

In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

VARINDER GREWAL
(the “Licensee”)

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee to dispute an intended decision of Council dated September 22, 2017.

The subject of the hearing was set out in an Amended Notice of Hearing dated April 11, 2018.

A Hearing Committee heard the matter on April 26, 2018 and presented a Report of the Hearing Committee to Council at its August 14, 2018 meeting.

Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236, and 241.1 of the Act:

1. The Licensee’s life and accident and sickness insurance licence is cancelled with no opportunity to reapply for a life and accident and sickness insurance licence for a period of 5 years, commencing September 11, 2018 and ending at midnight on September 10, 2023;
2. The Licensee is fined \$7,500.00, which is due and payable no later December 10, 2018;
3. The Licensee is assessed investigation costs of \$3,180.00, which are due and payable no later than December 10, 2018; and
4. The Licensee is assessed hearing costs of \$7,476.17, which are due and payable no later than December 10, 2018.

This order takes effect on the **11th day of September, 2018.**



Ken Kukkonen
Chairperson, Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

REPORT OF THE HEARING COMMITTEE

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c. 141)
(the "Act")

AND

VARINDER GREWAL
(the "Licensee")

Date: April 26, 2018
9:30 a.m.

Before: Ms. Lesley Maddison Chair
Mr. Chamkaur Cheema Member
Mr. David Russell Member

Location: Suite 300, 1040 West Georgia Street
Vancouver, British Columbia V6E 4H1

Present: Lanny Robinson Counsel for the Council
Nicholas McKnight Counsel for the Council
Michael D. Shirreff Independent counsel for the Hearing
Committee
No appearance Licensee, Ms. Grewal

BACKGROUND AND ISSUES

As set out in the Amended Notice of Hearing, dated April 11, 2018, this hearing was convened to determine whether or not the Licensee's life and accident and sickness insurance license should be cancelled on the basis that the Licensee is not suitable to hold such licence.

At the hearing, it was alleged by Council that: the Licensee had colluded with other applicants in writing certain of her Council Life Licence Qualifying Program ("LLQP") examinations; and had also encouraged and/or assisted at least one subsequent LLQP applicant to also cheat on the examinations.

Council initially considered the allegations against the Licensee at its meeting on August 15, 2017. At that time, Council made an intended decision to cancel the life and accident and sickness insurance licence of the Licensee. In accordance with section 237 of the Act, on September 22, 2017 Council provided the Licensee with written reasons and notice of its intended decision. In response to the intended decision, the Licensee requested a hearing, as was her right pursuant to section 237(3) of the Act.

The Hearing Committee was then constituted pursuant to section 223 of the Act and this is the written report that the Hearing Committee has prepared in accordance with section 223(4) of the Act.

At the outset of the hearing the Hearing Committee had to determine whether or not it was appropriate to proceed in the absence of the Licensee, who failed to attend the hearing. Council tendered evidence through the affidavit of Jenny Wong (an assistant at the office of counsel for the Council) that established that the Licensee had been represented by legal counsel in the weeks and days leading up to the hearing. Ms. Wong's evidence also confirmed that legal counsel for the Licensee had acknowledged service of the Amended Notice of Hearing on April 12, 2018 and had advised Council two days before the hearing that the Licensee would not be attending the hearing and wished to withdraw her objection to the proposed order cancelling her licence.

In light of this evidence, the Hearing Committee was satisfied that the Licensee had notice of the hearing and was prepared to proceed in her absence.

EVIDENCE

a. Witnesses

Michael Stitt was the only witness called by the Council at the hearing. Mr. Stitt is an investigator employed by Council and he was responsible for conducting the underlying investigation with respect to possible collusion on the LLQP examinations.

b. Exhibits

In addition to Mr. Stitt, Council tendered the following documentary evidence:

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| Exhibit 1 | Affidavit of Ms. Wong, dated April 25, 2018, which provided the evidence relating to service of the Notice of Hearing on the Licensee. |
| Exhibit 2 | Council's Book of Documents, which contained seven tabs providing information about aspects of the LLQP examinations and the investigation. |

- Exhibit 3 Statutory declaration, dated November 24, 2017, which contained evidence from a witness indicating that the Licensee had provided information to her with respect to cheating on the LLQP examinations.
- Exhibit 4 Expert report, dated January 26, 2018, prepared for Council by Chris Beauchamp, Ph.D., of Yardstick Testing & Training. Mr. Beauchamp's report provided a statistical analysis of certain issues relating to the LLQP examination results.

After hearing submissions from Council, the Hearing Committee admitted Exhibit 3 into evidence at the hearing even though the deponent was not called to testify in person. On the issue, Council referred the Hearing Committee to section 232.1 of the Act as the basis upon which the statutory declaration should be admitted. That being said, the Hearing Committee also noted that as an administrative tribunal it is not bound by the traditional rules of evidence and is entitled to consider any evidence that it deems relevant. On this basis, the Hearing Committee was prepared to accept the statutory declaration as evidence.

Council then applied pursuant to section 239(2) of the Act for an order that Exhibit 3 not be made available to the public so as to protect the personal and privacy interests of the deponent and to not compromise subsequent hearings relating to other licensees alleged to have colluded on the LLQP examinations. The Hearing Committee agreed to make the order requested by Council, subject to any person wishing to access Exhibit 3 also having the right to apply to seek access to the exhibit at a later date.

c. Facts

All applicants for a life insurance licence must complete the LLQP, which consists of a mandatory education course, as well as four multiple-choice qualifying licensing examinations. The examinations are divided into four specific subject areas: Life Insurance; Accident & Sickness Insurance; Segregated Funds; and Ethics (Tab 7, Exhibit 2). These examinations must be passed by an applicant within one year of completing the education course.

The Licensee in this matter was licensed as a life agent in British Columbia on February 16, 2017. At the time that she obtained her license, the Licensee became affiliated with an agency with offices in Surrey, British Columbia that was licensed to engage in life insurance activity (the "Agency").

In February 2017, Council was alerted about certain statistical anomalies in a recent sitting of the LLQP examinations that appeared to suggest some level of collusion amongst the examinees. In particular, Council received a collusion detection analysis that had been commissioned by the Canadian Insurance Services Regulatory Organizations ("CISRO")

with respect to all LLQP exam results across Canada. In its report, CISRO had identified possible collusion amongst recent LLQP exam writers in British Columbia. What the CISRO collusion analysis revealed were a surprisingly high number of exam results in British Columbia where candidates had used a substantially similar or identical answer sequence for certain exams.

After Council received the CISRO collusion analysis report, Mr. Stitt was tasked with investigating the matter further. Mr. Stitt began his investigation by reviewing exam results from the February 8, 2017 exam sitting. After looking at the exam results, Mr. Stitt determined that six candidates had used a combination of *precisely the same answers* across certain combinations of the exams. When Mr. Stitt looked up these six candidates in Council's licensee database, he discovered that all six individuals were licensees with the same Agency.

Mr. Stitt then discovered further linkages between these candidates, including the email addresses used by the candidates to receive their exam results. Eventually, as the scope of Council's investigation increased, Mr. Stitt determined that there were dozens of licensees associated with the same Agency who had appeared to have used the same or very similar answer sequences on the LLQP exams.

In early May 2017, the Licensee was identified by Council as having been one of the Agency licensees who had used the same answer sequence on two of her LLQP exams – Segregated Funds and Accident and Sickness. The Licensee had written both of these exams in January 2017.

On the Segregated Funds exam, the Licensee obtained an exam score of 63.33% (19/30). Her score was identical to 18 other candidates identified in the collusion analysis. More importantly, the Licensee had not only obtained the same raw score on the exam (19/30), but she had used exactly the same answer sequence as the 18 other candidates. That is, all 30 of the responses given by the Licensee on the exam matched the 30 responses given by the 18 other persons who obtained the same score (19/30).

On the Accident and Sickness exam, the Licensee obtained an exam score of 66.67% (20/30). For that exam, the Licensee again used the exact same answer sequence as 13 other examinees who had written the exam in 2016 and 2017. Of that group, 2 examinees wrote different versions of the exam than the Licensee and had obtained raw scores on the exam of only 3/30 (10%). A further review of the exam results also revealed numerous instances where examinees had used answer sequences that were substantially similar to the sequence used by the Licensee (for example, 29/30 of the exact same right and wrong answers). This indicated to Council that certain examinees had also used the same answer sequence as the Licensee, but had perhaps made a mistake during the exam with respect to one of the answers in the sequence that he or she had written down or memorized.

During the course of Council's investigation, Mr. Stitt met with the Licensee and directly asked her whether she had used a collusion sequence or had cheated on the two exams. The Licensee was unable to offer any explanation to Mr. Stitt as to why her answers were the same as many other licensees from the Agency and she denied that she had cheated in any way.

The expert opinion report prepared by Mr. Beauchamp provided a detailed statistical analysis of the probabilities of two candidates to a multiple choice examination having the same answer sequence, both in terms of the questions that were answered correctly, as well as the answers that were given when questions were wrong (Exhibit 4).

As Mr. Beauchamp outlined at page 3 of his report, his statistical analysis examined the potential for collusion using two well-validated statistical indices (the B-index and the g2 index). These indices are discussed in detail by Mr. Beauchamp in his report, but what the Hearing Committee found to be of most significance is that when the Licensee's answer sequences for the LLQP exams were reviewed and compared to other candidates, Mr. Beauchamp's analysis illustrated that the statistical probability of the Licensee's answer sequences independently matching the answer sequence of another candidate was *less than 1 in a billion*. The Hearing Committee further noted that Mr. Beauchamp set out that the statistical probability of multiple candidates having the same answer sequence as being even lower.

Finally, Council also tendered evidence by way of the statutory declaration (Exhibit 3), which revealed the Licensee to have actively facilitated and encouraged collusion on the LLQP exams by at least one other examinee. In or around March 2017, the Licensee provided another examinee with answer sequences for two versions of the Accident and Sickness exam and advised that examinee to memorize and use the answer sequences in order to pass the exams. The Licensee advised this examinee that the Licensee had used the sequences when she wrote the exams earlier in the year. The deponent then used the answer sequences provided by the Licensee during the May 4, 2017 LLQP exam sitting, but she did not pass the exams as they had recently been changed by Council given the concerns about possible collusion.

FINDINGS OF THE HEARING COMMITTEE

The burden at this hearing lies with Council, which must prove the allegations of collusion against the Licensee on a balance of probabilities.

Having reviewed and considered all of the evidence introduced by Council, even in the absence of an opportunity to hear from the Licensee, the Hearing Committee is of the view that Council has established that the Licensee cheated and colluded on her LLQP examinations, as well as actively encouraged and facilitated cheating by at least one other LLQP examinee.

In the eyes of the Hearing Committee, common sense dictates that it is highly improbable, if not impossible, for two candidates writing a 30 question multiple-choice examination to provide the exact same sequence of 30 answers (both right and wrong). The improbability of identically matching answers was brought home when the Hearing Committee reviewed the report from Mr. Beauchamp, which set out the statistical probability of this occurring as being less than 1 in one billion (by way of contrast, the Hearing Committee notes that a person's odds of winning the local lotto 6/49 are said to be only in the range of 1 in 14 million).

The Hearing Committee regards the circumstantial evidence in this matter to be overwhelming. It is particularly telling that every licensee alleged to have colluded on the LLQP exams, including the Licensee, was licensed or affiliated with the same Agency. The Hearing Committee also notes that Mr. Stitt reviewed the results from over 7,000 LLQP examinations and did not find any identical or substantially similar answer sequences from any candidates not affiliated with the Agency.

Further, the Hearing Committee is particularly troubled by the evidence in this instance that demonstrates the Licensee to have been actively involved in and encouraging cheating on the LLQP examinations by another candidate. Based on the evidence set out in the statutory declaration (Exhibit 3), it is clear that the Licensee provided two answer sequences to another examinee and advised that candidate to memorize and use the sequence.

The Council's primary mandate is of course the protection of the public. The LLQP plays an important role in ensuring that all licensees possess a basic level of competency and knowledge in order to effectively, properly and ethically engage in life insurance transactions and serve the public.

It is the Hearing Committee's view that the Licensee's actions are contrary to the public interest mandate of Council and are a serious violation of a number of provisions of the Code of Conduct, particularly sections 3, 4 and 5, which establish that trustworthiness, good faith and competence are critically important characteristics of a licensee. Further, these provisions of the Code also reveal that licensees are expected to conduct all professional activities with the utmost of integrity and reliability.

A licensee who has engaged in collusion and cheating in the course of obtaining her license has engaged in conduct that is diametrically opposed to the standards that a licensee is expected to uphold and represent. A willingness by the Licensee to cheat on the qualifying examinations should cause the Council great concern about the Licensee's competency, but perhaps even more importantly, her character and honesty.

As Council described in its written submissions, "a person licensed to engage in life insurance transactions is placed in a position of trust with whom she transacts" (Exhibit 5, para. 16). The Hearing Committee agrees with this characterization and believes that it is

imperative that licensees adhere to the highest ethical standards. The Licensee in this instance has failed in a number of serious ways to meet her professional obligations.

RECOMMENDATIONS OF THE HEARING COMMITTEE

In determining its recommendations to Council with respect to this matter, the Hearing Committee has carefully reviewed and considered the authorities that it was referred to at the hearing, including *Moore v. College of Physicians and Surgeons of Ontario*, [2003] O.J. No. 5200 (Ont. SC); *Financial Services Commission v. The Insurance Council of British Columbia and Maria Pavicic*, November 22, 2005; *Gurvinder Singh Lehal and Sukhvir Singh Mann*, 2009; and *the Matter of Richard Jones*, FST 06-020.

The Hearing Committee believes that the key factors in determining an appropriate penalty for the Licensee in this instance are deterrence, both general and specific, as well as the maintenance of the public confidence in the integrity of the profession and the regulatory system itself. At the same time, the Hearing Panel has also reviewed the above-noted prior decisions of Council so as to ensure that the penalty for the Licensee in is proportional to penalties assessed by Council in similar previous matters.

The Hearing Committee is quite troubled by the actions of the Licensee. In cheating on her LLQP exams, the Licensee has engaged in conduct which fundamentally undermines the integrity of the licensing process and has shown that she lacks the integrity and honesty required of a licensee. Further, not only did the Licensee cheat on her own LLQP exams, she was an active participant in perpetuating the collusion by encouraging at least one other examinee to do the same. These are actions and behaviours that the Hearing Committee believes require a strong disciplinary penalty.

For the reasons set out above, the Hearing Committee recommends that Council consider the following penalty:

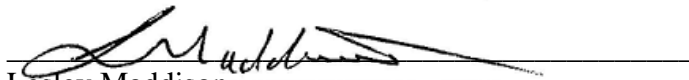
1. the Licensee's license be cancelled for a period of 5 years;
2. the Licensee be fined \$6,000;
3. the Licensee be required to pay Council's costs associated with both the investigation of this matter and the hearing, in amounts to be determined (with such costs to be paid prior to the Licensee reapplying for a licence); and
4. before reapplying to obtain a licence, the Licensee must also complete, at her own expense, an ethics course (or equivalent) that is approved by Council.

With respect to the investigation and hearing costs, the Hearing Committee considered the Licensee's position on costs as articulated in the email that her legal counsel sent to Council

two days before the hearing (Exhibit 1). As set out in that email, her counsel submitted that the Licensee should not be obliged to pay hearing costs given that the Licensee was withdrawing her objection to having her licence cancelled and was not going to attend the hearing.

The Hearing Committee has considered the Licensee's position, but is of the view that it is appropriate and necessary in this instance to order both investigation and hearing costs against the Licensee. It may be fair to say that the Licensee was required to request a hearing in order to obtain full disclosure from Council as to the evidence that would be called at the hearing. However, having received the disclosure materials, the Licensee waited until only two days before the hearing before advising that she was agreeable to having her licence cancelled. Further, while making that concession, the Licensee still took the position that Council should only cancel her licence for a two-year period. In the result, it remained necessary for Council to proceed to a hearing in order to prove the allegations against the Licensee. Given that a hearing was required, and considering the serious findings that the Hearing Committee has made, our recommendation to the Council is that the Licensee be required to pay costs of both the investigation and the hearing.

Dated in Vancouver, British Columbia, on the 13th day of August, 2018.



Lesley Maddison,
Chair of Hearing Committee