

In the Matter of

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

and

THE INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

PATRICIA JEAN ORR
(the "Licensee")

ORDER

As Council made an intended decision on August 18, 2009, under 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 September 9, 2009; and

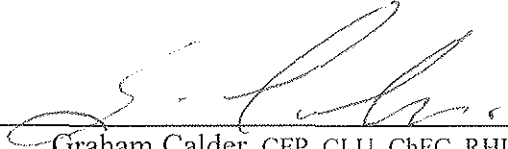
As the Licensee has not requested a hearing of Council's intended decision within the time provided to request a hearing;

Under authority of sections 231, 236 and 241.1 of the Act, Council orders that:

1. the Licensee's general insurance agent's licence is suspended for six months, commencing from April 2, 2009;
2. if the Licensee seeks to reactivate her licence at any time after the six month suspension period is completed, her licence will be issued as a Level 1 general insurance salesperson's licence for a period of twelve months from the date of reactivation;
3. the Licensee must successfully complete the Insurance Brokers Association of British Columbia's ethics course (or a comparable course as approved by Council), within six months from the date of Council's final decision or prior to the reactivation of her licence;
4. the Licensee pay the costs of Council's investigation in the amount of \$875.00; and

5. as a condition of this decision, the Licensee is required to pay the investigation costs by **January 5, 2010**, or prior to reinstatement of her licence by Council, whichever is the later.

This order takes effect on the 7th day of October, 2009.



Graham Calder, CFP, CLU, ChFC, RHU
Chairperson, Insurance Council of British Columbia

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

PATRICIA JEAN ORR
(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 July 20, 2009, an Investigative Review Committee (the "Committee") met with the Licensee to discuss the allegation the Licensee misrepresented to the Insurance Corporation of British Columbia ("ICBC") that she had been the driver of a vehicle involved in an automobile accident, when in fact another individual in her vehicle, her niece, was the driver of the vehicle.

The Committee was comprised of one voting and one non-voting member of Council, both of whom have significant experience in the insurance business. Prior to the Committee's meeting with the Licensee, an investigation report had been 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 advised the Licensee that it would present its findings to Council. Council would then consider the appropriate disposition and subsequently provide the Licensee with notice as to its decision in this regard.

A report setting out the Committee's findings and the aforementioned investigation report, was presented to Council at its August 18, 2009 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 a 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:

General

1. The Licensee was first licensed with Council on October 25, 1985, as a Level 1 general insurance salesperson. She has worked in the insurance industry since that time for various insurance agencies, as well as working for the Motor Vehicle Branch in the town of Sidney for approximately seven years.
2. The Licensee worked for Seafirst Insurance Brokers Ltd. (the "Agency") from September 21, 2005 to April 2, 2009, when the Agency terminated her employment contract as a result of the ICBC matter. Her Level 2 general insurance agent licence became inactive on April 2, 2009, as she did not have authorization to represent any other insurance agency.

ICBC Incident

3. At approximately 5:30 p.m. on February 15, 2009, the Licensee took her niece for a driving lesson in the Licensee's vehicle. Her niece was in the driver's seat and the Licensee was in the front passenger seat. While turning into a parking space, her niece hit the gas pedal instead of the brake pedal and struck a tree, resulting in a single vehicle accident.
4. The Licensee was worried that she had breached a condition of her ICBC insurance by having a driver in her vehicle with less than ten years of driving experience (ICBC's "10-Year Rule").
5. The niece was the daughter of the Licensee's identical twin. Following the accident, the Licensee received "family pressure" to not declare her niece as the driver because the accident may affect her niece's driver's licence status.
6. At approximately 9:00 p.m. on the day of the accident, the Licensee contacted ICBC Dial-a-Claim, filed a claim, and reported that she was the driver of the vehicle at the time of the accident.
7. Approximately a week after the accident, a person who was "not in the insurance industry," advised the Licensee that she had not breached the 10-Year Rule as her niece did not reside in her household.
8. After obtaining this information, the Licensee discussed the matter with a number of friends and colleagues including her family members who advised her to not say anything regarding the accident.

9. On March 19, 2009, the Licensee was called into the office of the Agency's Human Resource Manager. The Licensee was informed that her boss had become aware that the Licensee had made a claim to ICBC and misrepresented herself as the driver of the vehicle. The Licensee's boss required that the Licensee report the misrepresentation to ICBC within two weeks, or her employment at the Agency would be terminated. He also required that she write a letter to him confirming she had done so.
10. On the evening of March 19, 2009, the Licensee contacted an ICBC Claims Centre and reported that her niece was in fact the driver of her vehicle at the time of the February 15, 2009 accident.
11. On May 6, 2009, the Licensee met with an Investigator from ICBC's Special Investigation Unit. The investigator advised the Licensee that she was required to reimburse ICBC \$6,003.00 (which was the amount that ICBC paid out for her claim). The Licensee reimbursed ICBC, and as a result, ICBC advised that they would not advance fraud charges against her.
12. On April 2, 2009, the Agency advised the Licensee that as a result of her misrepresentation to ICBC, her employment was terminated.

The Licensee's Submissions from the Committee meeting

13. The Licensee confirmed that she misrepresented the driver of the vehicle to ICBC and that she did not contact ICBC to correct the issue until someone at the Agency advised her that it would affect her job if she did not report the misrepresentation to ICBC.
14. The Licensee explained the reason she did not report the breach to ICBC upon learning that the "10-Year Rule" did not apply, was because she feared how the accident would affect her niece's ability to maintain a driver's licence.
15. The Licensee stressed she had a 25-year career in the insurance industry and that her prior record was "clean." She characterized her actions as a "stupid mistake," that it was something she had not "thought out," and that her actions were all "fear based."
16. The Licensee was contrite and indicated that she was not running from her actions. She acknowledged that she made a misrepresentation to ICBC, and then did not proactively attempt to fix the problem after learning that her insurance coverage would not be affected by the 10-Year Rule. She accepted full responsibility for her actions and stressed that she had learned her lesson.

LEGISLATION

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.
- (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

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)(b) of the Act in that the Licensee failed to act in a trustworthy manner, as required by Council's Code of Conduct. In particular, Council concluded that on February 15, 2009, the Licensee made a false statement to ICBC which was material to ICBC's review of her insurance claim and, she did not undertake any corrective measures until she was directed to do so by her employer at the time.

Trustworthiness is a fundamental element of each of the professional requirements defined in Council's Code of Conduct. Licensees must adhere to a strict standard of personal integrity, reliability and honesty. Acts of dishonesty outside a licensee's professional life may reflect on his or her trustworthiness to hold an insurance licence.

In considering the appropriate disposition in this matter, Council reviewed two cases in which licensees were found to have made material misrepresentations to ICBC. In the 2007 decision of *Buljinder Takhar*, the licensee abused his position as an insurance salesperson by processing Autoplan transactions on his own vehicle and his wife's vehicle for the purpose of generating extra commissions; he processed Autoplan transactions on the vehicles in order to save insurance premiums; he falsely executed Autoplan documents and processed the documents knowing that they had been falsely executed; and he made a material misrepresentation to ICBC in relation to an insurance claim. As a result of his actions, the licensee earned approximately \$4,700.00 in commissions. Council found him not suitable to hold a licence for one year, he was fined \$5,000.00, and he paid Council's investigative costs.

In the case of *Lai Wa (Michelle) Tsui*, the licensee intentionally misrepresented two other individuals as principal operators of her vehicle on five occasions, in order to save insurance premiums. Council suspended her licence for six months, she was fined \$5,000.00 and following her suspension, her licence was downgraded from a Level 2 general insurance agent to a Level 1 general insurance salesperson licence for a period of at least one year. The licensee was ordered to pay Council's investigative costs.

In the present case, Council found the Licensee's actions to be less egregious than the conduct of *Buljinder Takhar*, but comparable to the conduct of *Lai Wa (Michelle) Tsui*. In particular, the Licensee's lack of trustworthiness was a fundamental breach that went to the root of her employment as an insurance agent, not only with respect to the initial misrepresentation, but also in her failing to proactively deal with the breach before it became clear that it could affect her employment with the Agency.

Council acknowledged that the Licensee accepted responsibility and felt she understood the significance of her actions. It also acknowledged that the Licensee has not been the subject of any previous sanctions by Council, and that this matter appeared to be an isolated and reactionary incident. Council considered such findings to be mitigating factors in determining the proper penalty for the Licensee's breach of the Act.

Based on the foregoing, Council determined the Licensee's licence should be suspended for six months, commencing from April 2, 2009, which is the date her licence became inactive due to her transgression. Council intends to impose this sanction against the Licensee as a punitive measure; to provide a specific deterrent against future misconduct of this nature; and to protect the public confidence in the industry. To promote the rehabilitation of the Licensee, Council determined that the Licensee must successfully complete the Insurance Brokers Association of British Columbia's ethics course (or a comparable course) within a specified time frame, and, because the Licensee's transgression reflected on her trustworthiness, Council concluded that if she seeks to reactivate her licence following her six month suspension, it should be downgraded to a Level 1 general insurance salesperson licence for a period of twelve months. Council reasoned this licence downgrade would provide an additional layer of protection to the public while the Licensee rehabilitates. If no issues arise with the Licensee's conduct during her twelve month period of licence restriction and she meets the requirements for a Level 2 general insurance agent licence, then her licence can be upgraded accordingly.

INTENDED DECISION

Pursuant to section 231, 236 and 241.1 of the Act, Council made the following intended decision:

1. the Licensee's general insurance agent licence be suspended for six months, commencing from April 2, 2009;
2. if the Licensee seeks to reactivate her licence at any time after the six month suspension period is completed, her licence will be issued as a Level 1 general insurance salesperson licence for a period of twelve months from the date of reactivation;
3. the Licensee must successfully complete the Insurance Brokers Association of British Columbia's ethics course (or a comparable course as approved by Council), within six months from the date of Council's final decision or prior to the reactivation of her licence; and
4. the Licensee pay \$875.00, which represents Council's investigative costs into this matter and these costs must be paid the later of 90 days from the date of Council's final decision or prior to the reactivation of her licence.

The intended decision will take effect on **October 7, 2009**, 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, she may present her case at a hearing before Council where she 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 **October 6, 2009**. 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 **October 6, 2009**, 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
Telephone 604-953-5300

Dated in Vancouver, British Columbia on the **9th day of September, 2009**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/RT/cs