

In the Matter of

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

and

**The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
 (“Council”)**

and

**SUKHBIR KAUR DARSHANSINGH SIDHU
(the “Licensee”)**

ORDER

Whereas Council made an intended decision on March 18, 2008, under sections 231, 236 and 241.1 of the Act; and

Whereas Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated March 31, 2008; and

Whereas the Licensee requested a hearing on April 24, 2008, but subsequent attempts by Council to set a hearing date, both by written correspondence with letters dated June 3, 2009 and August 20, 2009, and telephone calls, went unanswered, Council has concluded the Licensee has abandoned her request for a hearing; and,


Whereas by determining the Licensee has abandoned her right to a hearing, Council’s intended decision is now deemed to be final.

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

1. the Licensee’s general insurance licence is cancelled effective July 31, 2009, for a period of one year;
2. should the Licensee seek to reapply for an insurance licence in the future, she must first demonstrate to Council she is qualified for the insurance licence applied for;
3. the Licensee pay half the costs of Council’s investigation into this matter assessed at \$656.25; and,
4. the Licensee is required to pay the investigation costs by **December 4, 2009**.

ORDER
SUKHBIR KAUR DARSHANSINGH SIDHU
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This order takes effect on the 4th day of September, 2009.



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

INTENDED DECISION

of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

SUKHBIR KAUR DARSHANSINGH SIDHU
(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 February 11, 2008, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss allegations that she had cheated or assisted another licensed agent, Maninder Kaur Benipal (“Benipal”), to cheat on a Canadian Accredited Insurance Broker (CAIB) 2 examination.

An Investigative Review Committee is generally comprised of one voting and two non-voting members of Council, all of whom have significant experience in the insurance business. In this case, one of the non-voting members scheduled to attend was unable to do so, thus the Committee was comprised of only two members. 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 was of the view that the Licensee’s actions could reflect on her suitability to hold an insurance licence. Because of the potential severity of the consequences involved in making such a determination as to suitability and as the Committee consisted of only two members at this meeting, it decided not to make a recommended disposition but rather, felt it prudent to defer adjudication to Council.

Accordingly, the matter was presented to Council *de novo* at its March 18, 2008 meeting. A new investigation report was prepared and reviewed by Council. This report was also sent to the Licensee prior to Council’s meeting. While she was invited to provide additional written submissions in response to the report, she did not do so. 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.

FACIS

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

Licensing and Employment History

1. the Licensee was first licensed as a Level 1 General Insurance Salesperson on September 25, 2006;
2. the Licensee is currently employed full-time at A & T Insurance Broker Ltd. ("A&T") where she handles Autoplan insurance;
- 3.
4. Benipal, who is the Licensee's older sister, is also a Level 1 General Insurance Salesperson and was first licensed on July 3, 2003; Benipal also works full-time at A&T;

The CAIB 2 Examination

5. the Licensee and Benipal both wrote the CAIB 2 examination, as provided by the Insurance Brokers Association of British Columbia (IBABC), on July 11, 2007;
6. the examination was three hours in length, closed-book and comprised primarily of narrative questions; out of 100 marks, 90 of those require narrative answers and the remaining ten were from multiple choice questions;
7. the examination was held at SFU Harbour Centre at 9:30 a.m.; the examination room held approximately 100 examinees and tables were set up with two examinees sitting at each table;
8. the Licensee sat at the same table as Benipal in the middle of the room; the Licensee sat to the right of Benipal;
9. there were two proctors in attendance and neither observed anyone cheating or attempting to cheat on the examination;

10. when the examinations were marked, IBABC observed similarities in the answers provided by the Licensee and Benipal, as both examination booklets were handed in at the same time and marked one after the other;
11. the Licensee's and Benipal's answers were almost identical with respect to content, sentence structure, grammar and spelling; the Licensee obtained a mark of 71 percent on the examination and Benipal scored 70 percent;
12. IBABC took the position that the similarity of the Licensee's and Benipal's respective answers demonstrated "irrefutable evidence" of cheating; IBABC disqualified both their CAIB 2 examinations due to academic dishonesty and neither are permitted to write any Insurance Brokers Association of Canada examinations for a period of one year from the time of disqualification;

Submissions from the Licensee and Benipal

13. the Licensee had previously written the CAIB 2 examination in July 2006, again with Benipal, and both had failed; she denied cheating on this examination;
14. the Licensee stated that, after failing the examination in July 2006, she and Benipal began studying together for the July 2007 examination; they studied three to four hours per day, either at home or at the library, on a regular basis;
15. it took both the Licensee and Benipal approximately 2.5 hours to write the examination in July 2007; she left the examination room shortly before Benipal did;
16. the Licensee admitted to cheating on the CAIB 2 examination by copying Benipal's answers; she had been experiencing personal family problems weeks before the examination and when it came time to write it, she could not remember any of the answers;
17. Benipal denied cheating on the CAIB 2 examination and submitted that her examination booklet contained her own answers; specifically, she stated that she did not share information with, or copy answers from, the Licensee at any time during the examination;
18. Benipal stated that the Licensee managed to copy her answers without her knowledge; she was not aware that the Licensee had been copying her answers for the 2.5 hours of the examination as she was focused on her work and paid no attention to her surrounding environment;
19. the Licensee stated that, a few days following the examination, she advised Benipal that she had copied her answers; according to the Licensee, Benipal

responded by saying that the Licensee should not have written the examination in the first place;

20. Benipal stated that it was not until she received a letter from IBABC advising her of the disqualification that she was aware that the Licensee had cheated by copying her answers.

ISSUES

Council identified the following issues:

1. Does the evidence show that the Licensee failed to act in a trustworthy manner and in good faith in this matter by:
 - (a) cheating on the CAIB 2 examination by copying answers from Benipal?
 - (b) assisting Benipal to cheat on the CAIB 2 examination by allowing her answers to be copied?
 - (c) in any other manner?
2. Do any of the circumstances relating to this matter reflect on the Licensee's ability 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 Rule 3(2) of the *Council Rules* and section 231(1)(a) of the Act?
3. Is disciplinary or other action warranted in the circumstances?

LEGISLATION

Rule 3 of the *Council Rules*
Licence Applications

Applicants to Satisfy Council

- (2) If an applicant satisfies Council that the applicant:
 - (a) has met all of the requirements set out in the Act and Council Rules;
 - (b) is trustworthy, competent and financially reliable;
 - (c) intends to publicly carry on business as an insurance agent, salesperson or adjuster in good faith and in accordance with the usual practice of the business of insurance;
 - (d) has not in any jurisdiction:
 - (i) been refused, or had suspended or cancelled, an insurance licence or registration;

- (ii) been convicted of an offence; or
 - (iii) been refused or had suspended or cancelled a licence or registration in any other financial services sector or professional field
- for a reason that reveals the applicant unfit to be an insurance agent, salesperson or adjuster;
- and
- (e) does not hold other business interests or activities which would be in conflict to the duties and responsibilities of a licensee, or give rise to the reasonable possibility of undue influence.
- then the Council may consent to issuing a licence.

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 2 – Insurance Council of British Columbia

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 not 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 act in a trustworthy manner and in good faith by cheating or assisting Benipal to cheat on the CAIB 2 examination.

Council did not accept that Benipal was not aware that the Licensee was copying her answers from her examination booklet. Not only were the Licensee's and Benipal's answers identical, word for word, but even the grammar, sentence structure and spelling were the same. As well, on one question, where Benipal had crossed out and rewritten an answer, the Licensee had done the same. Council did not find it plausible that the Licensee could copy answers from Benipal so thoroughly and meticulously for the duration of the entire examination without any collusion on Benipal's part.

Council questioned why the Licensee, if she had been experiencing personal problems at the time, did not opt to write the examination at another sitting. It would not have been imperative to her employment that she write the examination in July 2007, as she could continue working as a Level 1 General Insurance Salesperson. Council also found it suspect that the Licensee had purportedly drawn a blank on every question. Had she been studying an entire year for the examination as she claimed, she would likely have been able to answer at least some of the examination questions on her own. This signalled to Council that every answer had been copied, and that this had been a premeditated attempt on the part of the Licensee and Benipal to cheat on the examination. There were also discrepancies between the Licensee's and Benipal's evidence with respect to how and when Benipal learned that the Licensee had copied her answers. This demonstrated to Council that the Licensee and Benipal were both being untruthful in response to inquiries from Council.

Council concluded that the Licensee and Benipal had both engaged in academic dishonesty. Council did not find it necessary to make a finding as to who actually cheated and who allowed her answers to be copied. It was possible that both the Licensee and Benipal had cheated off one another by copying each other's answers on different parts of the examination. Ultimately, in any of the aforementioned circumstances, as the cheater or the one who facilitated the cheating or both, the Licensee's and Benipal's conduct amounted to bad faith and untrustworthy behaviour.

Council also determined that Benipal's failure to admit to being complicit in her own attempts to cheat or in assisting the Licensee to cheat on the CAIB 2 examination demonstrated her untrustworthiness. Even after having their examinations disqualified for academic dishonesty and being subject to investigation by Council, Benipal continued to deny any involvement in cheating on the examination. However, Council did not find the Licensee's conduct to be any more mitigating than Benipal's. Although the Licensee had made an "admission" to Council that she had copied Benipal's answers without her knowledge, Council did not accept that this admission was wholly truthful. Council found that the Licensee and Benipal were attempting to conceal Benipal's participation in this collusion by having the Licensee act as the scapegoat. Their lack of truthfulness to Council in this regard only further established their lack of integrity and capacity for deception.

In considering the appropriate parameters for discipline, Council reviewed two recent cases in which licensees were found to have facilitated others to cheat. In the case of *Swee Heng Teh*, Council found that Teh had completed online examinations for another licensed agent in order to assist him in obtaining the continuing education (CE) credits required for the renewal of his insurance licence. This agent had been accredited with 23 hours of CE credits. The licensee submitted that it was her 12-year-old son who had completed the examinations for the agent and that she was not privy to their arrangement. Council found that the licensee had facilitated the arrangement between the agent and her son and had, either directly or indirectly through her son, completed the examinations for the agent. She had also accepted compensation from the agent. Ultimately, Council determined that the licensee had assisted the agent to cheat on his CE examinations for a fee. Council found that Teh failed to act in a trustworthy manner, in good faith and in accordance with the usual practice of the business of insurance. Council ordered that Teh be suspended for two months and fined \$2,000.00.

Council also considered the *Hee Dong Hong* decision. At issue in that case was whether Hong, who had submitted an application to Council, was suitable to be licensed as an insurance agent. While licensed as a life insurance agent, Hong had provided three individuals, all of whom he was recruiting to work at his agency, with study sheets for the Life Licence Qualification Program ("LLQP") course and Council's qualifying examination. The study sheets included questions from a previous LLQP examination administered by Council. One of the individuals was found to have the study sheets in his possession during the examination. Hong understood that his sister, also a licensed life agent, was in possession of information and questions that had been obtained from previous LLQP examinations and requested that she provide him with the same in order to assist the three individuals. Hong then created the study sheets from the information his sister had provided to him. In an email written by Hong, he suggested that these study sheets, known as the "Secret Genealogical Table", were well known, and possibly widely available to examinees. Hong also attempted to mislead Council about the source of the questions in order to protect his sister from potentially losing her insurance licence. In particular, Hong implicated his former girlfriend by asking her to lie to Council and say that she was the one who had provided him with the LLQP questions. Hong's sister, who was licensed in Ontario, entered into a settlement agreement with the Financial Services Commissions of Ontario wherein she consented to the revocation of her licence and agreed not to apply for a licence for a

period of five years. Hong failed to satisfy Council that he was trustworthy and intended to carry on the business of insurance in good faith. Council determined that Hong was not suitable to hold an insurance licence for a period of two years. The two year period included the ten months that had passed since Hong had submitted his application for a licence, awaiting Council's determination of the matter.

In reviewing the two precedents above, Council noted that the potential risk to the public from unqualified persons being licensed to carry on the business of insurance to be far greater than that posed by individuals who have already demonstrated a certain level of expertise in their respective insurance fields, but who may not have preserved and improved that existing knowledge through continuing education. Therefore, Council found the conduct in the *Hee Dong Hong* case, and in the case at bar, where the Licensee and Benipal had not yet demonstrated that they met the minimum educational qualifications to be licensed as Level 2 General Insurance Agents, to be much more egregious than that in the *Swee Heng Teh* decision.

The CAIB 2 examination is a qualifying examination. Level 1 General Insurance Salespersons must pass both the CAIB 2 and CAIB 3 examinations in order to upgrade their licences to Level 2 General Insurance Agent. Here, had the Licensee and Benipal not been caught cheating, either or both could have used their fraudulent exam results as part of the requisite requirements to obtain a Level 2 licence. Had this occurred, they would have been holding themselves out as competent and knowledgeable insurance agents despite not being properly qualified.

While Council found the *Hee Dong Hong* decision to be more factually similar to the case at hand than the *Swee Heng Teh* case, Hong's conduct was more reprehensible in that he assisted at least three individuals, and possibly more, in cheating on the LLQP examination. As noted above, there was the suggestion that his actions may have compromised the protection of the public on a larger scale by facilitating the licensing of an untold number of insurance agents who had not demonstrated that they met the minimum educational qualifications. Council found that the Licensee's conduct in this case was not as deplorable as Hong's in that it was not a systemic plan to assist a number of examinees to cheat on a qualifying examination, but dealt strictly with the Licensee herself and Benipal cheating on the CAIB 2 examination. However, like Hong, the Licensee was not trustful with Council during its investigation, further demonstrating her lack of trustworthiness and integrity.

Given her untrustworthy behaviour and lack of integrity, as exemplified in her attempt to cheat and/or assist Benipal in cheating on the CAIB examination, coupled with her continued untruthfulness regarding her own and Benipal's involvement in this matter, Council found the Licensee to be an ongoing risk to the public and not suitable to hold an insurance licence. Accordingly, Council determined that her insurance licence should be cancelled for a minimum period of one year, following which she will be required to requalify and have her suitability reviewed again should she apply for an insurance licence in the future.

Council found that a cancellation of her licence for a minimum of one year would be sufficient to eliminate her as a potential risk to the public, and would serve as an adequate general and

specific deterrence. This kind of sanction would satisfactorily communicate to the insurance industry that such conduct will not be tolerated from other licensees and also deter the Licensee from engaging in this or similar types of untrustworthy behaviour in the future. Council was hopeful that the cancellation of her licence for a minimum one-year period would also act as a measure of rehabilitation for the Licensee.

INTENDED DECISION

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

1. the Licensee's insurance licence be cancelled for a minimum period of one year from the date Council's order takes effect;
2. should the Licensee apply for an insurance licence in the future, she must successfully complete or re-complete the requisite education required to qualify for the licence applied for;
3. the Licensee pay half the costs of Council's investigation into this matter assessed at \$656.25; and
4. as a condition of this decision, the Licensee is required to pay the above mentioned costs by **July 25, 2008**. If the Licensee does not pay the ordered costs by this date the Licensee's licence is suspended as of **July 26, 2008**, without further action from Council.

The intended decision will take effect on **April 25, 2008**, 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 Licensees must give notice to Council by delivering to its office written notice of this intention by **April 25, 2008**. 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 25, 2008**, 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, BC
V3T 5X3
Phone 604-953-5300

Dated in Vancouver, British Columbia on the 31st day of March, 2008.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director