decision on February 9, 2016, 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 with written reasons and notice of the intended decision dated April 1, 2016; and

As the Agency 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 Agency is fined \$10,000.00.
2. The Agency is assessed Council’s investigative costs of \$750.00.
3. A condition is imposed on the Agency’s general insurance licence that requires the Agency to pay the above-ordered fine and investigative costs no later than **July 20, 2016**. 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 **July 21, 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 and investigative costs are paid in full.

This order takes effect on the **20th day of April, 2016**.



Brett Thibault
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

KENSINGTON INSURANCE SERVICES LTD.
(“Kensington”)

and

NANCY FENG KUAN TOY
(the “Nominee”)

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

As part of Council’s investigation, on January 11, 2016, a Review Committee (the “Committee”) met with the Nominee, as well as a licensee who acts as a liaison/regional manager for a group of affiliated insurance agencies (the “Liaison”), which includes Kensington, to discuss the allegation that a licensee who is authorized to represent Kensington (the “Licensee”) engaged in unlicensed insurance activities. The Licensee did not attend the meeting.

The Committee was comprised of two voting members and one non-voting member of Council. Prior to the Committee’s meeting with the Nominee and the Liaison, 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 and the Liaison were provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Nominee and the Liaison, 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.

PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to Kensington 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. Kensington 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 Kensington and the Nominee.

FACTS

Kensington has held a general insurance licence in British Columbia since 1981. The Nominee was first licensed in British Columbia on October 5, 1993, and became a director and the nominee of Kensington in November 2008. The Nominee is also nominee of at least one other insurance agency.

The Licensee joined Kensington as a Level 2 general insurance agent ("Level 2 agent") in November 2008, as both an insurance agent and a corporate director. The Licensee was first licensed in British Columbia in September 1999 as a Level 1 general insurance salesperson, and has been licensed as a Level 2 agent since September 2000. The Licensee also represents two other general insurance agencies as a Level 2 agent. All three of the agencies that the Licensee represents are part of the same group of affiliated insurance agencies.

In 2014, the Licensee failed to submit his annual filing, resulting in the termination of his general insurance licence on July 31, 2014. The Licensee's annual filing was previously handled by Kensington or another of the affiliated insurance agencies. However, when the Licensee changed from being an Agency staff member to a producer, paid on a commission basis, he became responsible for his own annual filing.

The Licensee became aware of his licence termination on September 4, 2014, and he contacted Council on September 5, 2014. At that time, Council advised the Licensee that he would have to reapply for his licence, and that he was required to submit information regarding his unlicensed activity to Council. On September 15, 2014, Council received a licence re-application from the Licensee, but it did not include the information requested regarding his insurance activities, if any, during the unlicensed period. The licence re-application was signed by a director of Kensington (the "Director").

Council again requested that the Licensee provide information regarding any unlicensed insurance activities as a requirement of his licence application. The Licensee's Level 2 agent licence was subsequently reissued on November 24, 2014.

The Nominee became aware of the Licensee's unlicensed status on October 28, 2014, and immediately instructed the Licensee to stop engaging in insurance activities on behalf of Kensington. The Licensee worked independently for the most part, and he did not comply with the Nominee's direction.

Between July 31, 2014 and September 4, 2014, the Licensee produced 81 Insurance Corporation of British Columbia ("ICBC") transactions and five personal lines or commercial policies. Between September 5, 2014 and October 28, 2014, he produced 134 additional ICBC transactions and 16 new or endorsed personal lines or commercial policies. After the Nominee instructed the Licensee to stop his insurance activities, a further nine insurance transactions were transacted by him.

The Nominee has subsequently implemented new procedures to ensure that all licensees at Kensington complete their annual filings in a timely manner.

ANALYSIS

Between July 31, 2014 and November 24, 2014, the Licensee engaged in insurance activities at Kensington while unlicensed. The unlicensed activity continued after the Licensee became aware of his licence termination, after Kensington became aware that his insurance licence was terminated, and after the Nominee instructed the Licensee to cease his unlicensed activity.

Council determined that there was a lack of procedures in place at Kensington to ensure that all of its representatives who engaged in insurance activities were properly licensed. However, Council found that the Nominee attempted to act appropriately as soon as she learned the Licensee was no longer licensed, but she was either ignored or not consulted by other senior people at Kensington.

Council noted that neither the Licensee, who is a director of Kensington, nor the Director, informed the Nominee that the Licensee's licence had been terminated, even though both were aware of this fact in early September 2014. Council concluded that the Nominee had acted reasonably in this situation and did not warrant being disciplined.

Council found that Kensington, through two of its directors, had knowledge of the Licensee's licence termination and subsequent unlicensed insurance activities, and failed to take action to prevent the Licensee from continuing to engage in unlicensed insurance activities.

In coming to a determination in this matter, Council considered its prior decisions in *N. G. Williams & Associates Ltd.* and *Family Insurance Solutions Inc.*, both of which pertain to unlicensed activity by agency staff.

Council found the conduct of Kensington to be somewhat similar to *N. G. Williams & Associates Ltd.*, as each situation involved periods of time when unlicensed staff had submitted licence applications to Council, yet were permitted by their agency to continue engaging in insurance activities prior to being issued an insurance licence. Accordingly, Council determined that Kensington should be fined for what it considers a flagrant disregard of its responsibility to ensure that its staff are properly licensed at all times.

INTENDED DECISION

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

1. Fine Kensington \$10,000.00.
2. Assess Kensington Council's investigative costs of \$750.00.

Kensington is 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. In addition, failure to pay the fine and investigative costs within the 90 days, will result in the automatic suspension of its general insurance licence, and Kensington 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 **April 20, 2016**, subject to Kensington's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If Kensington wishes to dispute Council's findings or its intended decision, Kensington 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, Kensington must give notice to Council by delivering to its office written notice of this intention by **April 19, 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 Kensington does not request a hearing by **April 19, 2016**, the intended decision of Council will take effect.

Even if this decision is accepted by Kensington, 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:

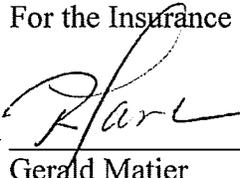
Intended Decision
Kensington Insurance Services Ltd. and Nancy Feng Kuan Toy
9002848-11771 and 109543-11771
April 1, 2016
Page 5 of 5

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 **1st day of April, 2016.**

For the Insurance Council of British Columbia

per 

Gerald Matier
Executive Director
604-695-2001
gmatier@insurancecouncilofbc.com

GM/gh