



Wai Kiong Raymond Lee (the “Former Licensee”)

On July 29, 2017, the Insurance Council of British Columbia (“Council”) cancelled the Former Licensee’s life and accident and sickness insurance agent licence, pursuant to sections 231 and 238 of the *Financial Institutions Act* (“Act”).

The Former Licensee requested a hearing in accordance with section 238(2)(a) of the Act. Council convened the requested hearing, which was held before a Hearing Committee on October 21, 2016.

On December 13, 2016, Council considered a Report of the Hearing Committee and confirmed its decision and order under sections 231 and 238 of the Act. The Report of the Hearing Committee and Council’s decision and order under sections 231 and 238 of the Act, follow this cover page.

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

REPORT OF THE HEARING COMMITTEE

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(the “Act”)
(S.B.C. 1996, c. 141)

AND

WAI KIONG RAYMOND LEE
(the “Former Licensee”)

Date: October 21, 2016
9:30 a.m.

Before: Darlene Hyde Chair
Gary Barker Member
Chamkaur Cheema Member

Location: Suite 300, 1040 West Georgia Street
Vancouver, British Columbia V6E 4H1

Present: Thea Hoogstraten Counsel for Council
Gil J. Korn Counsel for the Former Licensee
Wai Kiong Raymond Lee Former Licensee

BACKGROUND AND ISSUES

As set out in the Notice of Hearing, the purpose of the Hearing was to determine whether the Former Licensee failed to act in a trustworthy manner, in good faith, and in accordance with the usual practice of the business of insurance when he failed to disclose on his application for a life and accident and sickness insurance agent (“life agent”) licence that he had been convicted of a criminal offence in Hong Kong, and had failed to disclose his conviction in an attempt to mislead Council.

Council initially considered the allegations against the Former Licensee at its meeting on July 19, 2016, which resulted in the termination of the Former Licensee’s licence pursuant to sections 231 and 238 of the Act.

In response to Council's order, the Former Licensee requested a hearing, pursuant to section 238(2) of the Act. The Hearing Committee has the authority to determine if the allegations against the Former Licensee bring into question his suitability to hold an insurance licence and/or warrant some form of disciplinary action.

The Hearing Committee was constituted pursuant to section 223 of the Act, and this is a Report of the Hearing Committee, as required, pursuant to section 223(4) of the Act.

EXHIBITS

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| Exhibit 1 | Agreed Statement of Facts |
| Exhibit 2 | Council's Book of Documents |
| Exhibit 3 | Former Licensee's Book of Documents |

EVIDENCE

By way of an Agreed Statement of Facts, the following information was submitted as evidence.

The Former Licensee made an application for a life agent licence, dated January 6, 2016. The application was received by Council on February 9, 2016.

In completing the application, the Former Licensee answered "no" to question 8(a) which states:

"Have you ever been convicted, or are you currently charged, under any law of any province, state, or country, including but not limited to:

- a. offences under federal statutes, such as the Income Tax Act and the Immigration Act;*
- b. all Criminal Code offences (including impaired driving);*
- c. offence for which an absolute or conditional discharge has been granted*

but not including minor traffic violations or offences for which a pardon has been granted (and not revoked) under the Criminal Records Act."

Upon receipt of the Former Licensee's licence application, Council wrote to the Former Licensee on February 12, 2016, advising him that it had received his application but could not consider it until all outstanding documents were received, including the Certificate of No Criminal Conviction from Hong Kong.

On March 10, 2016, the Former Licensee was granted a life agent licence. In doing so, the Former Licensee was advised that Council was issuing a licence on the understanding that he had requested a criminal record check from Hong Kong, and that an original Hong Kong criminal record check would be provided to Council no later than September 2016.

On May 3, 2016, Council received the Hong Kong criminal conviction record relating to the Former Licensee. It disclosed that the Former Licensee had been convicted of two criminal offences in 2010.

SUBMISSIONS BY COUNCIL

The Former Licensee was issued a life agent licence in February 2016 on the condition that he provide Council an original criminal record check from Hong Kong before September 2016. An original copy of the Former Licensee's Hong Kong criminal record was received by Council in May 2016. The Hong Kong criminal record disclosed that, in 2010, the Former Licensee was charged and convicted of two charges related to possession of dangerous drugs and drug paraphernalia. The resulting conviction was a two-month imprisonment, suspended on 24-months' probation.

After the Hong Kong criminal record was received, the Former Licensee made a number of submissions with regard to his conviction. Initially, the Former Licensee wrote to Council on May 12, 2016, stating that he failed to disclose his criminal conviction because he had misread the licence application question.

The Former Licensee explained that, after submitting his licence application, he believed he may have completed his licence application incorrectly by not disclosing the Hong Kong convictions. The Former Licensee stated he contacted Council and spoke with Mr. Ryan in the Regulatory Services Department. The Former Licensee explained that he contacted Council to determine the appropriate course of action to address a potential misstatement on his licence application.

Mr. Ryan testified that, while he was unable to remember his conversation with the Former Licensee, he advised that his response to such an inquiry from a licence applicant or licensee would have been to instruct the Former Licensee to put his comments in writing so they could be properly considered. The Former Licensee took no further action until after the Hong Kong criminal record was received by Council.

After Council received the criminal record from Hong Kong disclosing the Former Licensee's criminal record, the Former Licensee wrote to Council on June 7, 2016, to explain his failure to disclose his criminal convictions in Hong Kong. The Former Licensee explained that he had misunderstood question 8(a) on Council's licence application. More specifically, the Former Licensee stated he did not fully understand the words "discharge" and "pardon" that are contained in question 8(a). The Former Licensee explained that he assumed he had received a pardon for the Hong Kong conviction because he had completed the 24-month probationary period and had not been convicted of any other criminal offences during that period.

On June 20, 2016, the Former Licensee attended a Review Committee (the "Committee") to consider his suitability to continue to hold a life agent licence. At that meeting, the Former Licensee stated, in response to questions from the Committee, that he was hesitant to respond "yes" to question 8(a) on the licence application. The Former Licensee explained that part of his hesitation came because he was not sure how it would reflect on him and his licence application. When specifically asked by the Committee whether he had concerns about disclosing his conviction in Hong Kong because it might result in him being found unsuitable, the Former Licensee responded "yes."

SUBMISSIONS BY GIL J. KORN

Testimony of the Former Licensee

The Former Licensee testified that he was charged with possession of dangerous drugs and possession of equipment intended for smoking, injecting, and inhaling dangerous drugs. The Former Licensee received a two-month imprisonment, suspended for 24-months, for each offence, which were to be served congruently.

The Former Licensee explained that, in advance of appearing in Hong Kong court on the drug possession charges, he was told by a court official that there could be one of four outcomes:

1. a fine;
2. sent to rehab;
3. imprisonment with probation; or
4. jail.

The discussion he had with the court official was conducted in Cantonese and he acknowledged it may have led to some confusion in his understanding. However, it was his understanding that if the outcome was Option 3, imprisonment with probation, that after the probation was served, the equivalent to a pardon would occur and he would no longer have a record of the conviction.

The Former Licensee testified that this contributed to his confusion about question 8(a) and what was the appropriate response, noting that question 8(a) clearly states that, where a pardon had been granted, there is no requirement to disclose.

The Former Licensee admitted that he was ashamed of the conviction and was reluctant to make disclosure if it was not required. The Former Licensee acknowledged that in responding “no” to question 8(a) he was hoping that his belief that a pardon had been issued was correct and that there would be no indication of a conviction on the Hong Kong criminal record. The Former Licensee acknowledged that he was relying on his understanding, based on his discussion with the Hong Kong court authorities, that once he had completed the 24-month probationary period, a criminal record would not be reported by the Hong Kong authorities.

The Former Licensee stated that he lived in Hong Kong for approximately seven years. Upon being charged with drug possession, he was required to go to a jail for two weeks, where drug testing occurred. Afterwards, he received a two-month sentence which was suspended for 24 months on the basis that, if no further legal action arose, his convictions would be pardoned at that time.

Mr. Korn provided evidence to support the Former Licensee’s understanding that a pardon may exist for the Hong Kong convictions. Mr. Korn noted that the Hong Kong *Rehabilitation of Offenders Ordinance* appears to suggest that the Former Licensee was no longer required to disclose the conviction after successfully completing the 24-month suspended sentence.

Mr. Korn referenced the discussions between the Former Licensee and the Hong Kong court officials, which were in Cantonese, noting that the term “pardon” in Cantonese may have been open to interpretation.

Mr. Korn also noted that there was ambiguity in question 8(a) on the licence application. Specifically, the term “pardon” is used in the question but Mr. Korn argued that, in 2012, the *Criminal Records Act* was amended and the word “pardon” was replaced with the term “record suspension.” Record suspension has the same effect as a pardon but the terminology has changed. The change in this terminology could also have been a contributing factor in the Former Licensee’s confusion over how to respond to question 8(a).

FINDINGS OF THE HEARING COMMITTEE

In completing a licence application, the Former Licensee was required to provide disclosure with regard to all criminal convictions for which he had not received a pardon. The Hearing Committee noted that the Former Licensee has acknowledged there was confusion in his understanding of how to answer question 8(a), which contributed to the Former Licensee's failure to disclose his Hong Kong conviction.

The Hearing Committee gave consideration to Mr. Korn's arguments that, based on his understanding of a Hong Kong law, the *Rehabilitation of Offenders Ordinance*, the Former Licensee's belief that he did not have a reportable criminal conviction was correct. The Hearing Committee also gave consideration to Mr. Korn's argument that question 8(a) is itself confusing, in that it uses the term "pardon" which is no longer applicable under the *Criminal Records Act*.

With this in mind, the Hearing Committee considered the Former Licensee's many submissions and actions with regard to his intent when answering question 8(a) on Council's licence application.

The Hearing Committee noted that there were a number of occasions from the time the Former Licensee completed the licence application, including his subsequent submissions to the Committee, and his testimony before the Hearing Committee, which suggest the Former Licensee was embarrassed by the Hong Kong conviction and was reluctant to disclose his conviction.

While the Hearing Committee accepts that there may be some basis for which the Former Licensee believed the Hong Kong criminal record check would come back clean, the Hearing Committee found the Former Licensee was never certain of this.

The Hearing Committee found the Former Licensee had a number of opportunities to make further inquiries or disclosures about his Hong Kong criminal record, both before he completed the licence application as well as after he was granted a licence, but before the Hong Kong criminal record was provided to Council. Throughout the process, the Former Licensee's actions appear driven as much by the embarrassment over the disclosure of his conviction as any belief that he was not required to do so.

The Former Licensee stated, on more than one occasion, that he was confused by question 8(a) but believed he was answering it correctly when he answered "no." The Hearing Committee noted the Former Licensee testified that, when he completed the in-depth application for an insurance company as part of the process to obtain an insurance contract, he was asked three specific questions with regard to a criminal record.

The Hearing Committee noted that the insurance company application specifically asked whether the Former Licensee had ever been charged or convicted of a crime. The question did not contain any reference with regard to pardons but the Former Licensee answered “no.”

The Former Licensee explained that a subsequent question on the insurance company application included references to pardons, which he claimed created confusion and resulted in him answering “no” to the previous question with regard to criminal charges or convictions.

The Hearing Committee found this was another example where the Former Licensee explained his non-disclosure as being one of confusion over the question and/or whether his criminal conviction required disclosure. With regard to the Former Licensee’s explanation that he was confused by how to answer question 8(a) on the licence application, the Hearing Committee found the Former Licensee failed to take reasonable steps to determine what was the correct course of action before he answered the question and submitted his licence application.

The Former Licensee stated that, after submitting his licence application to Council and obtaining a licence but before the Hong Kong criminal record was received, he contacted Council by telephone to get further guidance with regard to his answer to question 8(a). While it was not clear what was actually discussed by the Former Licensee and Council staff, it indicates that the Former Licensee was not sure whether or not he had a criminal record in Hong Kong. Other than this telephone call, the Former Licensee appears not to have taken any other steps, either by discussing this matter further with Council, his manager, or a lawyer, to determine or clarify how he should be responding to questions with regard to criminal convictions.

The Former Licensee’s failure to make proper disclosure is highlighted by the fact that Council was prepared to grant him an insurance licence in advance of obtaining the Hong Kong criminal record. The Hearing Committee determined the Former Licensee had an obligation, if he was prepared to accept an insurance licence prior to obtaining his Hong Kong criminal record, to be certain about his answer to question 8(a). This could have been accomplished by providing Council with further disclosure about his time in Hong Kong or, in the alternative, to decline to accept an insurance licence until the Hong Kong criminal record was received by Council. The Former Licensee knew he was being granted an insurance licence based on the information disclosed on his licence application and so had a responsibility to first clarify his confusion with regard to question 8(a). The Hearing Committee found that the Former Licensee never took reasonable steps to address his confusion.

The Hearing Committee found this specific issue, of not knowing for certain whether or not he had to disclose his Hong Kong criminal conviction, the most relevant in determining whether the Former Licensee made a material misstatement when he responded to question 8(a). The Hearing Committee found that the Former Licensee's actions and statements, both before and after completing Council's licence application, demonstrate that, while the Former Licensee may have hoped that the Hong Kong criminal record would be clean, he did not know for sure nor did he take appropriate steps to find out.

The Hearing Committee found the Former Licensee knew, or ought to have known, that he was not in the position to answer question 8(a) in the manner he did. The Hearing Committee concluded that the Former Licensee made a material misstatement on his licence application when he failed to disclose his Hong Kong criminal conviction.

In reaching this decision, the Hearing Committee noted that the Former Licensee did not hide the fact that he had lived in Hong Kong for a period of time. In fact, the Former Licensee was upfront about the time he lived in Hong Kong and acted in a timely manner to obtain a copy of his Hong Kong criminal record.

The Hearing Committee gave consideration to Mr. Korn's explanation that there may be a legal argument to suggest that, under Hong Kong law, the Former Licensee did not have to disclose his criminal conviction. While not making a determination on Hong Kong law, the Hearing Committee noted that, prior to the hearing, the Former Licensee never presented this argument as an explanation for why he had not disclosed his criminal conviction and concluded it was not relevant in determining whether the Former Licensee had made a material misstatement.

The Hearing Committee also considered Mr. Korn's argument that question 8(a) is ambiguous in that it includes the term "pardon," which was changed in legislation to "record suspension." While accepting Mr. Korn's argument that "pardon" was no longer the correct term, the Hearing Committee did not find that it had any bearing on the Former Licensee's intent when he responded to question 8(a).

The Hearing Committee believes the Former Licensee's material misstatement was driven more by embarrassment with regard to the conviction than an attempt to specifically mislead Council. The Hearing Committee felt the Former Licensee's actions were primarily intended to keep his convictions from his manager and work colleagues.

The Hearing Committee determined that, while the Former Licensee made a material misstatement on his licence application, he is still suitable to hold an insurance licence and does not present a risk to the public. The Hearing Committee recommends that Council confirm its order, dated July 29, 2016, made pursuant to section 238 of the Act.

The Hearing Committee noted that the primary reason the Former Licensee did not disclose his criminal conviction appears to be related more to embarrassment than an attempt to deceive Council. This is supported by a belief that, had the Former Licensee disclosed the Hong Kong criminal convictions on his application, it would not have resulted in him being denied an insurance licence. As a result of the Former Licensee's actions, he was the subject of an order, pursuant to section 238 under the Act, relating to his criminal conviction, which was made public in August 2016. In addition, this hearing report will be published, bringing further attention to his Hong Kong criminal conviction.

In recommending confirmation of the section 238 order, the Hearing Committee concluded the Former Licensee has been adequately punished for his material misstatement. As noted above, he has, and will be, the subject of two public decisions by Council. In addition, his life agent licence was terminated and he has been unlicensed for more than four months. The Former Licensee will also have the cost of a new licence application if he plans to continue his insurance career. The Hearing Committee is satisfied the Former Licensee should now be permitted to apply for a life agent licence.

With regard to hearing costs, the Hearing Committee recommends that no cost be assessed, believing that, in this case, as Council made an order pursuant to section 238 of the Act, the Former Licensee was entitled to a hearing and should not have to bear the costs.

Dated in Vancouver, British Columbia, on the 5 day of December, 2016.



Darlene Hyde
Chair of Hearing Committee

In the Matter of

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

and

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

and

WAI KIONG RAYMOND LEE
(the “Licensee”)

DECISION AND ORDER
UNDER SECTIONS 231 & 238 OF THE ACT

WHEREAS the Licensee made an application for a life and accident and sickness insurance licence, dated January 6, 2016, that was received by Council on February 9, 2016;

AND WHEREAS, in making the licence application, the Licensee confirmed that he had no prior criminal convictions or pending criminal charges to disclose;

AND WHEREAS Council granted the Licensee a life and accident and sickness insurance licence based on the Licensee’s disclosure, as well as his undertaking to obtain a criminal record check from the Hong Kong police as he had resided there in the previous five years;

AND WHEREAS Council subsequently learned that the Licensee had been convicted of a criminal offence in Hong Kong, which he had failed to disclose on his licence application and in subsequent discussions with Council staff;

AND WHEREAS the Licensee subsequently acknowledged that he intentionally failed to disclose a prior criminal conviction in an attempt to mislead Council because he believed that such disclosure may make him unsuitable to hold a life and accident and sickness insurance licence;

AND WHEREAS Council determined the Licensee had made a material misstatement on his licence application, contrary to section 231(1)(c) of the Act, for the sole purpose of misleading Council and that his actions brought into question his trustworthiness and his ability to act in good faith;

AND WHEREAS Council found the Licensee's actions make him unsuitable to hold a life and accident and sickness insurance licence and considers it to be in the public interest to cancel the Licensee's life and accident and sickness insurance licence pursuant to section 231(1)(g) of the Act;

AND WHEREAS Council considers the length of time required to make a decision on the Licensee's suitability to hold an insurance licence, pursuant to section 231 of the Act, would be detrimental to the due administration of the Act and contrary to the interests of the public;

NOW THEREFORE Council orders that the Licensee's life and accident and sickness insurance licence is cancelled pursuant to sections 231 and 238 of the Act, effective the date of this order.

TAKE NOTICE that pursuant to section 238 of the Act, the Licensee has the right to require a hearing on this order before Council by delivering written notice within 14 days of receipt of this order to Council at Suite 300, 1040 West Georgia Street, Vancouver, British Columbia, V6E 4H1; alternatively, the Licensee may appeal this order to the Financial Services Tribunal.

Dated in Vancouver, British Columbia, on the **29th day of July, 2016.**



Dr. Eric Yung
Chairperson, Insurance Council of British Columbia