

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

AMANDA LAMBERT
(the “Licensee”)

ORDER

As Council made an intended decision on December 15, 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 January 5, 2010; and

As the Licensee has not requested a hearing of Council’s intended decision within the time provided to request a hearing;

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

1. a condition is imposed on the Licensee’s licence prohibiting her from upgrading to a Level 2 general insurance agent’s licence for a 12 month period, commencing from **February 2, 2010**;
2. a condition is imposed on the Licensee’s licence requiring that she successfully complete the Insurance Brokers Association of British Columbia’s ethics course (or a comparable course as approved by Council), within six months. If the Licensee does not complete the course by **August 2, 2010**, the Licensee’s licence is suspended as of **August 3, 2010**, until the course is completed;
3. the Licensee pay a fine of \$500.00;
4. the Licensee pay \$1,362.50, which represents Council’s investigative costs into this matter; and

5. a condition is imposed on the Licensee's licence that she pay the above mentioned fine and investigative costs by **May 3, 2010**. If the Licensee does not pay the ordered fine and investigative costs by this date the Licensee's licence is suspended as of **May 4, 2010**, without further action from Council.

This order takes effect on the 2nd day of February, 2010.



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

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

AMANDA LAMBERT
(the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee had acted contrary to the requirements of the Act.

As part of Council’s investigation, on November 16, 2009, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss an allegation that, when completing vehicle transfer documents for a motorcycle she had purchased, the Licensee misstated the purchase price of the motorcycle to reduce the tax she owed on the purchase.

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 December 15, 2009 meeting. At the conclusion of its meeting, Council determined that the matter should be disposed of in the manner set out below.

INTENDED DECISION PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231, 236 and/or 241.1 of the Act before taking any such action. The Licensee may then accept Council’s decision or request a formal hearing. This intended decision operates as a written notice of the action Council intends to take against the Licensee.

FACTS

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

Licensing and Employment Information

1. The Licensee was first licensed with Council on October 3, 2007, as a Level 1 general insurance salesperson.
2. The Licensee is currently employed by a general insurance agency (the "Agency") as a Level 1 general insurance salesperson.

Motorcycle Purchase and Insurance Transaction

3. On April 6, 2009, the Licensee's boyfriend purchased a motorcycle for her.
4. The Licensee's boyfriend paid \$4,700.00 in cash for the motorcycle. The Licensee agreed to reimburse \$3,700.00 toward the purchase price, and he agreed to cover the remaining \$1,000.00.
5. On April 6, 2009, the Licensee's boyfriend attended the Agency with the seller of the motorcycle to transfer the ownership into the Licensee's name and to insure the motorcycle.
6. On this day, the Licensee completed a vehicle Transfer/Tax Form. The seller of the vehicle brought an older version of the Transfer/Tax Form and had completed the "Seller to Complete" section of the form (the top section of the form).
7. The Licensee then completed the "Purchaser to Complete" section of the form (the bottom section of the form). On this form, she wrote that the purchase price of the vehicle was \$500.00.
8. A newer version of the Transfer/Tax Form needed to be completed alongside of the older version of the Transfer/Tax Form. As per the Insurance Corporation of British Columbia's ("ICBC") guidelines, this procedure is required when a client submits an older version of the Transfer/Tax Form completed by the seller.
9. The Licensee filled in the new Transfer/Tax Form and stated that the purchase price was \$500.00.

10. In the "Purchaser to Complete" section of this form, it requires that the purchaser indicate whether "the stated purchase price is below market value". The Licensee checked "yes", to indicate that it was less than market value. If a vehicle is sold for less than 90 percent of the book value, then another form, the APB9E, must be completed to provide an explanation for the below market value purchase price. The Licensee did not complete an APB9E when she registered the vehicle.
11. At the time, the Licensee keyed the transaction into the ICBC system, the option to enter a Non Market Value or Tax Exempt Claim (APB9E) field was not selected.
12. The Licensee also completed the ICBC Owner's Certificate of Insurance and Vehicle Licence form. She signed the Customer's Signature line as "Mandi Lambert" and the Agent's Signature line as "Amanda L".
13. The Licensee admitted she chose to sign her signature in different ways in the Customer Signature line and the Agent Signature line because she knew that signing as both the customer and the agent was something that she probably should not be doing.
14. The Licensee indicated the reason she wrote an incorrect value for the purchase price on the Transfer/Tax Form was to save money, as there was \$200.00 difference in the tax. The Licensee felt she was already spending a lot on the motorcycle and wanted to save a little money. She submitted that she did not premeditate to misstate the amount.
15. The Transfer/Tax Forms and ICBC insurance papers were submitted to a batcher at the Agency. The batcher could not distinctively recall signing the ICBC papers and Transfer/Tax Forms for this particular transaction, but reported that in the past, if an agent had submitted a policy for themselves, she would sign as the agent. The batcher described her signature as matching to the ones on the forms.
16. As a result of the foregoing incident, the Licensee was restricted from doing any ICBC transactions. The Licensee provided the Agency with a written apology dated July 17, 2009, whereby she took responsibility for her actions, apologized to the Agency's owners and employees, and promised to perform her work diligently going forward.
17. In consultation with ICBC, the Agency decided to lift the foregoing restriction on the Licensee subject to the following conditions:
 - i. all of the Licensee's work must be monitored, supervised, and checked by the branch manager; and
 - ii. the Licensee is not permitted to perform insurance transactions for family and friends.

18. The Licensee has entered a restorative justice process, which is an initiative to divert matters away from criminal courts and resolve them through agreements that can include elements such as making restitution, performing community service and providing written apologies.

LEGISLATION

Rule 7(8) of the Council Rules

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

Section 231 of the Act

Part 7 – Administration of the Regulation of Financial Institutions

Division 2 -- Insurance Council of British Columbia

Council may suspend, cancel or restrict licences and impose fines

- (1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee
- (a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,
 - (b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,
 - (c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
 - (d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,
 - (e) has contravened section 79, 94 or 177, or
 - (e.1) has contravened a prescribed provision of the regulations,
- then the council by order may do one or more of the following:
- (f) reprimand the licensee or former licensee;
 - (g) suspend or cancel the licence of the licensee;
 - (h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
 - (i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
 - (j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;
 - (k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount
 - (i) not more than \$20 000 in the case of a corporation, or
 - (ii) not more than \$10 000 in the case of an individual.
- (2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.
- (3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance

agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.

- (3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.
- (4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
 - (a) were employed by that agent or adjuster at the time of the suspension, and
 - (b) remain employees of that agent or adjuster at the time of reinstatement, are also reinstated without the necessity of the council taking any action.

Section 236 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 3 – Hearings and Appeals

Power to impose conditions

- (1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization, permit or licence may
 - (a) impose conditions that the person considers necessary or desirable in respect of
 - (i) an order referred to in section 235 (1),
 - (ii) a consent referred to in section 235 (2),
 - (iii) a business authorization,
 - (iv) a permit issued under section 187 (1), or
 - (v) a licence issued under Division 2 of Part 6, and
 - (b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.
- (2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.
- (3) Except
 - (a) on the written application or with the written permission of the holder, or
 - (b) in the circumstances described in section 164, 231 or 249 (1), a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
 - (c) a business authorization is exercisable only on or before its issue date, or
 - (d) a permit under section 187 (1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue date with effect on and after that date.

Section 241.1 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Assessment of Costs

- (1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, or either or both of the following in accordance with the regulations:
 - (a) an investigation;
 - (b) a hearing.
- (2) Costs assessed under subsection (1)
 - (a) must no exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and
 - (b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing.
- (3) If a person fails to pay costs as ordered by the date specified in the order or by the date specified in the order made on appeal, if any, whichever is later, the commission, superintendent or council, as the case may be, may file with the court a certified copy of the order assessing the costs and, on being filed, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the court.

ANALYSIS

Council found the above mentioned facts constituted a breach of section 231(1)(b) of the Act in that the Licensee failed to act in a trustworthy manner. Specifically, Council found that when completing vehicle transfer documents for a motorcycle she had purchased, the Licensee misstated the purchase price of the motorcycle to reduce the tax she owed on the purchase. Council also determined that in an attempt to conceal her impropriety, the Licensee processed insurance on the motorcycle and signed the insurance documents in a certain manner to mislead who had conducted the transaction.

Council considered the actions of the Licensee and the Licensee's submissions. The Licensee confirmed the accuracy of the information contained in Council's investigative report and accepted full responsibility for the transgressions cited therein.

Council found that the Licensee understood the serious nature of her misconduct. The Licensee submitted that the incident bolstered her appreciation for her insurance salesperson licence, and underscored to her that the right to conduct herself as a licensee in the business of insurance can be taken away if she fails to demonstrate trustworthiness and competency.

Council noted the following factors reflected favourably on the Licensee. Firstly, the Licensee's employer was involved throughout the investigative process and he continues to support the Licensee. The employer feels the Licensee's transgressions are mistakes from which an important lesson can be learned. Secondly, the Licensee's work subsequent to the incident in question had been monitored, and no issues of concern were identified.

In considering the appropriate disposition in this matter, Council reviewed a range of cases in which licensees were found to have acted in an untrustworthy manner in carrying out an insurance transaction. In the *Sheryl Katherine Biesick* ("*Biesick*") decision, Council found that the licensee had acted in an untrustworthy manner and not in accordance with the usual practice of the business of insurance. The licensee disregarded her obligation to physically sight the vehicle identification number on two out of province vehicles prior to registering and insuring the vehicles, and misrepresented to ICBC that she had done so. Council ordered a \$2,000.00 fine against the licensee and she was required to pay the costs of the investigation. In the *Derek David Henneberry* ("*Henneberry*") decision, the licensee had improperly accessed the ICBC system, and improperly rated his own vehicle on at least 17 occasions to circumvent AirCare. Council determined that the licensee was not suitable to hold a licence for a minimum period of two years. In the *Moises Jorge De Vasconcelos Ferro* ("*Ferro*") decision, the licensee processed a renewal transaction for a vehicle owned by his cousin who was not present at the time. The insured's husband had attended the agency without a Notice to Renew permitting him to act on his wife's behalf. The licensee was required to pay the costs of Council's investigation and a \$1,000.00 fine was imposed by Council as a deterrence.

Council identified the Licensee's conduct in this case as far less egregious than in the *Henneberry* case. Unlike *Henneberry*, this was a single incident that was not carried out over a long period of time. The basis for comparison is the fact that in all of the foregoing cases the licensees engaged in conduct that is not trustworthy and abused their position as an insurance agent for personal benefit. Council noted that the Licensee's misstatement as to the value of the vehicle and her attempt to conceal her activities was motivated by her personal interest in saving money, but on a lesser scale than *Henneberry*. Council concluded that the Licensee's breach of the Act in this case was more comparable to the conduct at issue in the *Biesick* and *Ferro* decisions.

Council determined that the Licensee's acceptance of responsibility for the misconduct, her apparent remorse for the transgressions, and her relative inexperience in the industry, constituted mitigating factors. Notwithstanding, Council felt that some measure of discipline was warranted to address the Licensee's misconduct and sufficiently deter others from engaging in such conduct, and to also ensure that the Licensee is monitored for a period of time while she rehabilitates. Council also believed that the Licensee would benefit from some education in ethics.

Finally, Council determined that a fine ought to be levied against the Licensee because she abused her position as an insurance licensee for her own financial benefit. In deciding the amount, Council took into consideration that the Licensee had entered a restorative justice process which would have some consequences as well.

INTENDED DECISION

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

1. a condition be imposed on the Licensee's licence prohibiting her from upgrading to a Level 2 general insurance agent's licence for a 12 month period commencing on the date of Council's final decision;
2. a condition be imposed on the Licensee's licence requiring that she successfully complete the Insurance Brokers Association of British Columbia's ethics course (or a comparable course as approved by Council), within six months from the date of Council's final decision;
3. the Licensee pay a fine of \$500.00, which must be paid within 90 days from the date of Council's final decision;
4. the Licensee pay \$1,362.50, which represents Council's investigative costs into this matter and these costs must be paid within 90 days from the date of Council's final decision; and
5. as a condition of this decision, the Licensee is required to pay the above mentioned fine and costs by **May 3, 2010**. If the Licensee does not pay the ordered costs by this date the Licensee's licence is suspended as of **May 4, 2010**, without further action from Council.

The intended decision will take effect on **February 2, 2010**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, she may present her case at a hearing before Council where she may be represented by legal counsel. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention by **February 1, 2010**. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director.

If the Licensee does not request a hearing by **February 1, 2010**, the intended decision of Council will take effect.

Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at www.fic.gov.bc.ca/fst/ or contact them directly at:

Suite 1200 - 13450 102nd Avenue
Surrey, British Columbia
V3T 5X3
Telephone: 604-953-5300

Dated in Vancouver, British Columbia on the 5th day of January, 2010.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/tlh