

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

RAGHBIR KAUR ATWAL
(the "Licensee")

ORDER

As Council made an intended decision on March 16, 2010, 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 March 26, 2010; 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 pay a fine of \$5,000.00;
2. the Licensee pay \$1,250.00, which represents Council's investigative costs into this matter; and
3. a condition is imposed on the Licensee's licence that she pay the above mentioned fine and investigative costs by **July 20, 2010**. If the Licensee does not pay the ordered fine and investigative costs by this date, the Licensee's licence is suspended as of **July 21, 2010**, without further action from Council.

This order takes effect on the 21st day of April, 2010.



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

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)
respecting
RAGHBIR KAUR ATWAL
(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 January 22, 2010, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss the degree of knowledge and responsibility to assign the Licensee for transgressions that occurred at Accost Insurance & Financial Centre Inc. (“Accost”) at a time when the Licensee was Accost’s nominee.

The Committee is 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 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 made a recommendation to Council as to the manner in which this matter should be disposed. For the Committee to make a recommendation for disposition to Council, it has to have reached an agreement with the Licensee as to the facts of the matter, any breaches of the applicable legislation and the appropriate disciplinary action.

A report setting out the Committee’s findings and recommended disposition, along with the aforementioned investigation report, was presented to Council at its March 16, 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 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:

Licensing and Employment Information:

1. The Licensee has worked in the insurance industry since 1984.
2. She obtained a Level 1 general insurance salesperson licence on April 29, 1987.
3. The Licensee is currently licensed as a Level 3 general insurance agent nominee, and has held this licence since June 2, 1992.
4. She was the nominee of an insurance agency for eight years prior to working at Accost.
5. The Licensee commenced employment with Accost in May 2000, as a Level 3 general insurance agent.
6. She became the nominee of Accost in May 2001, and remained in this position until she resigned on June 3, 2007.

Accost and Past Transgressions:

7. At the material time, the Licensee was the sole nominee of Accost, which had two branch offices in Surrey: a main location on King George Highway in Surrey; and a location on 96th Avenue. Accost's principals, Sukhvir Singh Mann ("Mann") and Gurvinder Raj Singh Lehal ("Lehal"), worked from the King George Highway office. Mann was a Level 2 general insurance agent, and Lehal was a Level 1 general insurance salesperson.
8. The Licensee primarily worked out of Accost's 96th Avenue office, but was aware of her responsibilities at both of Accost's locations. She would attend Accost's King George Highway office about once a week.
9. Mann and Lehal sold Accost on September 1, 2008. Following this sale, Council found that between 2001 and 2006, Lehal and Mann had used their positions as general insurance agents and as officers, directors and principal owners of Accost to benefit their friends, family and clients prejudicing the Insurance Corporation of British Columbia ("ICBC") in the process through their misuse of Temporary Operating Permits. They were also found to have:
 - allowed, either by act or omission, Accost to breach the conditions of its Autoplan Agency Agreement with ICBC;

- allowed or failed to prevent employees of Accost from accessing ICBC's database to obtain personal information on ICBC customers for purposes other than intended;
- failed to comply with ICBC directives or take corrective actions after receiving ICBC warnings regarding improper insurance transactions and regarding improper use of ICBC's database by employees of Accost; and
- failed to ensure Accost's operations were properly supervised by a properly qualified nominee.

The misconduct also included:

- facilitating ICBC transactions based on false principal operator declarations;
 - improper enrolment of clients in ICBC's premium financing program;
 - permitting an employee to improperly transfer ownership of a vehicle to avoid a debt; and
 - improperly registering imported vehicles.
10. Council found that Accost had a culture of unethical practices and despite warnings and penalties from ICBC, the misconduct continued. Although the Licensee was Accost's nominee, Lehal and Mann were Accost's directing minds. The Licensee was Accost's nominee solely to fulfill a licensing requirement. In fact, she had little involvement with Accost's King George Highway office where the problems occurred.

Knowledge and Responsibility of the Licensee for Accost's Transgressions:

11. ICBC had to some degree addressed the misconduct that occurred between 2001 and 2006 at Accost. ICBC material revealed that it had dealt with Accost between 2002 and 2005 on four different issues, two of which resulted in the imposition of sanctions.
10. In 2002, Mann processed a transaction for his mother in contravention of the ICBC Autoplan Manual. A letter identifying Mann's conduct was sent via courier to Accost to the attention of Mann on February 17, 2003.
11. In 2003, a provincial review confirmed that Accost improperly registered 11 salvage vehicles imported from the USA. A letter identifying the issue was sent to Accost, to the attention of Mann, on July 8, 2003. The letter indicates that ICBC met with the Licensee in December 2002 to review the transactions.

12. In 2003 and 2004, Mann processed a series of transactions for his friend and his friend's mother, whereby the principal operator was improperly declared to avoid paying a higher premium. A letter identifying the issues was sent to Accost, to the attention of Mann, on March 24, 2004. Mann agreed to a commission deduction.
13. In 2005, Accost accepted cheques for transactions involving customers with a "cash only" status, contrary to the ICBC Autoplan Manual. A letter identifying the issues was sent to Accost, to the attention of Mann, on August 30, 2005. Mann agreed to a three day commission deduction.
14. The Licensee stated she was unaware that ICBC had investigated past transgressions committed by Accost staff. She further submitted that she had not known that sanctions had been imposed as a result of said transgressions on two occasions.
15. Although she had access to Accost's commission statements and its mail, she was never alerted by ICBC, Mann or Lehal about any ongoing concerns related to Accost's performance. Her understanding was then, as it is now, that all ICBC correspondence is sent to an agency's nominee, which was her role during the period in question.
16. The Licensee submitted that she occasionally went through the ICBC Autoplan batches at Accost's King George Highway office to ensure the transactions were being completed properly. She recalled one occasion where she found that a non-personal cheque was accepted for an Autoplan 12 enrolment, contrary to ICBC's policy. The Licensee remembers bringing the matter to Mann's attention and he told her that he would take care of it. She was not informed of anything further regarding this issue.
17. When ICBC investigators contacted the Licensee to arrange to meet and discuss the conduct of Accost staff, the Licensee immediately contacted Mann to determine the nature of ICBC's inquiries. Mann did not reveal the entire scope of the investigation. He told the Licensee it was related to the conduct of one particular employee who he intended to terminate.
18. It was not until the Licensee met with the ICBC investigators that she learned of the larger extent of its investigation. The following day, she submitted her resignation to Mann and Lehal.

19. The Licensee submitted that her normal supervisory practice at Accost included reviewing transactions, commission statements and ICBC Audit Reports. She submitted that she carried out this practice at Accost's 96th Avenue office where she worked from and she continues to do so currently at her own insurance agency, Atwal's Insurance.
20. The Licensee acknowledged that she did not oversee Accost's problematic King George Highway office to the same extent as its 96th Avenue office, primarily because the King George Highway office was being run by Accost's principals, Mann and Lehal, and she felt they were capable of carrying out insurance business as required. The Licensee also pointed out that ICBC had not brought any of the concerns to her attention, so she had no reason to believe there were problems at the King George Highway office.
21. The Licensee advised that she never specifically asked to review ICBC audit reports pertaining to the King George Highway office; and she never contacted ICBC to request that correspondence be directed to her attention.
22. The Licensee submitted that she relied on the verbal assurances of Mann and Lehal. To the extent she became aware of any irregular transactions, the Licensee's practice was to ask one of the principals about the matter and leave it in their hands to resolve.
23. Since the acquisition of Atwal's Insurance, the Licensee has opened two more branch offices. Each office has an assigned manager, holding a Level 2 general insurance agent's licence.
24. The Licensee submitted that she oversees the operations at Atwal's Insurance, and plays an active role in the day to day activities at each office. The Licensee works full time, with a schedule that ensures she is working at different locations in a given week.
25. She has provided Council with various ICBC Audit Reports, dating back to when she managed Accost's 96th Avenue branch office. Most recently, one of Atwal's Insurance offices received a 100 percent grade in an ICBC audit.

LEGISLATION

Rule 7(8) of the Council Rules

(8) A licensee must comply with the Council's Code of Conduct, as amended from time to time.

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 competently carry out her role as a nominee at Accost.

An insurance agent nominee is responsible to Council for all activities of the insurance agency he or she oversees. The nominee must ensure the agency's employees are properly supervised, and the agency is operating in accordance with the requirements.

In this case, Council concluded that the Licensee's failure as a nominee at Accost did not reflect on her overall abilities as a nominee. Council acknowledged that she appeared to have performed her role as a nominee adequately at different insurance agencies, before and after her experience at Accost. As well, the Accost circumstances were somewhat unique in that the Licensee was responsible for Accost's insurance activities, which included the transgressions of the Accost principals, yet she was beholden to these principals as her employer.

Notwithstanding, Council did not believe the unique circumstances or the Licensee's lack of knowledge of the transgressions absolved her of her responsibility as a nominee. It was not sufficient for her to implicitly trust Lehal and Mann as she had done. Council was of the view that if the Licensee had reviewed certain records at Accost's King George Highway office, she would likely have uncovered some of the problems or, at a minimum, been alerted to make further inquiries. Council determined that the transgressions continued for a considerable period of time at Accost, in part, because of the Licensee's failure to carry out her responsibilities, such as taking reasonable steps to remain informed of the activities at Accost's King George Highway office.

In considering the appropriate disposition in this matter, Council reviewed the *Apex Insurance Services Ltd.* ("Apex") decision, wherein Council found that the nominee of the agency had knowingly allowed licensed insurance agents at the agency to process ICBC Autoplan transactions on their own vehicles, and in some cases, the vehicles of other family members, for the primary purpose of generating commission and fees. The nominee was suspended for a period of nine months and deemed not suitable to hold a Level 3 general insurance agent's licence for two years. Council also imposed a \$5,000.00 fine on the nominee, in addition to fines against the agency and the individuals directly involved in the improper transactions.

In the present case, the Licensee permitted improper transactions at an insurance agency, and failed to provide sufficient supervision. However, Council did not believe the Licensee had acted in bad faith as in the Apex matter, where the nominee knowingly allowed transgressions to occur and she was found to have acted in an untrustworthy manner and contrary to the good faith requirement. Rather, the Licensee operated on the assumption that the principals of Accost, as owners, were experienced and knowledgeable enough to oversee the Accost branch office where they worked. Although the Licensee made an error in this regard, the fact that ICBC never directed any correspondence to her attention and the deliberate effort of the principals to mislead the Licensee are relevant factors in considering an appropriate disciplinary outcome.

Council recognized the challenges that can arise where an agency nominee is not an owner or directing mind of the agency. However, this does not excuse the nominee from carrying out his or her responsibilities, such as agency supervision.

Ultimately, given the widespread and serious breaches of the Act that occurred at Accost while the Licensee was its nominee, Council felt that she ought to be fined \$5,000.00. Council views it as critical to the regulatory framework that nominees be held accountable for misconduct by agency employees, particularly where it is demonstrated that a nominee has failed in his or her duties. Council determined that this fine reflects the seriousness of the Licensee's failings and would serve as a measure of general deterrence to reiterate the importance of the role of nominees to the industry at large.

INTENDED DECISION

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

1. the Licensee pay a fine of \$5,000.00, which must be paid within 90 days from the date of Council's final decision;
2. the Licensee pay \$1,250.00, which represents Council's investigative costs into this matter and these costs must be paid within 90 days from the date of Council's final decision; and
3. as a condition of this decision, the Licensee is required to pay the above mentioned fine and costs by **July 20, 2010**. If the Licensee does not pay the ordered fine and costs by this date, the Licensee's licence is suspended as of **July 21, 2010**, without further action from Council.

The intended decision will take effect on **April 21, 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, 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 **April 20, 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 **April 20, 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
Telephone: 604-953-5300

Dated in Vancouver, British Columbia, on the 26th day of March, 2010.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cc