

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

**and**

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

**and**

**SHEILA ANN BANNISTER (the “Licensee”)**

**ORDER**

As Council made an intended decision on April 21, 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 May 5, 2009; and

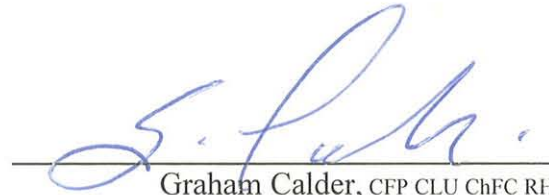
As the Licensee requested a hearing of Council’s intended decision on May 29, 2009, and subsequently withdrew her request for a hearing on June 21, 2009;

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

1. the Licensee’s Life and Accident and Sickness Insurance Agent licence is suspended until such time as the Licensee provides Council with proof of the outstanding balance of the minimum CE credits required, the adequacy of which will be determined by Council staff. Specifically, Council requires that the Licensee provide:
  - a) original certificates of the outstanding 9 CE credits or corroborating documentation from the company or institution administering the CE courses for the licensing period of November 30, 2005 to November 29, 2007;  
**and**
  - b) original certificates of the outstanding 3.5 CE credits or corroborating documentation from the company or institution administering the CE courses for the licensing period of November 30, 2007 to May 31, 2008;  
**or**
  - c) original certificates of 12.5 unclaimed CE credits from November 30, 2005 to present.
2. the Licensee is fined \$2,500.00; and,

3. as a condition of this decision, the Licensee is required to pay the fine by **October 6, 2009**, or prior to reinstatement of her licence by Council, whichever is the later.

This order takes effect on the **6<sup>th</sup> day of July, 2009**.



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

**INTENDED DECISION**  
  
**of the**  
  
**INSURANCE COUNCIL OF BRITISH COLUMBIA**  
**(“Council”)**  
  
**respecting**  
  
**SHEILA ANN BANNISTER**  
**(the “Licensee”)**

**INTRODUCTION**

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether there was compliance by the Licensee with the requirements of the Act.

As part of Council’s investigation, on March 23, 2009, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss allegations that she breached a condition of her licence and made a material misstatement on her licence renewal application.

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 April 21, 2009 meeting. At the conclusion of its meeting, Council accepted the Committee’s recommended disposition and 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 Committee's report and in the investigation report, Council made the following findings of fact:

*Breach of Licence Condition*

1. on April 11, 2007, Council conducted a random audit of the Licensee's CE credits for the licence period of November 30, 2003 to November 29, 2005;
2. based on the review of the documents the Licensee submitted in response to the audit, Council noted that some of the education the Licensee had claimed credit for had either been claimed already in a previous licensing period, or the proof she had provided for the purported education was inadequate;
3. Council reviewed the Licensee's CE history and found that she had not declared carry forward CE credits from the previous period. When taken into consideration, these CE credits offset the education concerns in the licence period being audited. For this reason, Council elected to conclude the audit without taking further action at that time;
4. by letter dated October 4, 2007, Council reminded the Licensee of her responsibilities to adhere to the requirements of Council's CE program;
5. on October 30, 2007, Council received a Licence Renewal Application from the Licensee in which the Licensee provided an affirmative confirmation of the following statements:
  - (a) I have completed the continuing education required as a condition of my licence;
  - (b) I have the original proof of attendance for this education;
  - (c) I agree to maintain the original proof of attendance in my files for a period of 5 years from the date of this renewal; and
  - (d) I understand and agree that these records are subject to audit by Council.
6. the Licensee's application was subsequently approved and a licence was issued for the period of November 30, 2007 to May 31, 2008;
7. by letter dated July 21, 2008, Council requested the Licensee provide copies of her attendance records for the education hours completed during her licensing period of November 30, 2005 to November 29, 2007. The Licensee was specifically advised that she was required to complete 60 credit hours during this period. The letter stipulated that the Licensee must submit the requested material to the attention of Regulatory Services by August 11, 2008;

8. Council did not receive a response from the Licensee by August 11, 2008. Accordingly, by letter dated August 21, 2008, Council sent the Licensee a final request to provide the aforementioned documentation by September 11, 2008;
9. on September 11, 2008, the Licensee called Council and advised that she would submit CE material to Council by September 12, 2008;
10. on September 12, 2008, the Licensee left a voice message for Regulatory Advisor, Katharine Nicholson ("Nicholson"), advising that she would not be able to bring the CE materials to Council's office and that she would be out of town until September 17, 2008, at which time she would deliver the materials;
11. on October 8, 2008, Nicholson left a telephone message for the Licensee advising that Council had still not received any of the CE material requested, and therefore Council would be proceeding to take the matter before an Investigative Review Committee.

Licensee's Submissions

12. The Licensee attended an IRC meeting, but did not bring any CE material with her;
13. the Licensee submitted that she had put everything in the mail in October, 2008, and had assumed that everything was in order until she received notice of the IRC meeting;
14. the Licensee submitted that she understands the CE requirements relating to her Life and Accident and Sickness Insurance Agent licence. She concedes that she is in error for not providing the requested documentation;
15. she stated that her error had been in assuming that the material she put in the mail in October was adequate when she did not hear anything back from Council;
16. the Licensee contended that she never received Council's July 21, 2008 CE Audit Request for Records;
17. the Licensee also informed Council that she was in surgery March 11, 2009, and not able to respond to Council's requests at that time;
18. the Committee asked if the Licensee could re-send the material she stated she mailed to Council in October, 2008. The Licensee explained that this was not possible as there was no one available to pull the documents from her records.
19. On April 1 and 2, 2009, following the IRC meeting, the Licensee provided Council with certificates and documentation demonstrating her CE credits earned for the two licence periods under review;

20. on April 16, 2009, after concluding an audit of the material, it was determined the Licensee had not completed the required number of hours for the two licence periods under review. Specifically:
  - (a) For the licensing period November 30, 2007 to November 29, 2007, the Licensee was required to have completed 60 qualified CE hours. Based on her submissions, she completed only 51 hours of education, leaving 9 hours outstanding.
  - (b) For the licensing period November 30, 2007 to May 31, 2008, the Licensee was required to have completed 20 qualified CE hours. Based on her submissions, she completed only 16.5 hours of education, leaving 3.5 hours outstanding.

### ISSUES

Council identified the following issues:

1. Did the Licensee fail to meet the continuing education required as a condition of her licence for the period of November 30, 2005 to November 29, 2007?
2. Did the Licensee make a material misstatement to Council on her October 20, 2007 application for renewal, when she declared that she had met the CE requirement for the period of November 30, 2005 to November 29, 2007?
3. If so, is disciplinary or other action warranted against the Licensee?

## 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 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.



## ANALYSIS

Council found that the above mentioned facts constituted a breach of section 231(1) of the Act in that the Licensee no longer met a licensing requirement established by a Council Rule. Rule 7(5) of the Council Rules provides that a licensee must meet the requirements of the continuing education program established by Council, as amended from time to time. Records to support continuing education claims must be kept for five years from the date the information was submitted in support of the licence renewal application period. Council does random audits to ensure the information licensees provide can be verified. If a licensee does not have the supporting documentation, Council may take disciplinary action, including invalidating the licence renewal.

Council considered the Licensee's submission of documentation on April 1 and 2, 2009, and concluded that she had not completed the required number of hours for the two licensing periods in question. On this basis, Council determined that the Licensee was not in compliance with the continuing education condition on her licence. Further, Council was concerned about the Licensee's lack of preparation and delay in providing such material despite Council's repeated requests.

The Licensee's failure to respond to Council's inquiries made it necessary to hold an IRC meeting to obtain information from the Licensee. The Licensee was granted additional time to respond to Council's request for documentation and received several telephone messages to remind her of the requirement. The Licensee submitted to the Committee that she had completed the minimum number of CE credits for the relevant licensing period. It has since been determined that the Licensee has not in fact met this requirement, or has failed to provide Council with proof thereof. In the circumstances, Council concluded that the Licensee made a material misstatement in her renewal application when she represented that she had completed the necessary number of CE credits for the time period in question.

Council considered previous Council decisions involving misstatements and failure to provide adequate proof of minimum CE requirements. In the *Michael Joseph Kelly* case, the licensee had provided a CE supplement form indicating that he had completed the minimum 30 hours of CE required for the renewal of his licence, together with his application for renewal of his life insurance agent licence. In that case, the licensee admitted that he did not complete the CE requirements and had lied to Council on his licence renewal by claiming that he had. Council found that the licensee's actions represented a material misstatement to Council as well as a breach of a licence condition. As a result, the licensee received a three month suspension and a \$2,000.00 fine. Council ordered that the licensee had to demonstrate that he had earned the minimum CE credits pertinent to each renewal period under review before it would consider lifting the suspension.

In the *Douglas Frank Butt* case, the licensee acknowledged that he had provided false information to Council when he applied for his licence renewal. The Licensee had been in the insurance industry for 58 years without any disciplinary concerns. He had stopped engaging directly with clients and referred them to one of the four licensed agents in his agency. The licensee had severe medical challenges to contend with and admitted that he was likely to sell the agency in the short term future, but wished to maintain his licence nonetheless. The licensee expressed a willingness to obtain the balance of credits necessary. Council recognized the licensee's unblemished record and health condition as mitigating factors. The licensee was ordered to pay a \$1,000.00 fine for a material misstatement and granted a 90 day extension to obtain the necessary continuing education credits, failing which, his licence would be automatically suspended until such time as he demonstrated that he had earned the necessary credits.

In the present case, Council found that the Licensee had been provided with numerous opportunities to address Council's requests for proof of her CE credits. The Licensee had previously been audited for the same reason. Although Council elected not to pursue any further action at that time, Council had advised the Licensee to review the CE requirements associated with her licence, and to pay particular attention to record keeping guidelines. Pursuant to the October 4, 2007 letter, the Licensee was warned that future concerns of a similar nature would not be viewed favourably and could result in sanctions.

In the circumstances, Council was of the view that the Licensee's actions demonstrated either a failure to comprehend the CE responsibilities associated with her licence, or a failure to take the requirements seriously. Further, she did not appear to have a record keeping system in place to facilitate the delivery of copies of the required documentation.

Council concluded that the Licensee had made a material misstatement on the renewal application for her licence with respect to the CE requirements and has failed to provide proof to the contrary. As such, she is not in compliance with a condition of her licence.

Council determined that the Licensee's licence ought be suspended pending proof of compliance. The Licensee bears the onus of providing the balance of original documentation for the CE credits earned for the period of November 30, 2005 to November 29, 2007 and from November 30, 2007 to May 31, 2008, in order to lift the suspension. If she is unable to do so, the Licensee can also submit original documentation to demonstrate CE credits earned from November 30, 2005, to the end of the present licensing period. It must be noted that any credits earned and submitted to demonstrate the Licensee has met the minimum number of required credits for the period under review, cannot be counted towards the present licensing period. If additional material is received from the Licensee as set out, Council staff can exercise discretion to determine whether the documentation provided by the Licensee is satisfactory.

Based on the foregoing evidence and the two precedents discussed, Council also determined that it would be appropriate to fine the Licensee \$2,500.00. Council felt that a fine in this amount would satisfy general and specific deterrence. Further, the quantum of the fine was deemed to be warranted given the Licensee's failure to respond to numerous inquiries from Council and maintain her records in order to respond readily to such requests. The Licensee had sufficient warning of the likelihood of future audits of this nature and ample notice to prepare for the Committee's review of the matter. The Licensee's own actions thereby extended Council's ongoing investigation and review of the matter. In the circumstances, Council concluded that a fine against the Licensee would be appropriate, independent of whether or not she ultimately provides sufficient documentation to demonstrate compliance with her CE requirements.

INTENDED DECISION

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

1. the Licensee's Life and Accident and Sickness Insurance Agent licence be suspended until such time as the Licensee provides Council with proof of the outstanding balance of the minimum CE credits required, the adequacy of which will be determined by Council staff. Specifically, Council requires that the Licensee provide:
  - a) original certificates of the outstanding 9 CE credits or corroborating documentation from the company or institution administering the CE courses for the licensing period of November 30, 2005 to November 29, 2007;  
**and**
  - b) original certificates of the outstanding 3.5 CE credits or corroborating documentation from the company or institution administering the CE courses for the licensing period of November 30, 2007 to May 31, 2008;  
**or**
  - c) original certificates of 12.5 unclaimed CE credits from November 30, 2005 to present.
2. the Licensee be fined \$2,500.00. If the Licensee does not pay the ordered fine within 90 days from the date the intended decision takes effect, the Licensee's licence will be suspended without further action from Council.

The intended decision will take effect on **June 2, 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 **June 1, 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 **June 1, 2009**, the intended decision of Council will take effect.

Even if this decision is accepted by the Former 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/](http://www.fic.gov.bc.ca/fst/) or contact them directly at:

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Dated in Vancouver, British Columbia on the **5<sup>th</sup> day of May, 2009**.

For the Insurance Council of British Columbia



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Gerald D. Matier  
Executive Director

GM/tlh