

**In the Matter of**

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

**and**

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

**and**

**ACCOST INSURANCE & FINANCIAL CENTRE INC.**  
**(the "Agency")**

**ORDER**

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Agency to dispute an intended decision dated October 10, 2008.

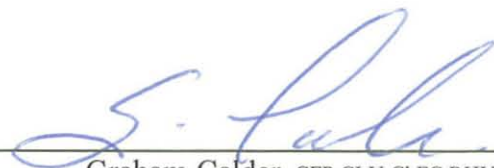
The subject of the hearing was set out in a Notice of Hearing dated March 10, 2009.

A Hearing Committee heard the matter on April 29<sup>th</sup> and 30<sup>th</sup>, 2009, and presented its hearing report to Council at its July 21, 2009 meeting.

Council considered the Hearing Committee's report and made the following order pursuant to section 231, 236 and 241.1 of the Act:

1. the Agency is fined \$20,000.00;
2. the Agency pay for Council's investigative costs assessed at \$3,500.00;
3. the Agency pay Council's costs associated with this hearing, assessed at \$5,128.25; and,
4. as a condition of this decision, the Agency is required to pay the aforementioned fine and costs no later than **January 26, 2010**. Failure to pay the costs by this date, will result in the automatic suspension of the Agency's licence as of **January 27, 2010** until such time as the fine and costs are paid in full.

This order takes effect on the 30 of July, 2009.



Graham Calder, CFP CLU ChFC RHU  
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*  
(S.B.C. 1996, c. 141)  
(the "Act")

AND

ACCOST INSURANCE & FINANCIAL CENTRE INC.  
(the "Agency")

DATE: April 29, 2009  
9:30 A.M.

BEFORE: David Lyons Chair  
Darlene Barker Member  
Susan Newham Member

HEARING AT: Insurance Council of British Columbia  
Suite 300, 1040 West Georgia Street  
Vancouver, British Columbia V6E 4H1

PRESENT: David McKnight Counsel for Council  
Robert Doran Counsel for the Agency  
Nishaber Singh Dhindsa ("Nishaber")  
Nagdip Kaur Dhindsa ("Nagdip")

Background and Issues

The Agency entered into a settlement agreement with the Insurance Corporation of British Columbia ("ICBC") after its owners, who at the time were Gurvinder Raj Singh Lehal ("Lehal") and Sukhvir Singh Mann ("Mann"), agreed to two material breaches of the Agency's ICBC Autoplan Agency Agreement. The breaches involved the improper issuance and voidance of ICBC Temporary Operating Permits ("TOPs") and the inappropriate access of ICBC's database.

The aforementioned matters, as well as previous ICBC related non-compliance issues at the Agency, were considered by Council. On October 10, 2008, Council made an intended decision pursuant to sections 231 and 236 of the Act. The Agency requested a hearing of the intended decision, pursuant to section 237 of the Act, and, as set out in the Notice of Hearing, the purpose of the hearing was to determine whether:

1. The Agency failed to act in a trustworthy and competent manner, in good faith and in accordance with the usual practice of the business of insurance:
  - i. by breaching the conditions of the Agency's Autoplan Agency Agreement with ICBC;
  - ii. by issuing and then improperly voiding TOPs for the benefit of customers and friends;
  - iii. by allowing staff or other individuals to access ICBC's information database for reasons other than to transact automobile insurance business;
  - iv. by failing to comply with ICBC directives and/or to take corrective measures after receiving ICBC warnings regarding improper insurance transactions conducted by the Agency and/or its employees; and,
  - v. in any other manner.
2. The Agency is able to continue to carry on the business of insurance in a trustworthy and competent manner, in good faith and in accordance with the usual practice, as required under section 231 of the Act; and,
3. disciplinary or other action is warranted in the circumstances.

The Hearing Committee (the "Committee") was subsequently constituted under section 223 of the Act, and this is the report of the Committee to Council in accordance with section 223(4) of the Act.

### Evidence

Evidence reviewed by the Committee in consideration of this matter:

- Exhibit 1                      Agreed Statement of Facts
- Exhibit 2                      Council's Book of Documents
- Exhibit 3                      The Agency's Book of Documents
- Exhibit 4                      October 10, 2008 correspondence from Council to George Willie ("Willie")
- Exhibit 5                      September 12, 2007 correspondence from Council to Willie
- Exhibit 6                      Facsimile dated September 21, 2007 from Willie to Council
- Sworn testimony of Nishaber

The Committee also considered submissions from both legal counsels on investigation and hearing costs, as attached to this Hearing Report.

**Nishaber's Testimony**

Nishaber testified under oath to the following:

1. he has held a Level 1 general insurance salesperson licence since September 2008;
2. his wife, Nagdip, has had a lengthy insurance career and she previously worked for Coast Capital Insurance;
3. prior to purchasing the Agency, he had been actively looking to purchase a business and had purchased shares in a taxi business;
4. at a public gathering in July 2008, he learned through a business acquaintance that the Agency was for sale. He subsequently met with Lehal and Mann a total of four to five times to discuss purchasing the Agency;
5. he met with Lehal and Mann to discuss purchasing the Agency on three occasions in July. On the third occasion, they told him about an ICBC investigation into their conduct. Mann told him he made a misrepresentation to ICBC respecting a declaration on a vehicle for his mother and cousin. Mann also indicated there were two infractions but he didn't provide any further particulars. Lehal advised him that there were two TOPs that should not have been voided. They both advised him that the breaches were not significant and they could be fined individually, but the sale of the Agency was not related to these events;
6. in August 2008, he became aware that ICBC had brought its concerns to Council's attention;
7. Jason Sandhu ("Sandhu") was their lawyer who represented them in purchasing the Agency;
8. he told his lawyer, Sandhu, that ICBC had been investigating Lehal and Mann. Sandhu advised him that ICBC cannot stop the sale/purchase of the Agency because the concerns were not significant;
9. he relied on his lawyer to conduct the necessary due diligence of the Agency;

10. he and Nagdip are 50/50 shareholders of the Agency, and they took over its operation effective September 1, 2008. Part of the due diligence on the Agency purchase involved reviewing its financial statements and insurance company statements of commission. They purchased the Agency for one million dollars, using equity in their home and the sale of his shares in the taxi business. The original Agency sale/purchase agreement included retaining the services of Lehal and Mann for four years, primarily to assist in maintaining the Agency clients. Due to this arrangement, they did not believe it was necessary to hold back any money during the Agency purchase;
11. in mid October 2008, through Sandhu, he learned that ICBC was not approving the purchase/sale of the Agency due to the retention of the services of Lehal and Mann;
12. he learned of Council's intended decision against the Agency in October or November 2008;
13. as he had learned that the problems with Lehal and Mann were indeed serious, he subsequently requested that they pay back what he had paid for the Agency;
14. Willie was the Agency's nominee prior to his purchase of the Agency and he kept Willie as the nominee until Nagdip's licence was upgraded to nominee status in April 2009;
15. following his purchase of the Agency, he spoke with Willie on a daily basis, however, Willie never discussed with him any of the previous problems at the Agency;
16. prior to purchasing the Agency, he was aware of the insurance licensing framework and the regulatory requirements. He was aware that Council could discipline insurance licensees and/or agencies, including the cancellation or suspension of a licence and the imposition of fines;
17. he was aware of the responsibility incumbent upon an agency nominee;
18. he had not seen Exhibit 5 before the hearing and he was not aware that there was a branch office of the Agency, operated by Raghbir Atwal ("Atwal");
19. he had not seen Exhibit 6 before the hearing;
20. he did not contact Council directly about its investigation of the Agency;
21. he was aware that ICBC had to review the sale/purchase agreement and based on his discussions with Sandhu, he believed that ICBC had approved it;

22. he learned from people in his community that Lehal and Mann were “good people” and he thought they were honest despite knowing they were under investigation;
23. Lehal and Mann indicated they would pay any fines imposed on the Agency. He no longer trusts them and has appealed the matter to protect his rights.

**Arguments by David McKnight on behalf of Council**

1. The Agency failed to act appropriately when conducting a number of ICBC transactions and this misconduct was acknowledged in the settlement agreement with ICBC. There was a culture of inappropriate practices at the Agency, and Atwal, who was the Agency’s nominee during the period in question, was, in fact, an “absentee” nominee who was not involved in the day to day activities within the Agency. Atwal had not been aware of the ongoing problems, as she reported to and relied on the information given to her by Lehal and Mann, both of whom were experienced Level 2 agents;
2. The Agency, its nominee and Nishaber were aware of Council’s investigation. Nishaber was aware that Council could discipline licensees. Yet, despite his knowledge of ongoing issues at the Agency prior to purchasing it, Nishaber did not contact either ICBC or Council to obtain more information and he chose to complete his purchase of the Agency without any contingencies to protect his interests;
3. Based on the settlement agreement with ICBC, Lehal, Mann, and some Agency employees assisted friends and favoured clients by improperly issuing and then voiding TOPs in order to assist their clients in passing AirCare without having to pay for ICBC insurance. In 2006, the Agency improperly issued and voided 12 TOPs. The settlement agreement establishes that both Mann and Lehal, as principal owners of the Agency, allowed this practice to occur;
4. The Agency had engaged in a culture of unethical business practices. As a result of the Agency’s misuse of TOPs, ICBC was denied insurance premium, while at the same time being put “on risk” should there be a loss by the Agency’s customers on the way to or from AirCare;
5. The motive and most plausible explanation for the “TOP scam” was to allow the Agency to garner favour with preferred clients and customers which would ultimately lead to beneficial business opportunities, such as clients keeping their business with the Agency and encouraging others to place insurance business through the Agency. In this regard, the Agency implemented a practice to manipulate the system for personal benefit, which was tantamount to fraud;

6. While both Gurinder Singh Dhesi (“Dhesi”), a Level 1 general salesperson employed at the Agency at the time, and Mann’s brother did not implicate Mann as being involved or aware of Dhesi’s improper access of the ICBC database in order to identify vehicle owners for reasons other than processing insurance, it is clear this practice took place. It is significant that it was Mann’s brother and father who benefited from the improper access. Even if Mann was not directly involved in the improper access to the ICBC systems, it speaks to the unethical culture within the Agency and demonstrated a significant lack of competency and supervision at the Agency;
7. The submissions of Atwal are of assistance in understanding how the Agency operated. Atwal was in charge of the Agency’s branch office on 96<sup>th</sup> Avenue but was, as nominee for the Agency, responsible for both offices. Atwal has stated she attended the Agency’s King George office “once a week and sometimes twice a week”. She stated that Mann was in charge of the Autoplan, and Mann, Dhesi and Lehal were responsible for ICBC batching in the King George office. While she understood that as a nominee, she had a duty to supervise all operations of the Agency, she always reported to Mann and Lehal, who, in turn, advised her that everything was in order. She was employed by Mann and Lehal for a two year period because they could not find another person to be nominee. The agreement was she would continue as nominee for two years and then the Agency’s 96<sup>th</sup> Street location would be transferred to her and her husband. This took place in 2006;
8. Atwal’s statement is consistent with the finding that she had no knowledge that the practice involving TOPs or any other inappropriate conduct was taking place at the Agency. Upon learning of the allegations raised in ICBC’s investigation, Atwal promptly resigned; and,
9. The evidence speaks to the lack of competence in managing the Agency and strongly suggests the activities at the Agency did not conform to the usual practice of the business of insurance.

**Arguments by Robert Doran on behalf of the Agency**

1. The Agency, through Nishaber and Nagdip, was not given a chance to make submissions prior to Council making its intended decision;
2. The ICBC investigation started the process of public protection. Lehal and Mann had to sell the Agency, otherwise the Agency's ICBC agreement would have been terminated;
3. The admission of wrongdoing by Lehal and Mann is a mitigating factor for the Agency, particular in that the admission was made early on in ICBC's investigation;
4. As of September 1, 2008, the Agency removed those persons, and particularly Lehal and Mann, who caused the problems which led to the ICBC concern;
5. Protection of the public is the fundamental purpose of sentencing for misconduct. This purpose has been met through the change in the Agency's ownership and the removal of Lehal, Mann and others from the Agency who engaged in the misconduct;
6. Lehal and Mann, the directing minds behind the Agency's problems, have been subject to maximum penalties from Council for the misconduct and it is not necessary to impose maximum penalties against the Agency, particularly in view of the changes made by Nishaber and Nagdip, which have addressed the public protection concerns; and,
7. It would be unreasonable to impose a fine greater than \$5,000.00 against the Agency.



### **Committee Findings**

After evaluating the evidence before it, the Committee concluded the Agency's conduct in this matter was contrary to Council's Code of Conduct and, in particular, the principles of trustworthiness, good faith and the usual practice of the business of insurance.

The Agency allowed the following misconduct to occur:

1. improper issuing and voiding of TOPs on 12 occasions which resulted in ICBC being denied premiums despite being "on risk" for the TOPs;
2. inappropriate access of ICBC's database on numerous occasions;
3. allowing ICBC insurance to be placed on vehicles based on false declarations respecting who principally drove the vehicles;
4. improper enrollment of clients in ICBC's premium financing program;
5. allowing an Agency employee to improperly transfer his vehicle so as to avoid an outstanding debt to ICBC; and,
6. improperly registering vehicles imported from the United States.

The misconduct occurred between 2001 and 2006 at a time when Lehal and Mann were principals of the Agency. The Committee found that the misconduct was pervasive, intentional and prejudicial to others. In particular, ICBC was denied insurance premiums, and harm could have come to the clients as well as the public in that numerous ICBC transactions were knowingly based on false information, possibly giving rise to uninsured losses. Further, ICBC policy holders suffered a breach of their privacy when their information was improperly accessed by Agency staff for purposes other than an insurance transaction.

The Agency had a culture of unethical practices and, despite warnings and penalties from ICBC, the misconduct continued. While a nominee was employed, it was Lehal and Mann who were the Agency's directing minds. Atwal was the Agency's nominee solely to fulfill a licensing requirement. In fact, she had little involvement with the Agency's King George office's operations where the problems occurred.

The Committee found the activities at the Agency to be egregious and brought into question the suitability of the Agency to continue to be licensed. While the activities in question occurred as a result of the actions or inactions of the Agency's previous owners, the Agency was a licensed person that was contracted with ICBC and therefore, accountable for what occurred.

The Committee considered two precedents in reaching its recommended disposition. The first one involved a related group of agencies (Apex Insurance Services Ltd. et al. ["Apex"]). Over a four year period, Apex allowed a number of its licensed agents 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 commissions and fees. Apex and the related group of agencies were each fined \$20,000.00 and the individual licensees found most responsible for the misconduct received fines of \$10,000.00 each.

The other precedent considered by the Committee was the matter of Aurora Underwriting Services Inc. ("Aurora"). In that case, policy declaration pages and insurance proposals were altered to conceal fees/commissions being charged by Aurora. As well, Aurora failed to place insurance coverage as instructed and inform relevant parties of the absence of coverage. Aurora and two licensees involved in the matter, had their licences suspended for 18 months, along with fines of \$20,000.00 for Aurora and \$10,000.00 for each of the licensees.

The Committee found some parallels between these precedents and the matter at hand. In both cases, the agencies, through the actions of the owners and licensees, intentionally engaged in improper acts to the prejudice of others. However, the Committee found the misconduct in this current matter to extend beyond what had occurred in these precedent cases. In particular, the Agency's situation encompassed a variety of serious transgressions over a number of years and a culture of unethical practices at the Agency had been bred by its principals.

In view of these precedents and the fact that an agency, as a licensed person, is responsible for the actions of its staff (as cited in the Apex matter), the Committee determined that a significant penalty against the Agency is warranted. This would serve as a specific and general deterrence as well as a punitive measure, and would demonstrate that intentional and harmful misconduct will not be tolerated.

Consideration was given to the Agency's submissions on mitigating factors and penalty. The Committee did not dispute that the public protection concerns are being addressed by the Agency's new owners, particularly through removing Lehal and Mann from the Agency. The result of these actions allowed the Committee to conclude the Agency is still suitable to hold an insurance licence. Had Lehal and Mann still been the owners of the Agency, the Committee would have recommended the Agency's licence be suspended or cancelled. The fact the Agency ownership changed at the same time Council made an intended decision was a mitigating factor but does not absolve the Agency of responsibility in this matter.

While any discipline may leave the Agency's new owners responsible for the previous owners' transgressions, the Committee concluded the new owners could have protected themselves. In particular, they were in possession of information that ought to have compelled them to undertake greater due diligence before purchasing the Agency.

Nishaber and Nagdip were represented by legal counsel in the purchase of the Agency and prior to purchasing the Agency could have taken steps to determine if the Agency was the subject of any complaints, investigations or disciplinary action by Council. In addition, the purchase agreement allows Nishaber and Nagdip to pursue the previous owners for any fines or costs that arise as a result of events that occurred before they became owners. The Committee determined that what appears to be a civil matter between the old and new owners should not be a factor in determining penalty. For the above reasons, the Committee concluded a maximum fine against the Agency is warranted.

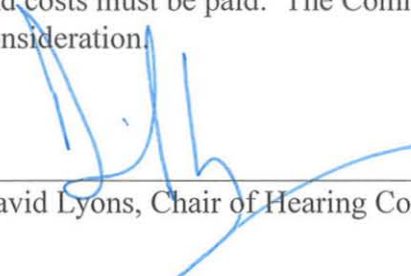
On the issue of investigation and hearing costs, Council is authorized to assess these costs, pursuant to section 241.1 of the Act. As set out in Council Policy 56.1, Council collects the costs of its investigations on the principle that licensees whose improper activities engage Council's investigative resources should bear related expenses. Costs are not assessed as a form of punishment. Council exercises its discretion to assess costs in a fair and consistent manner by defining the cases where costs will be collected, and by providing criteria for exceptions where costs may not be collected. The costs of an investigation include all costs incurred by Council through to the final disposition of the matter.

The Committee considered the submissions on investigation and hearing costs, and based on its findings and recommendations, the Committee believes the investigation and hearing costs are justified. The Committee also feels it would be unfair for Council, which is funded through licence fees, to absorb any part of these costs as it would in essence mean that the industry is bearing the cost of the Agency's misconduct.

Accordingly, the Committee makes the following recommendation:

1. the Agency be fined \$20,000.00;
2. the Agency be jointly and severally liable (with Lehal and Mann) to pay for Council's investigative costs assessed at \$3,500.00; and,
3. the Agency pay Council's costs associated with this hearing, assessed at \$5,128.25.

The Committee noted the Agency's request to extend the period within which the fine and costs must be paid. The Committee defers that request to Council for its consideration.



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David Lyons, Chair of Hearing Committee