

In the Matter of

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

and

The **INSURANCE COUNCIL OF BRITISH COLUMBIA**
("Council")

and

SANJAY ASHOK SHARMA
(the "Licensee")

ORDER

As Council made an intended decision on July 13, 2010, pursuant to sections 231, 236 and 241.1 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 3, 2010; 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, 236 and 241.1 of the Act, Council orders that:

1. the Licensee is fined \$5,000.00;
2. the Licensee's Level 1 general insurance salesperson's licence is cancelled for a minimum period of two years;
3. the Licensee pay the costs of Council's investigation into this matter assessed at \$825.00; and
4. as a condition of the order, the Licensee is required to pay the fine and investigative costs by **December 1, 2010**.

This order takes effect on the **31st day of August, 2010**.



Barbara MacKinnon, CAIB
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

SANJAY ASHOK SHARMA
(the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether there had been compliance by the Licensee with the requirements of the Act.

As part of Council’s investigation, on June 21, 2010, an Investigative Review Committee (“Committee”) met with the Licensee to discuss the manner in which he handled two Insurance Corporation of British Columbia (“ICBC”) transactions.

The Committee was comprised of one voting and two non-voting members of Council, all of whom have significant experience in the insurance business. Prior to the Committee’s meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee 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 Licensee, 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 presented to Council at its July 13, 2010 meeting. At the conclusion of its meeting, Council determined that the matter should be disposed of in the manner set out below.

INTENDED DECISION PROCESS

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, 236 and/or 241.1 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

Based on the information contained in the investigation report, Council made the following findings of fact:

Licensing and Employment Information:

1. the Licensee was first licensed as a Level 1 general insurance salesperson on April 27, 2007;
2. at the material time, the Licensee was working with Hub International (Richmond Auto Mall) Ltd. (the "Agency");
3. the Licensee's licence is currently inactive;
4. the Licensee has not been subject to any discipline by Council in the past;

The ICBC Transactions:

Transaction A

5. on September 11, 2009, the Licensee attended a car dealership in White Rock ("Dealership X") to process an ICBC insurance transaction for a client ("Client A");
6. the Licensee completed the insurance transaction on site at Dealership X and collected \$1,344.00 in cash from Client A for the premium payment;
7. the Agency's production report indicates that Client A's transaction was completed by the Licensee at 2:26 p.m.;
8. the Licensee was interviewed by Council staff as part of Council's investigation. During the interview the Licensee submitted that on September 11, 2009, after completing Client A's transaction, he believed he had then gone to another car dealership ("Dealership Y") in the area to handle another unrelated insurance matter, possibly to drop off a registration form. The Licensee added that after doing so, he returned to Dealership X and discovered that he did not have the cash with him, nor was it at this dealership;
9. the Agency's production report listing the transactions completed by the Agency's licensed agents on September 10 and 11, 2009, do not identify any registration transactions for Dealership Y;

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10. the Agency's production report also identifies that on September 11, 2009, the Licensee conducted insurance transactions at the following times at Dealership X, after completing Client A's transaction (which occurred at 2:26 p.m.):
 - a. 2:59 p.m.
 - b. 3:09 p.m.
 - c. 3:53 p.m.
 - d. 4:08 p.m.
 - e. 5:52 p.m.
11. when he met with the Committee, the Licensee stated he placed the cash on the counter behind him in an envelope with the application and left it unattended while he processed other insurance transactions at Dealership X;
12. the Licensee submitted that he later realized he could not find the cash for the premium and panicked;
13. the Licensee returned to the Agency at the end of the day and remitted the documentation for Client A's insurance transaction for batching without any premium payment;
14. the Licensee did not advise anyone at the Agency that the premium was missing at the time he remitted the documentation, and failed to do so for five days following the transaction;
15. according to the Agency, the Licensee advised the Agency that he had forgotten to collect the premium from Client A and had stated he would attend the residence of Client A to obtain a cheque for the outstanding premium;
16. the Licensee subsequently advised the Agency that he had forgotten the cheque from Client A and approximately one week after the transaction, the Licensee remitted a personal cheque to the Agency for the premium;
17. the Licensee admitted that he lied to the Agency by suggesting that he had forgotten the cheque from Client A;
18. the Licensee's personal cheque did not clear and was returned due to insufficient funds;
19. to date, the Licensee has not reimbursed the \$1,344.00 paid by the Agency to cover the premium payment on Client A's transaction;

Transaction B

20. on October 14, 2009, the Licensee attended a car dealership in Richmond (“Dealership Z”) and processed an ICBC transaction for a husband and wife (“Clients B”) who had purchased a 1996 Dodge Caravan;
21. Clients B had recently immigrated to Canada and had not insured a vehicle in British Columbia prior to Transaction B;
22. Clients B requested that they each be registered owners of the vehicle and that the insurance be financed through ICBC’s Autoplan 12 premium payment plan;
23. Clients B had only brought a counter cheque with them and not the required void cheque with the specific account information to facilitate the financing plan, nor had the wife brought the required identification to the dealership;
24. Clients B advised the Licensee that they would return with the necessary documentation;
25. Clients B returned to the Agency approximately one week after the initial meeting with the Licensee to complete Transaction B;
26. the Licensee was not available at the time, so a supervisor at the Agency assisted Clients B. According to the supervisor, Clients B advised her that they had left \$100.00 cash with the Licensee as a “deposit” on an insurance premium, which would secure the policy pending receipt of the outstanding documentation;
27. the supervisor checked the account for Clients B to determine if there was a record of the \$100.00 “deposit” or the application of \$100.00 towards the monthly premium payment and did not find a record of either;
28. ultimately, the Agency completed the documentation for Clients B, reimbursed Clients B for the \$100.00 “deposit” they claimed to have left with the Licensee and the vehicle purchased by Clients B was properly insured;
29. the Licensee argued he never collected \$100.00 from Clients B; and
30. the Licensee admitted that he should not have completed the documents for Clients B without the proper identification and should not have taken a counter cheque as evidence of payment.

LEGISLATION

Council Rules 3(2) and 7(8)

Section 231 of the Act

Part 7 – Administration of the Regulation of Financial Institutions

Division 2 – Insurance Council of British Columbia

Council may suspend, cancel or restrict licences and impose fines

- (1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee
- (a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,
 - (b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,
 - (c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
 - (d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,
 - (e) has contravened section 79, 94 or 177, or
 - (e.1) has contravened a prescribed provision of the regulations,

then the council by order may do one or more of the following:

- (f) reprimand the licensee or former licensee;
 - (g) suspend or cancel the licence of the licensee;
 - (h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
 - (i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
 - (j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;
 - (k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount
 - (i) not more than \$20 000 in the case of a corporation, or
 - (ii) not more than \$10 000 in the case of an individual.
- (2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.
- (3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.

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- (3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.
- (4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
 - (a) were employed by that agent or adjuster at the time of the suspension, and
 - (b) remain employees of that agent or adjuster at the time of reinstatement,are also reinstated without the necessity of the council taking any action.

Section 236 of the Act

Part 7 – Administration of the Regulation of Financial Institutions

Division 3 – Hearings and Appeals

Power to impose conditions

- (1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization, permit or licence may
 - (a) impose conditions that the person considers necessary or desirable in respect of
 - (i) an order referred to in section 235 (1),
 - (ii) a consent referred to in section 235 (2),
 - (iii) a business authorization,
 - (iv) a permit issued under section 187 (1), or
 - (v) a licence issued under Division 2 of Part 6, and
 - (b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.
- (2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.
- (3) Except
 - (a) on the written application or with the written permission of the holder, or
 - (b) in the circumstances described in section 164, 231 or 249 (1), a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
 - (c) a business authorization is exercisable only on or before its issue date, or
 - (d) a permit under section 187 (1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue date with effect on and after that date.

Section 241.1 of the Act

Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

A. Assessment of Costs

- (1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, or either or both of the following in accordance with the regulations:
 - (a) an investigation;
 - (b) a hearing.
- (2) Costs assessed under subsection (1)
 - (a) must no exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and
 - (b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing.
- (3) If a person fails to pay costs as ordered by the date specified in the order or by the date specified in the order made on appeal, if any, whichever is later, the commission, superintendent or council, as the case may be, may file with the court a certified copy of the order assessing the costs 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.

ANALYSIS

Council found the above mentioned facts constituted a breach of section 231(1)(a) of the Act in that the Licensee failed to meet the requirements established by Council Rule 3(2). Specifically, the Licensee's conduct demonstrated he was not trustworthy, competent, financially reliable and did not intend to carry on the business of insurance in good faith and in accordance with the usual practice. Council concluded that the Licensee mishandled Transactions A and B.

With respect to Transaction A, Council found the following facts were supported by the evidence. The Licensee accepted \$1,344.00 in cash from a client for the premium payment on an insurance transaction. He proceeded to conduct five more insurance transactions at Dealership X before returning to the Agency at the end of the day. The Licensee knowingly remitted the documentation for batching at the Agency without the cash he had received from Client A. The Licensee failed to inform anyone at the Agency about the missing premium payment until directly questioned about it by a staff member. The Licensee responded by stating that he forgot to get the payment from Client A at the time of the transaction and then subsequently stated he had forgotten to pick up a cheque from Client A. Eventually, after the Agency prompted the Licensee, he wrote a personal cheque for the amount of the outstanding premium. The Licensee's cheque was returned due to insufficient funds.

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In explaining Client A's missing premium the Licensee initially stated he may have left Dealership X to drop off a registration form at another dealership and returned to Dealership X to discover the premium was missing. The Agency's production report contradicted this explanation. During the meeting with the Committee, the Licensee offered an alternative explanation, suggesting that he left the premium on a counter unattended while he completed additional transactions and only realized it was missing at the end of the day. The Licensee submitted to the Committee that he mishandled the premium by leaving it unattended.

Council considered the Licensee's submissions and found his evidence was not corroborated by the transactional documentation, the Agency's records, the witness accounts gathered during Council's investigation and the Licensee's actions after completing Client A's transaction. Cumulatively, these factors led Council to question the Licensee's credibility and seriously undermined the reliability of his submissions. As a result, Council did not accept the Licensee's characterization of how Transaction A was mishandled. On a balance of probabilities, Council concluded the evidence demonstrated the Licensee had taken the cash collected for the purpose of a premium payment from Client A and used it for his own purpose.

Council also determined the Licensee was less than forthcoming to the Agency about the missing premium. When the Licensee remitted the documentation for batching he did not disclose that the premium had been misplaced or lost. He then offered several excuses and delayed the matter until he eventually provided the Agency with a personal cheque. Council found the fact the Licensee's cheque was returned due to insufficient funds exacerbated the matter and further compromised Client A's interests.

With respect to Transaction B, Council did not accept the Licensee's denial that he had requested or collected \$100.00 from Clients B as a "deposit" on the transaction. The Licensee's denial cannot be corroborated by any independent evidence and there was no reason to question the reliability of the other witness accounts, particularly as the amount of money in dispute was nominal and no party stood to gain a significant financial benefit in crafting a false story about the Licensee's request for \$100.00. Council concluded the Licensee had taken the cash in Transaction B and used it for his own purpose.

Council also found the Licensee knowingly processed Transaction B without the required documentation. The Licensee had improperly accepted a counter cheque to arrange for the financing on Transaction B and accepted the documentation without the wife's necessary identification. The Licensee acknowledged that this was inappropriate.

In the circumstances, Council concluded the Licensee had demonstrated a disregard for the requirements of processing insurance transactions, mishandled funds received from clients and provided misleading explanations to the Agency and Council throughout the process. Council found that the Licensee's conduct was a direct consequence of placing his own interests ahead of the interests of his clients, his employer and ICBC. Council's concerns about the Licensee's conduct were further compounded by the incompetent manner in which he handled Transaction B.

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Council reviewed previous cases in which licensees placed their own interests above the interests of clients and mishandled funds received for insurance payments. In the case of *Baljinder Singh Takhar*, the licensee processed ICBC Autoplan transactions for his own vehicle and his wife's for the purpose of generating approximately \$4,700.00 in extra commissions. He also falsely executed Autoplan documents and processed the documents knowing they had been falsely executed, in order to save insurance premiums. Council found that he was not suitable to hold a licence for a period of one year. Further, Council found that it was appropriate to fine the licensee \$5,000.00 and that he pay the costs of Council's investigation.

In the case of *Patricia Jean Orr*, the licensee made a false statement to ICBC which was material to her insurance claim and did not undertake any corrective measures until she was directed to do so by her employer. Council suspended the licensee for six months and placed a condition on her licence thereafter, precluding her from upgrading to a Level 2 general insurance agent for a one year period. She was also required to complete an ethics course approved by Council and pay the investigative costs. What distinguishes the licensee from the current case is that she was forthright throughout the process and demonstrated contrition to Council as well as an understanding that she had grossly erred.

In the *Amanda Lambert* decision, the Licensee completed vehicle transfer documents for a motorcycle she had purchased and misstated the purchase price of the motorcycle to reduce the tax she owed on the purchase. Council prohibited her from upgrading to a Level 2 general insurance agent for a one year period. Council also ordered that she pay a fine of \$500.00, complete an ethics course approved of by Council, and pay the investigative costs.

Council also considered the *Glenn Frank Bergen* case, wherein the licensee accepted investment monies for an overseas development project from two insurance clients and deposited the funds into his account for personal use. He reimbursed the clients when money from a family account was made available to him after numerous requests for the funds from his client. Council determined that the licensee was not trustworthy or financially reliable and cancelled his licence for a minimum period of one year. In addition, the licensee was found to have been evasive with Council staff during its investigation by making a material misstatement and failing to reply to inquiries from Council. He was fined \$6,000.00 in that regard.

Council found that the Licensee's conduct in the present case constituted a gross deviation from Council Rules and the Code of Conduct. The Licensee had used cash obtained from his clients for insurance payments for his own purpose. The Licensee's financial reliability was also brought into question when he wrote a personal cheque that did not clear. Throughout the investigation and the meeting with the Committee the Licensee failed to demonstrate credibility and continued to offer misleading explanations for his actions. In light of this, Council determined that a fine in the amount of \$5,000.00 was appropriate in the circumstances. Council also considered that the amount of the fine would sufficiently address the financial motivation underlying the Licensee's conduct in Transaction A and effectively deter similar conduct in the future. In addition, Council determined that the Licensee ought to be required to pay for the costs of Council's investigation into the matter.

The Licensee had also conducted Transaction B without properly sighting identification and improperly accepted a counter cheque to facilitate a pre-authorization payment plan. This could plausibly be attributed to a lack of competence. However, when coupled with the Licensee's request for cash as a "deposit" to secure the insurance pending receipt of all outstanding documentation, Council found the Licensee had not handled Transaction B in good faith and had shown a disregard for the procedural requirements that govern insurance transactions.

Council concluded the Licensee had failed to demonstrate trustworthiness, financial reliability, competence and an intention to carry on the business of insurance in good faith and in accordance with the usual practice. Council determined the Licensee was not suitable to hold an insurance licence. In Council's view, the matter necessitated a disposition that appropriately addressed the gravity of the Licensee's misconduct, the Committee's concerns regarding the Licensee's suitability and the risk he poses to the public. In addition to imposing a fine and assessing the costs of the investigation against the Licensee, Council determined the Licensee's licence ought to be cancelled for two years. In arriving at this disposition, Council considered the general principles of sentencing and was satisfied that its recommended disposition would sufficiently deter the Licensee and other agents from engaging in this type of behaviour. Such discipline would also protect members of the public and maintain confidence in the insurance industry.

INTENDED DECISION

Pursuant to section 231, 236 and 241.1 of the Act, Council intends to order the following:

1. the Licensee be fined \$5,000.00;
2. the Licensee's Level 1 general insurance salesperson's licence be cancelled for a minimum period of two years;
3. the Licensee pay the costs of Council's investigation into this matter assessed at \$825.00; and
4. as a condition of the order, the Licensee is required to pay the fine and investigative costs by **December 1, 2010**.

The intended decision will take effect on **August 31, 2010**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, he may present his case at a hearing before Council where he may be represented by legal counsel. 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 by **August 30, 2010**. 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 by **August 30, 2010**, the intended decision of Council will take effect.

Even if this decision is accepted by the Licensee, 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.fic.gov.bc.ca/fst/ or contact them directly at:

Suite 1200 - 13450 102nd Avenue
Surrey, British Columbia
V3T 5X3
Phone 604-953-5300

Dated in Vancouver, British Columbia, on the **3rd day of August, 2010**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/AH