

In the Matter of

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

and

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

and

**ELAINE DRANEY
(the “Former Licensee”)**

ORDER

Whereas Council made an intended decision on January 14, 2014, pursuant to sections 231, 236, and 241.1 of the Act; and

Whereas Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated February 11, 2014;

Whereas the Former Licensee requested a hearing of Council’s intended decision in accordance with the Act; and

Whereas, after numerous attempts to arrange a date for a hearing were unsuccessful or not responded to, Council has deemed that the Former Licensee has abandoned her request for a hearing and its intended decision is now final.

Under authority of sections 231, 236, and 241.1 of the Act, Council orders:

1. The Former Licensee is prohibited from holding an insurance licence for a minimum period of two years from the effective date of this order.
2. The Former Licensee is fined \$10,000.00.
3. The Former Licensee is assessed Council’s investigative costs of \$2,937.50.
4. As a condition of this order, the Former Licensee is required to pay the above-ordered fine and investigative costs no later than **June 25, 2015**.

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March 25, 2015
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This order takes effect on the **25th day of March, 2015.**



Rita Ager, CFP, CLU, CHS, CPCA, FEA
Past Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

ELAINE DRANEY
(the “Former Licensee”)

INTRODUCTION

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

As part of Council’s investigation, on December 9, 2013, an Investigative Review Committee (the “Committee”) met with the Former Licensee, via teleconference, to discuss allegations the Former Licensee misdirected insurance premiums intended for insurers and refund cheques intended for clients into her own accounts; and, failed to place insurance coverage.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Former Licensee, an investigation report was distributed to the Committee and the Former Licensee for review. A discussion of this report took place at the meeting and the Former 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 Former 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 reviewed by Council at its January 14, 2014 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 Former Licensee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Former 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 Former Licensee.

FACTS

The Former Licensee was originally licensed as a Level 1 general insurance salesperson in December 1992, and subsequently obtained a Level 2 general insurance agent licence in August 1996.

She worked at an agency in rural British Columbia (the "Agency") from September 2009 to October 7, 2011. The Former Licensee worked at the Agency's office for two months doing personal and commercial lines before being permitted to work remotely from her home in a nearby community. She serviced the area primarily as a commercial producer.

The Former Licensee was required to confirm all quotes and policies with the Agency prior to issuing any documents to clients, but the Agency claimed that the Former Licensee did not always abide by this requirement. In December 2010, the Agency restricted the Former Licensee from binding coverage directly with insurance companies and required her to only deal with the Agency's marketing department, which was based within an affiliated agency.

In 2011, the Agency continued to deal with procedural and administrative issues with regard to the Former Licensee, which ultimately led to her termination. In a letter to Council, the Agency's manager explained how she and Agency's nominee (the "Nominee") met with the Former Licensee on September 22, 2011, to discuss the Former Licensee's termination and how they were prepared to transfer her clients to whichever insurance agency she decided to subsequently represent. As the Former Licensee did not have another agency to move to, the Nominee initially allowed her to stay at the Agency until September 30, 2011, to give her time to find a new agency. During this period, the Agency did not permit the Former Licensee to bind new coverage or solicit new clients, rather, she was restricted to reconciling all outstanding issues on her existing files.

The Agency eventually terminated the Former Licensee on October 7, 2011, for not following the Agency's policies and procedures when conducting insurance business. On November 10, 2011, the Former Licensee indicated to Council staff that she no longer intended to work in the insurance industry and requested that her licence be terminated. The Former Licensee has remained unlicensed since November 10, 2011.

Following the Former Licensee's termination, the Agency discovered that insurance premium refund cheques intended for clients had not been delivered. The premium refund cheques were generated by the Agency months earlier, when it discovered that the Former Licensee had failed to place coverage as directed by her clients. The Agency had requested that the Former Licensee meet with these clients to deliver the premium refund cheques and explain to them why they did not have insurance coverage.

Following her termination by the Agency, the Former Licensee admitted to depositing four of the premium refund cheques, totalling \$8,842.00, into her personal bank accounts.

In March 2012, it came to the Agency's attention that two personal cheques from a client, intended as premium payments, had been deposited into the Former Licensee's account in September 2011 and October 2011. The client reported that the cheques were initially made payable to an insurer, but the Former Licensee asked her to change the payee to the Agency, which appeared to have later been changed to "*Elaine Draney*." There was also a third cheque issued on November 15, 2011, similar in design, but deposited into an unidentified bank account.

The Former Licensee acknowledged she deposited three post-dated cheques into her personal bank account, which she had received from a client for insurance premium payments, totalling \$1,412.00. Two of the three cheques were dated with dates subsequent to the Former Licensee's effective termination from the Agency. The Former Licensee also took a \$1,200.00 cash premium from a customer without properly remitting it to the Agency or the insurer. Instead, the \$1,200.00 payment was ultimately charged to the Former Licensee's credit card.

The Former Licensee claimed that her actions were the result of being frustrated by the Agency. She felt the Agency made mistakes, and she was left with the responsibility of dealing with these mistakes and facing the clients. She claimed it was easier to keep the premium refund cheques, rather than forward them to the clients and have to explain why the refunds were issued. The Former Licensee could not explain why she did not simply tear up the cheques, rather than deposit them into her own accounts, if this was in fact her motivation.

The Agency subsequently discovered another insurance premium refund cheque, issued to a client, which was deposited in the Former Licensee's bank account. The Former Licensee did not identify this incident during Council's initial investigation.

The total amount misappropriated by the Former Licensee was \$10,254.00, representing seven different cheques (four premium refund cheques and three premium cheques issued by a client, intended for the Agency). The Former Licensee paid the bank a total of \$9,842.00 to avoid having the matter turned over to the Royal Canadian Mounted Police by the bank.

ANALYSIS

Council found the above-mentioned facts constituted a breach of the fundamental licensing requirements of trustworthiness and the intention to carry on the business of insurance in good faith and in accordance with the usual practice. In particular, Council concluded the Former Licensee misdirected premium payments intended for insurers and premium refunds intended for clients to her own accounts, and failed to place insurance coverage.

Council considered the precedents *K. Wagenaar* and *M. Gansekoele*.

In *K. Wagenaar*, Council determined the licensee had taken cash payments totalling \$28,340.00 from the insurance agency she was authorized to represent, and attempted to conceal her actions through substitute cheques drawn on the agency's operating account and false journal entries in the agency's internal recordkeeping system. The agency opted to pursue a restorative justice initiative in that case. Council found the licensee was not suitable to hold an insurance licence for two years from the date on which she completed the conditions of her restorative justice agreement and ordered her to pay the costs of Council's investigation.

Similarly, in *M. Gansekoele*, Council determined the licensee had taken cash payments received from clients for general insurance premiums and used the funds for his own purposes. Council determined that the licensee, who had not repaid the misappropriated funds, was not suitable to hold an insurance licence for a minimum period of two years commencing from the date on which he made restitution of the funds. He was also assessed investigative costs.

Ultimately, Council found that the Former Licensee's conduct was more egregious than the above cases.

Council held that the Former Licensee misappropriated funds over a period of approximately two years, and demonstrated careful planning in the execution of forgeries. In addition, the Former Licensee failed to accept full responsibility for her actions, stating that because of the Agency's failures, she was "*too embarrassed*" to return the funds. Council did not find this to be a credible explanation.

Further, Council determined the Former Licensee was not being forthright, noting that she did not disclose the additional misappropriated refund cheque which was not originally identified in Council's initial investigation. The Former Licensee minimized her conduct in this regard, claiming that it was "*just one cheque*."

Council determined that the Former Licensee's actions deemed her unsuitable to hold an insurance licence. Council noted that the Former Licensee has not held an insurance licence since November 10, 2011. In light of the foregoing time period, Council held that the Former Licensee is not eligible to hold an insurance licence for a period of two additional years.

In addition to the misappropriation of funds, Council determined the Former Licensee failed to place coverage on five different occasions. The Committee found that this was a serious and repeated breach by an experienced agent, who knowingly let her clients believe they were insured when in fact no coverage was in place. The Former Licensee's failure to arrange coverage placed the clients, and continues to place the clients, at risk of incurring an uninsured loss.

Council determined that a fine of \$10,000.00 was required to address the Former Licensee's failure to place insurance coverage, particularly in light of her failure to acknowledge responsibility for her behaviour.

Council also assessed the Former Licensee Council's investigative costs.

INTENDED DECISION

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

1. Prohibit the Former Licensee from holding an insurance licence for a minimum period of two years from the date on which the order takes effect.
2. Fine the Former Licensee \$10,000.00.
3. Assess the Former Licensee Council's investigative costs of \$2,937.50.

The Former Licensee is advised that should the intended decision become final, the fine and costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the fine and costs will result in the Former Licensee not being permitted to apply for an insurance licence until such time as the fine and costs are paid in full.

The Former Licensee is also advised that should she wish to reinstate her licence, she will be required to re-qualify for a licence and must demonstrate to Council her suitability to hold the licence by meeting with a Committee of Council.

The intended decision will take effect on **March 4, 2014**, subject to the Former Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Former Licensee wishes to dispute Council's findings or its intended decision, the Former 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 Former Licensee must give notice to Council by delivering to its office written notice of this intention by **March 3, 2014**. 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 Former Licensee does not request a hearing by **March 3, 2014**, the intended decision of Council will take effect.

Intended Decision
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Even if this decision is accepted by the Former 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

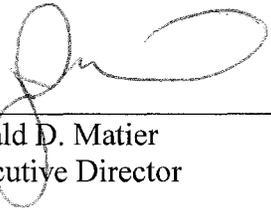
Reception: 250-387-3464

Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **11th day of February, 2014.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/tp