



**In the matter of the *Financial Institutions Act*,
*R.S.B.C. 1996, Chapter 141***

and

Fenchurch General Insurance Company

**NOTICE OF PENALTY
(s. 253.1)**

Fenchurch's Business Authorization

1. Fenchurch General Insurance Company (Fenchurch) has been authorized by the Financial Institutions Commission (FICOM) as an extraprovincial insurance company in the Province of British Columbia since September 28, 1998. The company was originally registered as The Loyalist Insurance Company (Loyalist), and its name was changed to Fenchurch on November 28, 2005.
2. On March 14, 2003, Loyalist entered into a Voluntary Compliance Agreement (2003 VCA) with the Superintendent of Financial Institutions (Superintendent) to restrict its business authorization in British Columbia to extended vehicle warranty insurance written in conjunction with Global Warranty (West Coast) Corporation. The VCA was put into place due to the Superintendent's concern about the ability of Loyalist to remain in compliance with the capital adequacy provisions of the *Financial Institutions Act* (FIA).
3. Effective July 27, 2005, FICOM issued an amended business authorization to Fenchurch in recognition of the company name change from Loyalist. In amending the business authorization and to reflect the limitation set in place by the 2003 VCA, the business authorization restricts Fenchurch to only conducting vehicle warranty insurance business in British Columbia.
4. On December 17, 2007, FICOM agreed to expand the authorized business of Fenchurch and issued the current Certificate of Business Authorization to Fenchurch limiting the company to accident and sickness and vehicle warranty insurance business in British Columbia. On February 28, 2017, Fenchurch electronically submitted their 2016 year end annual report to FICOM. That report indicates that Fenchurch wrote \$59,000 in premiums for surety insurance in British Columbia in 2016.

Superintendent of Financial Institutions

2800 – 555 West Hastings Street
Vancouver, BC V6B 4N6
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Facsimile: 604-660-3365
<http://www.fic.gov.bc.ca>

5. On March 13, 2017 the intake department at FICOM received calls enquiring what type of insurance Fenchurch is allowed to conduct.
6. On March 27, 2017 Staff confirmed that Fenchurch's business authorization does not authorize surety insurance. Staff confirmed Fenchurch was originally authorized for surety, but that authorization was removed in 2003.
7. FICOM received an application from Fenchurch on March 15, 2017 to add the class of surety insurance to its business authorization; however, that application was withdrawn on May 1, 2017.
8. As a result of inquiries by Staff to Fenchurch in 2018, in March 2018 Fenchurch through its Chief Operating Officer & Director of Claims represented as follows:
 - a. Fenchurch became aware of the issue related to surety on March 13, 2017 due to a prospective bond and began an internal investigation.
 - b. When it discovered the unauthorized nature of the surety coverage it issued, Fenchurch immediately undertook steps to correct the situation.
 - c. As a result of the internal investigation Fenchurch also immediately undertook corrective action to add surety to their authorization.
 - d. Fenchurch continued to honour all commitments and adhered to stringent requirements during the corrective period, including making significant trust payments into court.
 - e. Fenchurch initially submitted an application to add surety to their authorization but withdrew it as a result of the divesture and sale of its National Surety operations to Northbridge Financial effective May 31, 2017.
 - f. There was no current surety operation within Fenchurch.
 - g. Fenchurch previously believed their British Columbia authorization permitted surety to be underwritten as they were licensed for surety in all other Canadian jurisdictions.

The legislative scheme

9. Section 159 of the FIA provides that extraprovincial insurance companies must not carry on insurance business in British Columbia unless they have a business authorization, and that the business authorization may be restricted to certain classes of insurance:

Authorized business

159 (1) An extraprovincial corporation must not carry on trust business, deposit business or insurance business in British Columbia unless it has a business authorization.

...

- (4) A business authorization issued to an extraprovincial insurance corporation
- (a) may be confined to
 - (i) general insurance business or life insurance business, or
 - (ii) one or more classes of insurance, or
 - (b) may authorize both general insurance business and life insurance business.
- ...

10. Section 253.1(1) of the FIA and section 2 of the *Administrative Penalties Regulation* (Regulation) provide that administrative penalties may be ordered against a financial institution which does not comply with section 159 of the FIA:

Administrative Penalties

- 253.1 (1) If, in the opinion of the commission, a person has contravened
- (a) a prescribed provision of the Act,
 - (b) a prescribed provision of the regulations,
 - (c) a condition of a business authorization,
 - (d) an order under section 244 (2) (f), 245 (1) (f) to (j) or 247, or
 - (e) an undertaking given to the commission or the superintendent under section 208 or 244 (2) (g),

the commission may give written notice to the person requiring the person to pay an administrative penalty in the amount specified in the notice.

...

Monetary penalties for prescribed provisions of the Act and regulations

2 (1) The provisions of the Act and regulations in Column 2 of the schedule are prescribed for the purposes of section 253.1 (1) (a) and (b) of the Act, as applicable.

(2) A person who contravenes a provision in Column 2 of the schedule is liable to an administrative penalty not exceeding the monetary penalty in Column 3 of the schedule for that contravention, as applicable.

11. Columns 2 and 3 of the Regulation set out that a contravention of Section 159(1) of the FIA attracts a maximum penalty of \$50,000 for a corporation.
12. The Superintendent has been delegated the authority to issue administrative penalties to corporations up to \$25,000 under section 253.1 of the FIA by the Commission in its Instrument of Delegation issued April 4, 2018.

The contravention

13. By issuing contracts of surety insurance in 2016 Fenchurch issued contracts under a class of insurance for which it was not authorized. This contravenes section 159(1) of the FIA. As such an administrative penalty may be ordered against Fenchurch in an amount up to \$50,000 pursuant to section 253.1 of the FIA.

Amount of penalty

14. FICOM expects all institutions it regulates to comply with the restrictions placed on its business authorizations. FICOM authorizes institutions for business lines for which the institution has provided adequate information. As well the institution is to have in place appropriate controls and measures to ensure that it can properly engage in that type of insurance business and make good on the promises it makes to its policyholders. Fenchurch has agreed to the restrictions placed on its authorization since 2003.
15. The goal of administrative penalty orders is to protect the public by promoting compliance with the Act, thereby protecting the public from regulated activity that is non-compliant, not in the public interest, and that may result in loss of public confidence in the insurance industry.
16. In assessing an appropriate administrative penalty I take into account mitigating and aggravating factors, as well as precedent to arrive at an appropriate penalty to provide both specific deterrence to Fenchurch and general deterrence to the industry against future similar conduct.
17. I find the following to be mitigating factors:
 - a. Fenchurch admitted to the conduct in its responses to FICOM Staff in March 2018.
 - b. Fenchurch represents that when the unauthorized business was discovered by Fenchurch in March 2017 due to a claim, they immediately honoured the bond commitments and applied for surety coverage authorization in British Columbia, though that application was eventually withdrawn.
 - c. A low level of surety premiums were issued totalling \$59,000.
 - d. It appears that Fenchurch fully honoured the surety policies and no claims went unpaid.
 - e. I infer that Fenchurch has not engaged in surety business in British Columbia at least since March, 2017.
18. I find the following to be aggravating factors:
 - a. Fenchurch did earn premiums for the unauthorized insurance.
 - b. Fenchurch did not notify FICOM they had written surety coverage when they discovered this error in March 2017.
 - c. Fenchurch has a long history of restricted business with FICOM and should have been well aware of those restrictions.

19. There are no precedents for penalties issued by FICOM against financial institutions in breach of its existing business authorization. However this is a matter related to a breach of voluntary undertakings as the restrictions here were originally part of a voluntary compliance agreement.
20. Breaches of existing orders generally attract the highest penalties (see *Re Uniclear Payment Systems Inc. et al*, January 27, 2004 Order; and *Re Centennial Insurance Company A.V.V. S.A. (Costa Rica), et al*. May 18, 2006 Order). Here, the maximum penalty would be \$50,000.
21. The partial breach of a series of undertakings did result in a penalty of \$12,000 for each company in *Re Trans Global Insurance Company and Trans Global Life Insurance Company*, Consent Order, December 20, 2011.
22. In light of all of the circumstances in this matter, I find that an appropriate penalty for Fenchurch's contravention of FIA section 159(1) is \$25,000.

Issued this 19 day of March, 2019, at
Vancouver, British Columbia



Frank Chong
Acting Superintendent of Financial Institutions

NOTICE TO INSTITUTION:**PENALTY CALCULATION INFORMATION**

You have been assessed an administrative penalty of \$25,000.

PAYMENT

Pursuant to section 253.1 of the FIA you have 14 days after receipt of this notice to either pay the penalty, or deliver a written notice disputing the penalty and/or the amount of penalty. Please remit on Receipt of this Notice. Accounts not paid within 30 days of notice date will be subject to interest charges. Cheques should be made payable to the Minister of Finance and sent to:

Accounting Department
Financial Institutions Commission
2800 – 555 West Hastings Street
Vancouver, BC V6B 4N6

Please note that administrative penalties are subject to the *Interest on Overdue Accounts Receivable Regulation*, under the *Financial Administration Act*.

DISPUTE PROCESS

Pursuant to section 253.1 of the FIA, if you wish to dispute this administrative penalty and/or the amount of penalty, you must deliver a written notice of dispute to the Financial Institutions Commission within 14 days of receipt of this notice. Your notice of dispute must set out whether you elect for your dispute to proceed by way of written submissions or oral hearing.

WRITTEN DISPUTE

If you elect for your dispute to proceed by way of written dispute, the written submission must clearly articulate the reason for the dispute and the facts that the Superintendent should take into consideration as part of her review, including any extenuating circumstances that prevented compliance from occurring. The complete submission must be received by the Superintendent no later than 30 days after receipt of the Notice of Penalty. Upon receipt of your submission the Superintendent may decide to confirm the penalty or by order reduce the penalty or order no penalty. The Superintendent cannot increase the penalty.

ORAL HEARING

If you elect to proceed by oral hearing the Office of the Superintendent will acknowledge receipt of the request and will schedule a hearing. Hearings will be held within a reasonable time.

NOTICE INFORMATION

All correspondence, including payment and any request for dispute and election of form of dispute, should be addressed to:

Financial Institutions Commission
Attention: Executive Director, Market Conduct
2800 - 555 West Hastings
Vancouver BC, V6B 4N6
email: insurance@ficombc.ca

Financial Institutions Act

Sections 253.1-253.3

Administrative penalties

253.1 (1) *If, in the opinion of the commission, a person has contravened*

- (a) a prescribed provision of the Act,*
- (b) a prescribed provision of the regulations,*
- (c) a condition of a business authorization,*
- (d) an order under section 244 (2) (f), 245 (1) (f) to (j) or 247, or*
- (e) an undertaking given to the commission or the superintendent under section 208 or 244 (2) (g),*

the commission may give written notice to the person requiring the person to pay an administrative penalty in the amount specified in the notice.

(2) A notice of administrative penalty under subsection (1) must specify all of the following:

- (a) the contravention;*
- (b) the amount of the administrative penalty;*
- (c) the date by which the person must pay the administrative penalty;*
- (d) the right of the person, within 14 days after the notice is delivered, to dispute the administrative penalty, including disputing the amount of the administrative penalty, and the procedure for disputing the penalty.*

(3) A person to whom an administrative penalty notice is given must, within 14 days after receiving the notice,

(4) A notice of dispute respecting a penalty described under subsection (5) (b) must indicate whether the person wishes to proceed by way of written submissions or oral hearing.

(5) A person may dispute an administrative penalty as follows:

(a) by written submissions only, if the administrative penalty specified in the notice is less than

- (i) \$5 000, in the case of a corporation, or*
- (ii) \$2 000, in the case of an individual;*

(b) by written submissions or oral hearing, if the administrative penalty specified in the notice is

- (i) \$5 000 or more, in the case of a corporation, or*
- (ii) \$2 000 or more, in the case of an individual.*

(6) If a person is proceeding by way of written submissions, the submissions must be delivered to the commission no later than 30 days after the person receives the administrative penalty notice.

(7) If a person requests an oral hearing, the commission must hold an oral hearing within a reasonable time after delivery of the notice referred to in subsection (3) (b).

(8) The commission must, within a reasonable time after receiving written submissions or holding an oral hearing, confirm whether the person committed the contravention, and if so, may, by order, confirm the penalty specified in the notice under subsection (1) or order a lesser penalty or no penalty.

(9) If a person requests an oral hearing respecting a penalty described under subsection (5) (b) and fails to appear at the time scheduled for the hearing, the commission may exercise its powers under subsection (8) in the person's absence.

(10) An administrative penalty for a contravention must not exceed the amount prescribed by regulation for that contravention, and in any event must not exceed

- (a) \$50 000, in the case of a corporation, and
- (b) \$25 000, in the case of an individual.

(11) An order made under subsection (8) must specify all of the following:

- (a) the contravention;
- (b) the amount of the administrative penalty;
- (c) the date by which the person must pay the administrative penalty;
- (d) the person's right to an appeal.

(12) The commission must deliver to the person a copy of any order made under subsection (8).

(13) A person on whom an administrative penalty is imposed by order under subsection (8) must, within 30 days after receiving the order,

- (a) pay the administrative penalty, or
- (b) file notice of appeal.

(14) An appeal of an order made under subsection (8) operates as a stay and suspends the order until disposition of the appeal.

(15) The time limit for serving an administrative penalty notice under subsection (1) is 2 years after the date that the superintendent or the commission first had knowledge of the facts on which the notice of contravention is based, whichever is earlier.

(16) If a corporation commits a contravention referred to in subsection (1), the commission may, in accordance with this section, impose an administrative penalty on an officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention, even though the corporation is liable for or pays an administrative penalty.

(17) An administrative penalty must be paid into the consolidated revenue fund.

Limitation on proceedings

253.2 (1) A person on whom a penalty is imposed and who pays the penalty may not be charged and a prosecution does not lie against the person for an offence under this Act for the same contravention.

(2) The commission may not impose an administrative penalty under section 253.1 in respect of a contravention if the person has been charged with an offence under this Act for the same contravention.

Failure to pay administrative penalty

253.3 If a person fails to pay an administrative penalty within the time period specified in a notice under section 253.1 (1) or an order under section 253.1 (8), as applicable, or by the date specified in the order made on appeal, if any, the commission may file with the court a certified copy of the order imposing the administrative penalty and, on being filed, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the court.