

In the Matter of

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

and

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

and

SUZANNE ANNETTE-MARIE CLEMENT
(the "Licensee")

ORDER

As Council made an intended decision on October 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 October 31, 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. The Licensee is fined \$1,000.00.
2. The Licensee is assessed Council's investigative costs of \$562.50.
3. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires her to pay the above-ordered fine and investigative costs no later than **February 19, 2014**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **February 20, 2014**, 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
Suzanne Annette-Marie Clement
170948-11151
November 19, 2013
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This order takes effect on the **19th day of November, 2013.**



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

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

SUZANNE ANNETTE-MARIE CLEMENT
(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 September 16, 2013, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss the allegation that during the process of recruiting an unlicensed person to become a life and accident and sickness insurance agent (“life agent”) for an agency (the “Agency”) she represented, the Licensee provided confidential client information to the unlicensed person. Two representatives of the Agency attended the meeting via teleconference.

The Committee was comprised of one voting member and two 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, along with the aforementioned investigation report, was reviewed by Council at its October 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 licensed with Council as a life agent since 2007, and has been authorized to represent the Agency since that time.

As a representative for the Agency, the Licensee recruits individuals to become life agents authorized to represent the Agency. One such recruit was a woman the Licensee had known for many years and considered a friend (the "Recruit"). Through the Licensee, the Recruit contracted with the Agency to be an "associate member." "Associate members" are not employees of the Agency, nor was the Recruit licensed with Council.

During the recruitment process in 2009, the Licensee provided the Recruit with client information. This information included client names, policy numbers, policy market values, and client addresses.

According to the Licensee, she did not consider the Recruit to be a third party who was not entitled to client information. As an "associate member" of the Agency, the Licensee believed the Recruit could be provided with the information since the Agency's business model allows both licensed and non-licensed associate members to build their own business. She added that most of the information shared with the Recruit pertained to clients referred to her by the Recruit, or who the Recruit knew personally.

The Licensee advised she did not have consent from any of the clients to release their personal information to the Recruit or any other party. The Licensee stated it was not her intent to cause harm to any clients, but to show the Recruit it was possible to earn a living as a life agent.

The Agency advised that it had privacy guidelines in place, and expected its agents to obtain client consent before disclosing client information to any third parties, including "associate members."

ANALYSIS

Council considered the actions of the Licensee, the Licensee's submissions, and the information provided by the Agency.

Council concluded the Licensee did not intend to harm any party or intentionally breach client confidentiality. Council took into consideration the Licensee's submission that she did not consider the Recruit to be a third party because of her status as an "associate member" of the Agency, but was concerned that the Licensee did not turn her mind to whether client consent was required in the circumstances, particularly as the Recruit was unlicensed.

Council's position is that client confidentiality is one of the cornerstones of the insurance industry and any breach in this regard is unacceptable and falls outside the usual practice of the business of insurance.

In determining the appropriate penalty, Council considered the precedents *T. Cantin*, *S. Egan*, *M. Crowe*, and *G. Yeung*.

In *T. Cantin*, Council determined that the licensee negligently breached client confidentiality by providing client information to a former supervisor who was working at another agency. The licensee was fined \$1,000.00 and assessed Council's investigative costs. Conditions were also imposed on the licensee's licence that required her to take privacy education and be under supervision for 12 months.

In *S. Egan*, Council determined the licensee intentionally requested client information from a former employee to which she knew she was not entitled. Council concluded this action was intentional and not in accordance with the usual practice of the business of insurance, and fined the licensee \$1,500.00 and assessed Council's investigative costs. Council further determined that the licensee unintentionally breached her own client's privacy by sharing client information with the former employee, and that an inadvertent breach of confidentiality occurred during an exchange of emails with the former employee. Council fined the licensee an additional \$1,000.00 for this negligent misconduct. A condition was also imposed on the licensee's licence restricting her to working for an insurance agency that was aware of the matter, that had implemented measures to ensure her conduct would be appropriately supervised, and where she would receive adequate training.

In *M. Crowe*, the licensee created and distributed marketing material that contained confidential information relating 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 and assessed Council's investigative costs.

In *G. Yeung*, the licensee was fined \$1,000.00 and assessed Council's investigative costs 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.

Accordingly, Council determined that a fine was 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.

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.
2. Assess the Licensee Council's investigative costs of \$562.50.

The 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 within the 90 days will result in the automatic suspension of the Licensee's life and accident and sickness insurance licence and the Licensee will not be permitted to complete any annual filing until such time as the fine and costs are paid in full.

The intended decision will take effect on **November 19, 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 **November 18, 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 **November 18, 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

Dated in Vancouver, British Columbia, on the **31st day of October, 2013**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/tp