



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

**and**

**Creston and District Credit Union**

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

***Resignation of a senior officer***

1. Creston and District Credit Union (CDCU) is an authorized credit union regulated by the Financial Institutions Commission (FICOM) under the Financial Institutions Act (FIA).
2. On May 15, 2018, the then Chief Executive Officer (CEO) of CDCU submitted his resignation to CDCU.
3. On June 15, 2018, FICOM Staff was informally advised of the CEO's resignation by a CDCU employee during an unrelated telephone conversation.
4. On June 16, 2018, the Superintendent of Financial Institutions (Superintendent) received written confirmation from CDCU of the CEO's resignation by email.
5. The Board of Directors of CDCU explained the failure to immediately report the resignation of the CEO to FICOM was due to being unaware of the legislative requirement to notify the Superintendent.

***The legislative scheme***

6. Section 99(4) of the FIA provides that a credit union must immediately notify the Superintendent of the resignation of a senior officer:

*Definitions and interpretation*

*(1) In this Act:*

...

**Superintendent of Financial Institutions**

2800 – 555 West Hastings Street  
Vancouver, BC V6B 4N6  
Telephone: 604-660-3555  
Facsimile: 604-660-3365  
<http://www.fic.gov.bc.ca>

*"senior officer" means each of the 5 highest paid officers of a corporation and includes an individual who, whether or not among those 5 highest paid officers,*

*(a) is the chair or a vice chair of the board of directors or the president, a vice president, the secretary, the treasurer or the general manager of the corporation, or*

*(b) performs functions of the corporation similar to those normally performed by an individual occupying any of the offices described in paragraph (a).*

...

*Removal of directors and officers*

*99(4) A financial institution must deliver written notice immediately to the superintendent of the resignation, removal, election or appointment of a director or senior officer.*

...

7. 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 99(4) 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.*

8. Columns 2 and 3 of the Regulation set out that a contravention of Section 99(4) of the FIA attracts a maximum penalty of \$10,000 for a corporation.

9. 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***

10. The CEO performs the functions of the credit union similar to those normally performed by a president or general manager of a corporation. I find that the CEO of CDCU was a senior officer under the FIA.
11. By not providing written notice of the CEO's resignation, which took place on May 15, 2018, until June 16, 2018, I find that CDCU contravened the notification requirements of FIA s. 99(4). The notification provided to the Superintendent was one month late.

***Amount of penalty***

12. FICOM expects all institutions it regulates to comply with the notification requirements of the legislation. The resignation of a senior officer of a financial institution can have a significant impact on its operations and stability. By being informed of this type of significant change the regulator is better placed to address any consequential matters which may require regulatory oversight and intervention in order to protect the interests, in this case, of the institution's depositors.
13. The goal of administrative penalty orders is to protect the public by promoting compliance with the Act.
14. 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 CDCU and general deterrence to the industry against future similar conduct.
15. I find the following to be mitigating factors:
  - a. FICOM has not issued administrative penalty orders against CDCU in the past;
  - b. CDCU is a small-sized credit union;
  - c. The Board fully cooperated with FICOM Staff in this matter; and
  - d. CDCU is implementing a series of remedial measures which should address this type of governance failure.

16. I find the following to be aggravating factors:

- a. The Board is collectively responsible for the governance of the credit union and ensuring all legislative requirements are met. The Board admitted they were over reliant on the CEO and did not take it upon themselves to be informed of their responsibilities; and
- b. CDCU received a warning for a late Monthly Financial Statistics Report filing in contravention of the FIA on July 10, 2017.

17. There are no precedents for penalties issued by FICOM or the Superintendent against financial institutions for a breach of section 99(4).

18. In light of all of the circumstances in this matter, and in order to provide adequate specific deterrence to CDCU and general deterrence to the industry, I find that an appropriate penalty for CDCU's contravention of FIA section 99(4) is \$2,500.

Issued this 15 day of APRIL, 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 \$2,500.

**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 Superintendent within 14 days of receipt of this notice.

**WRITTEN DISPUTE**

If you elect to dispute the order, the dispute must be by way of written submission. 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.

**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](mailto: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.

