

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

A C & D (QUESNEL) INSURANCE SERVICES LTD.
(the “Agency”)

and

JOSEPH EDWARD STONEHOUSE
(the “Nominee”)

ORDER

As Council made an intended decision on January 14, 2014, 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 and the Nominee with written reasons and notice of the intended decision dated February 11, 2014; and

As the Agency and the Nominee requested a hearing of Council’s intended decision in accordance with the Act, but no longer wish to proceed with the hearing.

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

1. The Nominee is reprimanded.
2. The Agency is fined \$5,000.00.
3. The Agency is assessed Council’s investigative costs of \$593.75.

Order

A C & D (Quesnel) Insurance Services Ltd. and Joseph Edward Stonehouse

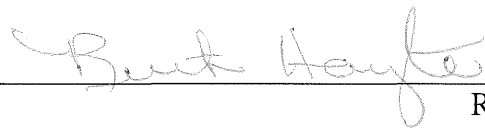
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4. A condition is imposed on the Agency's general insurance licence that requires it to pay the above-ordered fine and investigative costs no later than **March 2, 2015**. If the Agency does not pay the ordered fine and investigative costs in full by this date, the Agency's general insurance licence is suspended as of **March 3, 2015**, 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 **2nd day of December, 2014**.



Ruth Hoyte
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

A C & D (QUESNEL) INSURANCE SERVICES LTD.
(the “Agency”)

and

JOSEPH EDWARD STONEHOUSE
(the “Nominee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Agency and the Nominee 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 Nominee and a manager of the Agency (the “Manager”), to discuss allegations the Agency and the Nominee failed to act in accordance with the usual practice of the business of insurance after discovering that some Agency clients were without 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 Nominee and the Manager, 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 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 Nominee and the Manager, 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, 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 Agency 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. The Agency and/or 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 the Agency and the Nominee.

FACTS

The Agency has been licensed with Council since 1990. The Nominee has been the Agency's nominee since June 1, 2008.

The Agency terminated a Level 2 general insurance agent (the "Former Agent") on October 7, 2011, for failing to follow the Agency's policies and procedures when conducting insurance business. Following the Former Agent's termination, the Agency discovered the Former Agent had not forwarded insurance premium refund cheques to clients, but rather deposited them into her own account. The premium refund cheques were generated by the Agency months earlier when it discovered that coverage was not properly placed by the Former Agent.

After discovering that coverage was not properly placed by the Former Agent in several cases, the Agency did not contact the clients directly. Instead, the Agency directed the Former Agent to explain to the clients why they were not covered, as the Agency felt it was her responsibility.

The first premium refund cheque was issued by the Agency on December 30, 2010, after coverage was not placed by the Former Agent, with the expectation that the Former Agent would meet with the client and provide both the cheque and an explanation as to why they did not have any insurance coverage. The premium refund cheque was instead deposited, through an automated teller machine ("ATM") on January 5, 2011, into the Former Agent's bank account. This was not discovered by the Agency until after the Former Agent was terminated, when the Agency conducted a review of all of the Former Agent's files. The Agency has since contacted the client as he was unaware there was no coverage in place between 2009 and 2010. The Agency re-issued a premium refund cheque to the client.

The Agency then discovered that the Former Agent had failed to place coverage for two more clients in February 2011. The Agency again issued premium refund cheques, dated February 10, 2011, and directed the Former Agent to meet with the clients.

In each case, the Former Agent requested that the premium refund cheques be couriered to her home office, so she could personally give the clients the premium refund cheques. Only after the Former Agent was terminated did the Agency discover she had deposited the premium refund cheques into her personal bank account and that she had not advised the clients about their lapses in coverage.

In addition, the Agency found that another client had paid an insurance premium of \$1,200.00, in cash, to the Former Agent, but coverage was not placed and the premium was not remitted to the Agency or the insurer.

In mid-2011, the Agency continued to deal with procedural and administrative issues with regard to the Former Agent, which ultimately led to her termination on October 7, 2011. Following the Former Agent's termination, the Agency initially discovered that three premium refund cheques issued to clients on February 10, 2011, were never delivered by the Former Agent. The Agency subsequently discovered additional cheques were improperly deposited into the Former Agent's bank account

The Former Agent explained her actions were the result of being frustrated by the Agency. The Former Agent felt the Agency made mistakes, and considered it unfair that she was left with the responsibility of dealing with these mistakes and facing the clients.

Agency Procedures and the Former Agent's Responsibilities

The Agency, which operates in Quesnel, is affiliated with two other agencies located in Squamish and North Vancouver. The Nominee is responsible for all three agencies, although he mainly works out of the North Vancouver agency, named A C & D Insurance Services Ltd. ("A C & D North Vancouver").

The Manager has been managing the Agency since October 1, 2007. She has been licensed as a Level 2 general insurance agent ("Level 2 agent") for the past 13 years.

The Manager reports to the Nominee on a weekly basis, and more often if required. All the procedures at the Agency are implemented by the Nominee. The Nominee attends the Agency as required. The Manager attends manager meetings at A C & D North Vancouver, which includes a visit with the Nominee to discuss procedures or corrections related to the Agency. A portion of the commercial marketing goes through A C & D North Vancouver, and there is a senior commercial marketing person assigned to assist the Agency in placing business, and to provide advice or assistance in placing business. All accounting functions are performed at A C & D North Vancouver.

While the Former Agent was employed at the Agency, there were 12 licensees in total. Of the 12 licensees at the Agency, eight were licensed as Level 1 general insurance salespersons ("Salespersons") and four were licensed as Level 2 agents.

Intended Decision

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The Former Agent began working at the Agency in September 2009. She worked out of the office in Quesnel for the first two months doing personal and commercial lines, where she was permitted to do her own binders and invoicing. Two months later, the Former Agent began working remotely out of her home office in a nearby community. She serviced the community primarily as a commercial producer.

The Former Agent was provided with a monthly production statement outlining all the accounts bound and invoiced, showing the commissions owed.

Agency staff sent out all renewal letters and a renewal list was given to the Former Agent for follow-up. The Agency provided monthly reports for lapsed and non-renewed policies, and an "ages receivables" listing was provided to the Former Agent with individual customer account statements. The Agency's expectation was for the Former Agent to go through the statements, make comments, and advise of notice of cancellation within a specific period, if unpaid. When, after a period of time, the Agency realized the Former Agent was not dealing with the premium collection properly, the Agency sent statements directly to customers to ensure they were received.

The Former Agent was responsible for her own accounts receivable and the resulting debts, unless it was agreed that the Agency would handle them. The Agency provided the Former Agent with monthly accounts receivable reports.

The Agency provided the Former Agent with access to their internal network, The Agency Manager ("TAM"), which allowed the Former Agent to obtain quotes, print insurance binders, and communicate by email with Agency staff. She had no access to invoicing. The invoices were issued by the Agency at the Former Agent's request. The Former Agent would typically access TAM to bind coverage on an insurance policy, but it was not the only method used. Certain insurance companies were web-based, so it was not necessary to use TAM. During the first 90 days of her employment at the Agency, the Former Agent was given the Manager's passcode to one insurer's online portal. The Manager primarily oversaw the Former Agent's activities. The portal was for quoting purposes only and personal lines documents could not be issued from there. After 90 days, the Former Agent received her own passcode.

The Former Agent was also able to bind coverage by communicating directly with the insurance companies using her personal email or Gmail, which she often did. The Agency permitted the Former Agent to communicate using her Gmail account when the Agency's network was unavailable, but she was required to copy the Manager on all correspondence. According to the Manager, this was not always done and resulted in the Agency being unaware of all the Former Agent's insurance activities.

The Former Agent was required to confirm all quotes and policies prior to issuing any documents to clients. According to the Agency, the Former Agent did not always abide by this requirement. The Agency felt tighter restraints were necessary in order to monitor the Former Agent's new insurance business and renewals. Effective December 2010, the Agency restricted the Former Agent from dealing directly with insurance companies, and required that she deal with the Agency's marketing department based at A C & D North Vancouver. The Agency was still doing all the invoicing to the clients.

As noted above, in 2011, the Agency continued to deal with procedural and administrative issues with regard to the Former Agent, which ultimately led to her termination. The Manager advised that the Former Agent's problems ensuring coverage was in place was not discovered immediately, because insurers would regularly take several months to issue policies.

The Manager believed the Former Agent was a strong agent who appeared to be having trouble with paperwork. It was the Manager's practice to contact the Nominee when a problem arose with the Former Agent and set up a plan for dealing with the issue.

The Agency had several measures in place to ensure that clients are properly insured, including the use of registered lapse letters, renewal and outstanding lists, periodic TAM review, and review of notes to file. Further, the Agency no longer has commercial producers working outside of the office.

The Nominee explained that supervising the Former Agent was more challenging because she worked remotely. Initially, the Former Agent was given full responsibility, and as she demonstrated that she was incapable of properly following procedures, her responsibilities and freedoms were scaled back. The Nominee claimed it was an ongoing process to determine the Former Agent's knowledge and capabilities.

Although the problems with the Former Agent arose as early as 2010, and included a failure to ensure that coverage was in place, the Nominee believed the Former Agent's issues were the result of a lack of organizational skills and "*done innocently*."

ANALYSIS

Council determined that overall, the Nominee and the Agency took reasonable steps in how they managed the insurance activities of the Former Agent. Considering the Former Agent's years of experience, the Agency and Nominee acted prudently in establishing additional procedures and guidelines when they were not satisfied with her work performance. The one exception was the decision to issue premium refund cheques to clients via the Former Agent, and not immediately follow up directly with the clients regarding coverage issues.

With respect to the Agency, Council was troubled that five clients were left without coverage, and none were contacted immediately by the Agency to explain the consequences of the lack of coverage. Council held that in light of the Agency's knowledge that the Former Agent had repeatedly failed to follow proper procedures, resulting in clients being left uninsured, it was not reasonable for the Agency to rely on the Former Agent to properly address the coverage issues.

Council determined that the Agency, and in particular the Nominee, knowing that clients were placed at significant risk without coverage, should have immediately taken steps to ensure that the situation was fully explained to the clients by someone other than the Former Agent. Council held that ensuring coverage is properly placed is one of the most important obligations of an insurance agent, and the failure to properly address the risks of the clients in this case fell outside the usual practice of the business of insurance.

Council considered that the Agency, as a licensed "person," is responsible for the actions of its staff. While Council accepted that the Agency had no reason to suspect that the Former Agent would take premium refund cheques intended for clients or forge cheques, Council held that the Agency failed to have adequate measures in place to deal with the Former Agent's serious failures to ensure coverage was in place, once they were discovered.

Council considered the precedent *John Ross Insurance Service Ltd.* In *John Ross Insurance Service Ltd.*, Council found the agency failed to act in a competent manner and in accordance with the usual practice of the business of insurance when it failed to provide evidence of coverage to a client for almost one year. The client was not notified that, on renewal, one of her properties had been deleted from the policy, leaving it uninsured for approximately one year. Council ordered a fine of \$2,000.00, and assessed Council's investigative costs against the agency.

Council felt that the penalty in this case should be more significant than in *John Ross Insurance Service Ltd.*, as five clients were left without coverage in circumstances that were never addressed properly by the Agency. Council held that a fine of \$5,000.00 was appropriate, and would indicate that a failure to deal quickly and thoroughly with clients who are known to be at risk will not be tolerated. Council also assessed the Agency Council's investigative costs.

In addition, Council determined that the Nominee failed to personally ensure that proper procedures were in place to deal with the clients who were left without coverage. Council felt that the Manager did her best to manage the busy Agency and concluded the Manager acted appropriately, seeking supervision and direction from the Nominee.

Council held that the proper management of the Agency and its clients is ultimately the Nominee's responsibility, and that a reprimand was appropriate to address the Nominee's failure to ensure that clients were dealt with appropriately.

INTENDED DECISION

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

1. Reprimand the Nominee.
2. Fine the Agency \$5,000.00.
3. Assess the Agency Council's investigative costs of \$593.75.

The Agency 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 Agency's general insurance licence and the Agency 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 **March 4, 2014**, subject to the Agency's and the Nominee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Agency or the Nominee wishes to dispute Council's findings or its intended decision, the Agency or the Nominee 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 Agency or the Nominee 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 Agency and the Nominee do 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 Agency and the Nominee, 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

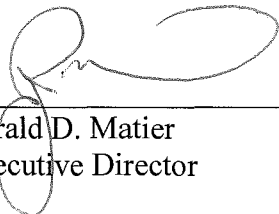
Reception: 250-387-3464

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