



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

and

CCEC Credit Union

**PENALTY ORDER AFTER DISPUTE
(s. 253.1)**

Corrected Decision: The July 3, 2019 date referred to in paragraphs 5, 6 and 7 of the decision was corrected to state July 3, 2018.

The Notice of Penalty

1. On January 28, 2019, I issued a Notice of Penalty to CCEC Credit Union (CCEC) for contravention of section 112(3) of the *Financial Institutions Act* (the Act) by failing to review written procedures established by the conduct review committee to prevent conflicts of interest at intervals of not more than two years. The administrative penalty assessed was \$4,999.
2. CCEC elected to dispute the Notice of Penalty and provided written submissions in support of its dispute.
3. CCEC seeks reconsideration of the assessed administrative penalty on three grounds:
 - a. The decision was based on Incomplete information;
 - b. There are extenuating circumstances which should result in no penalty; and
 - c. The process engaged in was deficient.
4. I have reviewed the submissions of CCEC and staff's materials and make the following findings and decision on this dispute.

Superintendent of Financial Institutions

2800 – 555 West Hastings Street
Vancouver, BC V6B 4N6
Telephone: 604-660-3555
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<http://www.fic.gov.bc.ca>

CCEC's Dispute of the Penalty*CCEC's submission on incomplete information*

5. In response to a request by Staff to provide the written procedures designed to prevent conflicts of interest, a letter was sent from CCEC's Conduct Review Committee (CRC) Chair dated July 3, 2018.
6. In the July 3, 2018 letter, the CRC Chair named the following policies and procedures as CCEC's written procedures designed to prevent conflicts of interest:
 - a. Code of Ethical Conduct;
 - b. Conflict of Interest Policy for Directors;
 - c. Conduct Review Committee Procedures; and,
 - d. Related Party Transaction Policies.
7. The letter provided copies of the above policies and procedures with their July 3, 2018 letter, except for the "Related Party Transaction Policies". Those copies indicated a last reviewed date of October 2010 or earlier. These last reviewed dates formed the basis for finding of a failure to review the policies which attracted the administrative penalty, as which were outlined in the Notice of Penalty:
 - a. June 2008 for Conflict of Interest Policy for Directors;
 - b. October 2010 for Code of Ethical Conduct; and
 - c. October 21, 2010 for Conduct Review Committee Policies.
8. The "Board Policies" package provided to Staff by CCEC as part of the targeted onsite review held in October and November, 2018 confirms the same dates of review for the "Conflict of Interest Policy for Directors" and the "Code of Ethical Conduct". The package indicates that the "Related Party Transaction Policy (and Procedures)" had a last reviewed date of February 2004. The "Conduct Review Committee Policies" were not included in the package.
9. CCEC submits that the policies and procedures provided to Staff did not accurately reflect the actual review dates and so staff's observations and my decision were based on incomplete information. CCEC, with its submissions, provided CRC minutes dated October 20, 2011, October 15, 2013, October 21, 2014, and October 20, 2015 which indicated "Related Party Policies and Procedures" had been reviewed by the CRC at the

respective meetings. This I agree with. However, the minutes do not show that the other three written procedures were reviewed at the meetings. No additional supporting documents were provided by CCEC with respect to those other policies which are also designed to prevent conflicts of interest.

10. Therefore, I find that the last date of review of the three policies and procedures outlined in the Notice of Penalty which was done in 2008 or 2010, is accurate.

CCEC's submission on extenuating circumstances

11. CCEC submits there were extenuating circumstances that prevented compliance in the fall of 2017 and early 2018 which focused the Board and Management to dedicate their attention and time to address that priority issue.
12. I agree that there were extenuating circumstances facing the credit union which required the full attention of Board and Management. It is understandable that during this time the review of the policies related to conflicts of interest were delayed.
13. However, no extenuating circumstances were provided by CCEC to address the lack of attention to the policies between 2010 (2008 for "Conflict of Interest Policy") and 2017. During this period, three to four review cycles (2010, 2012, 2014, and 2016) for reviewing the "Conflict of Interest Policy", "Code of Ethical Conduct" and "Conduct Review Committee Policies" were missed.

CCEC's submission regarding deficient process

14. CCEC sets out concerns it has with the administrative penalty process:
- a. The timeliness of the administrative penalty;
 - b. Lack of communication;
 - c. Lack of clarity surrounding two of the three factors referenced in the Notice of Penalty that support the imposition of a penalty; and,
 - d. The penalty amount does not reflect the circumstances and the size of the credit union.
15. Regarding timeliness, CCEC noted that the record of materials indicated that the approval for the administrative penalty by the Superintendent was provided September 12, 2018. However, the issuance of the Notice of Penalty and related reasons was not made until January 28, 2019.

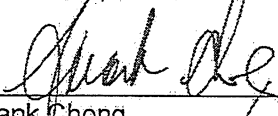
16. This is correct. The legislation does not prescribe the time period in which the Superintendent must make their decision nor renders their reasons for decision, apart from the limitation period provided in section 253.1(15) for serving the notice. I do not find that the time between my decision to issue a penalty and my issuance of the Notice of Penalty with reasons unduly prejudiced CCEC, if CCEC was prejudiced at all.
17. CCEC submitted that there was a lack of communication from FICOM with regard to this issue as it was not brought to their attention until the Notice of Penalty was provided to them. CCEC submits that there were multiple opportunities to discuss this issue.
18. Staff confirms that while there was regular communication with the institution, this matter was not specifically addressed with CCEC before issuance of the Notice of Penalty.
19. The legislation does not require discussions of possible administrative penalties with financial institutions prior to the issuance of a Notice of Penalty. The legislative scheme provides for a dispute resolution process which has been engaged by CCEC.
20. CCEC submits that the second and third factor that support the imposition of a penalty in the Notice of Penalty were referenced in very general terms and do not specify any incidents or dates.
21. The circumstances referenced in the second and third factors referenced conflicts of interest regarding [REDACTED]. This is a reference to the acknowledgement by the credit union that a member of the Board was involved in a personal relationship with an executive officer from the date of their election through Board approval of the hiring of the executive officer in [REDACTED]. The relationship had apparently been disclosed to the Board but there were no minutes by the CRC committee or Board indicating the disclosure or measures put into place to handle the conflict. Upon discovery of this relationship by a delegated regulatory authority, they noted the conflict of interest to the Board. At that point the Board member resigned from the office of [REDACTED].
22. Staff discussed this potential conflict of interest and lack of documentation with the Chair of the CRC on June 7, 2018.
23. CCEC submits that the penalty assessed is excessive given the extenuating circumstance and the burden on a relatively small credit union. CCEC submits that the "principle of proportionality" should reflect not only the circumstance of the situation but also the relative size of the credit union.

24. Under Section 253.1 of the Act, the commission has the authority to impose an administrative penalty if, in the opinion of the commission, a person has contravened a prescribed provision of the Act. The Administrative Penalty Regulation item 55 provides for an administrative penalty not exceeding \$25,000 for contravention of Section 112(3) of the Act. However, it does not specify how the penalty should be assessed.
25. While the impact of the penalty on the operations of a credit union may be a reasonable factor to consider, here, the penalty is relatively small compared to the maximum penalty permitted. There were numerous years of failure to comply with very important requirements to oversee conflict of interest policies. And failure to review those policies may have been a contributing factor to the failure to address actual conflicts which may have occurred, and one which did occur.

DECISION

26. I confirm the Notice of Penalty issued January 28, 2019 as supplemented by these findings and reasons. I attach and incorporate that Notice to these reasons as Appendix A. I agree that there were extenuating circumstances in the Fall of 2017 that required the Board to focus its efforts elsewhere. Given the prior partial reviews by the CRC, I order a lesser penalty of \$4,000 be paid by CCEC for contravention of section 112(3) of the Act.

Issued this 26 day of APR 2019, at
Vancouver, British Columbia



Frank Chong
Acting Superintendent of Financial Institutions

APPENDIX A

NOTICE OF PENALTY JANUARY 28, 2019



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

and

CCEC Credit Union

**Notice of Penalty
(s. 253.1)**

CONTRAVENTION

The Superintendent has been delegated the authority to issue administrative penalties to corporations up to \$25,000 and individuals up to \$10,000 under section 253.1 of the *Financial Institutions Act* (FIA) by the Commission in its Instrument of Delegation issued April 4, 2018.

Pursuant to Section 253.1 of the FIA, the Superintendent of Financial Institutions has determined CCEC Credit Union (CCEC) contravened section 112 (3) of that Act by failing to review written procedures established by the conduct review committee at intervals of not more than two years.

BACKGROUND INFORMATION

Section 112 of the FIA requires the Conduct Review Committee (CRC) of a financial institution to establish written procedures to provide customers with prescribed disclosures, prevent conflicts of interest, and to resolve them if they occur, and to review those written procedures at intervals of not more than two years.

At the request of FICOM Staff, CCEC provided their written procedures designed to prevent conflicts of interest on July 3, 2018. The last reviewed dates for these procedures were identified as follows:

- a) June 2008 for Conflict of Interest Policy for Directors;
- b) October 2010 for Code of Ethical Conduct; and
- c) October 21, 2010 for Conduct Review Committee Policies.

• Superintendent of Financial Institutions

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CCEC advised FICOM they were unable to locate evidence of any CRC meetings between October 21, 2015 and May 23, 2018. Documents and information supplied by CCEC provide evidence their written procedures relating to conflicts of interest have not been reviewed at intervals of not more than two years pursuant to section 112 (3).

The *Administrative Penalties Regulation* sets a maximum administrative penalty for breach of section 112 at \$25,000. The Financial Institutions Commission expects all institutions it regulates to establish written procedures designed to prevent conflicts of interest and review those procedures at regular intervals.

Several factors support the imposition of an administrative monetary penalty and indicate that compliance is a long-standing issue at CCEC:

1. The CRC has missed three review cycles in 2012, 2014, and 2016;
2. The Board failed to recognize and prevent conflicts of interest, particularly those involving [REDACTED] and
3. Conflicts arising in 2018 were not appropriately documented in a timely manner, although the Chair of the CRC indicated they were addressed upon disclosure.

The following mitigating factors were considered:

1. CCEC has now committed to improving their conflict of interest procedures;
2. CCEC self-identified the issue prior to FICOM conducting inquiries into the matter; and
3. The CRC recognized their policies and procedures were overdue for review and in need of consolidation. As a result, the CRC committed to considering revised policies and procedures at CCEC's September 2018 meeting, as well as regular CRC meetings to review policies and procedures, and training for CCEC employees.

Given the serious nature of this breach and taking into consideration CCEC's commitment to improvement, that no harm to depositors has resulted from the breach, and the small size of CCEC Credit Union, I find the amount of penalty at \$4,999 is appropriate for the purposes of providing specific and general deterrence against future noncompliance.

PENALTY CALCULATION INFORMATION

You have been assessed an administrative penalty of \$4,999.

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 these findings 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 does not need to set out the particulars of the dispute; you have 30 days from receipt of this notice of penalty to provide your full written submission. However, if you wish to include your submission with the notice you may do so.

WRITTEN DISPUTE

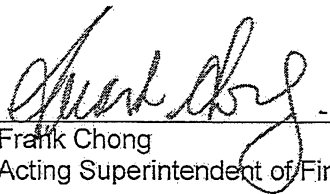
The written submission must clearly articulate the reason for the dispute and the facts that the Superintendent should take into consideration as part of his/her review, including any extenuating circumstances that prevented compliance from occurring. The complete submission must be received by the Superintendent 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.

CONTACT INFORMATION

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

Financial Institutions Commission
2800 - 555 West Hastings Street
Vancouver, BC V6B 4N6

Issued this 28 day of JAN., 2019 at
Vancouver, British Columbia.



Frank Chong
Acting Superintendent of Financial Institutions