

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

WAH SHING JACKY CHAN
(the “Licensee”)

ORDER

As Council made an intended decision on August 25, 2020, pursuant to sections 231 and 236 of the Act; and

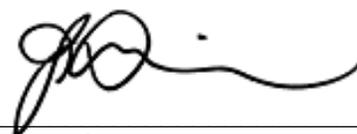
As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated August 31, 2020; and

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 and 236 of the Act, Council orders that:

1. The Licensee is fined \$3,000;
2. A condition is imposed on the Licensee’s life and accident and sickness insurance agent (“Life Agent”) licence that requires him to complete the Council Rules Course; and
3. A condition is imposed on the Licensee’s Life Agent licence that failure to pay the fine or complete the Council Rules Course by December 14, 2020 will result in the automatic suspension of his licence and he will not be permitted to complete his 2021 annual filing until the fine is paid in full and the Council Rules Course is completed.

This order takes effect on the **15th day of September, 2020.**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

("Council")

respecting

WAH SHING JACKY CHAN

(the "Licensee")

1. Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Licensee breached Council Rule 7(5) by failing to meet the requirements of Council's continuing education ("CE") program for three licencing years, namely 2014/2015, 2015/2016, and 2017/2018.
2. On July 14, 2020, as part of Council's investigation, a Review Committee (the "Committee") comprised of Council members met via video conference to review an investigation report prepared by Council staff. The Licensee was invited to provide any additional information or make any further submissions, but he declined to attend. Therefore, the Committee reviewed the investigation report in the Licensee's absence.
3. Staff's investigation report and the Committee's report to Council were reviewed by Council at its August 25, 2020 meeting where it was determined the matter should be disposed of in the manner set out below.

PROCESS

4. 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 and 236 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

5. The Licensee has held a life and accident and sickness insurance agent ("Life Agent") licence with Council since May 2013.
6. In June 2019, Council staff asked the Licensee to provide his CE records for five consecutive licencing years starting at 2014/2015.

7. Pursuant to Council's CE program, the Licensee was required, as are all licensees, to maintain his CE records for five years from the end of the annual licence period for which the education was taken. He was also required to earn 15 technical hours of CE for each of the 2014/2015, 2015/2016, 2016/2017, 2017/2018 licence years. In the 2018/2019 licence year, he qualified for a CE reduction to 10 technical hours as he had been a licensed Life Agent for at least five of the last seven years. Accordingly, the total number of credits required in the period audited was 70.
8. Over several weeks, in response to staff's request, the Licensee submitted CE certificates which showed completion of only 38.25 credits in the period audited.
9. Based on the certificates provided, the Licensee was short a total of 31.75 credits for three licencing years, namely 2014/2015, 2015/2016, and 2017/2018.
10. The Licensee advised staff that he had completed all the required credits but that he had forgotten to retrieve his electronic CE records before he switched email domains in 2018. As such, he advised that he was only able to provide some CE records based on the paper copies of CE certificates he had kept.
11. During the course of the audit, Council staff recommended that the Licensee contact his information technology provider for access to his previous email domain. However, the Licensee advised that this would be difficult.
12. Staff also recommended that the Licensee contact his CE providers to obtain copies of his certificates. The Licensee had been able to successfully retrieve some records from his previous employer but he advised staff that he received no response from the CE providers. Staff offered to contact the CE providers directly if the Licensee would provide their names. However, the Licensee did not respond.
13. The Licensee also submitted a total of 53.25 credits earned during the 2013/2014 licence year and asked if they could be credited toward his CE shortages for the following years. However, pursuant to Council's CE program, excess credits are not permitted to be carried over into the next annual licence period.
14. In November 2019, the Licensee submitted evidence that he subsequently completed make-up credits to address his CE shortfall for the 2014/2015, 2015/2016, and 2017/2018 licence years. While he has now earned a sufficient number of credits to meet Council's CE requirements, the Licensee failed to complete them in the requisite years as required.

ANALYSIS

15. Council considered staff's investigation report and the Committee's report to Council.
16. Council agreed with the Committee that, in the absence of evidence to the contrary, the Licensee breached Council Rule 7(5) three times by failing to meet the requirements of Council's continuing education program for the 2014/2015, 2015/2016, and 2017/2018 licensing years. Council further agreed that a sanction is warranted for the purposes of specific and general deterrence, rehabilitation, punishment, denunciation of the Licensee's breaches and the need to maintain the public's confidence in the insurance industry and Council's ability to govern insurance licensees.

INTENDED DECISION

17. Council is not bound by precedent to follow the outcomes from prior decisions, but similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case.
18. Council considered the cases of *Jian Guo Han* (May 11, 2020), *Cameron Alexander Fortin* (October 10, 2019), *Annie Chu* (May 2, 2018), *Sukhdarshan Singh Mann* (May 1, 2018), and *Jagjit Singh Gill* (April 9, 2018).
19. In *Jian Guo Han* (May 11, 2020), a Life Agent was unable to demonstrate he had met his CE requirements for three years. He advised that he had done all his credits but was unable to provide adequate proof. In the result, he was fined \$3,000 for the CE failures, required to make up all the CE credits, and required to complete the Council Rules Course. The licensee was also fined \$2,000 for a breach of Council's errors and omissions insurance requirements.
20. In *Cameron Alexander Fortin* (October 10, 2019), a Life Agent contacted Council to advise he had fallen short on CE credits due to his misunderstanding about how many credits he was required to complete per year. Council initiated a CE audit which found he failed to fulfil the required CE credits for three years. The licensee was fined \$500 for each year, for a total of \$1,500. Council considered it mitigating that the licensee had proactively contacted Council as soon as he realized his error. The fact that the licensee quickly began to make up for his missing credits was an additional mitigating factor.
21. In *Annie Chu* (May 2, 2018), a licensee who held a Life Agent licence since 2012 and a level 1 general agent licence since 2006 was audited for CE by Council staff. As a result, Council determined the licensee had failed to meet the CE requirements for the 2014 and 2016

licensing years for both her life and her general licence. The licensee was able to provide some certificates for her CE credits and had completed make up CE credits in subsequent years but still failed to meet the minimum requirements for two years. Council concluded that her failure to complete the credits showed a disregard for Council Rules and fined the licensee \$1,000 for each licensing year and each licence for which she had failed to meet the CE requirements. The licensee was also required to complete the Council Rules Course and make up the missing CE credits.

22. In *Sukhdarshan Singh Mann* (May 1, 2018), a Life Agent was audited by Council staff for CE. The licensee failed to demonstrate he had completed the requisite CE credits for a two year period and advised Council he was unaware he was required to keep track of his training. Council audited the licensee a second time and found that he had continued to fail to obtain CE credits. Council fined the licensee \$1,000 for each year he had insufficient proof of his CE credits and required the licensee to make up the missing credits and take a Council Rules Course.
23. In *Jagjit Singh Gill* (April 9, 2018), a Life Agent was unable to demonstrate he had met his CE credit requirements in the 2012, 2013, 2014, and 2016 licence years, although he subsequently completed a sufficient number of make-up credits to address the shortfall. Council concluded that the licensee's action warranted discipline and fined him \$4,000 and required him to complete the Council Rules Course.
24. As suggested by the *Han, Chu, Mann, and Gill cases*, Council agreed that a fine of \$1,000 for each year the Licensee could not demonstrate that he completed the required CE credits, for a total of \$3,000, is appropriate in the circumstances. Furthermore, Council agreed that the Licensee be required to take the Council Rules Course, and be automatically suspended if he fails to pay the fine or complete the course within 90 days.
25. Council considered whether there were any mitigating or aggravating circumstances. Although not an aggravating factor, Council was troubled by the fact that the Licensee failed to keep records of the CE he stated he completed and that it appears he may not have reached out to all his past CE providers to obtain certificates, nor did he provide the names to Council staff so they could assist. Furthermore, Council felt that the Licensee's subsequent completion of make-up credits was not a mitigating factor because it was the Licensee's obligation to fulfil his CE obligations in the first place and within the required timeframe. On this point, Council distinguished *Fortin* on the basis that the licensee in that case contacted Council as soon as he realized his error, whereas the present Licensee did not and was non-responsive to staff's offer of assistance.

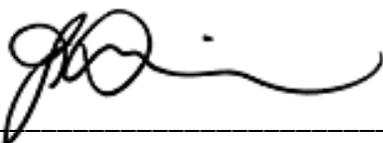
26. Accordingly, Council agreed that there are no factors in this case that would warrant an adjustment, either up or down, to the intended penalty.
27. Pursuant to sections 231 and 236 of the Act, Council made an intended decision to:
- a) Fine the Licensee \$3,000;
 - b) Require the Licensee to complete the Council Rules Course;
 - c) Impose a condition on the Licensee's Life Agent licence that failure to pay the fine or complete the Council Rules Course within 90 days of Council's order will result in the automatic suspension of his licence and he will not be permitted to complete his 2021 annual filing until the fine is paid in full and the Council Rules Course is complete.

RIGHT TO A HEARING

28. 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 within 14 days of receiving this intended decision. 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 within 14 days of receiving this intended decision, the intended decision of Council will take effect.
29. Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right of appeal to the Financial Services Tribunal ("FST"). The BCFSA 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 visit the guide to appeals published on their website at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

Dated in Vancouver, British Columbia, on the **31st day of August, 2020**.

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director