

In the Matter of

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

and

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

and

**SUKHVIR SINGH MANN
("Mann")**

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of Mann to dispute an Intended Decision dated September 16, 2008.

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

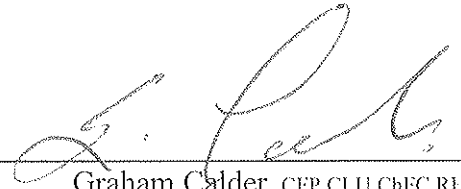
A Hearing Committee heard the matter on March 30th and 31st, 2009, and presented a Report of the Hearing Committee to Council at its August 18, 2009 meeting.

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

1. Mann is prohibited from being an officer, director, shareholder, partner or Level 3 general insurance agent of a general insurance agency for a minimum of ten years;
2. Mann is prohibited from holding an insurance agent, adjuster or salesperson's licence for a period of three years, commencing from October 7, 2008;
3. if Mann decides to reapply for an insurance licence in the future, he must make full disclosure to any employer/agency he will be authorized to represent, the circumstances which led to the termination of his insurance agent's licence. Such disclosure must be made prior to a licence application being approved by Council. This condition will remain in force until one year of active licensed experience is completed;

4. Mann is fined \$7,500.00;
5. Mann is jointly and severally liable to pay the costs associated with this hearing, assessed at \$10,314.39; and,
6. as a condition of this decision, Mann is required to pay the above fine and costs by **November 24, 2009.**

This order takes effect on the 24th day of August, 2009.



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

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

REPORT OF THE HEARING COMMITTEE

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

AND

GURVINDER RAJ SINGH LEHAL
("Lehal")

AND

SUKHVIR SINGH MANN
("Mann")

DATE: March 30th and 31st, 2009
9:30 A.M.

BEFORE: Barbara MacKinnon Chair
Donald Sache Member
Robert Scott Member

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

PRESENT: David McKnight Counsel for Council
Gurvinder Raj Singh Lehal Licensee
Sukhvir Singh Mann Licensee
J.J. McIntyre Counsel for Lehal and
Mann

Issues

On September 16, 2008, Council made an intended decision respecting Lehal and Mann pursuant to sections 231 and 238 of the Act. Lehal and Mann subsequently requested a hearing before Council pursuant to section 238 of the Act.

As set out in the Notice of Hearing dated March 10, 2009, the purpose of the hearing was to determine whether Lehal and Mann:

- (a) failed to act in a trustworthy and competent manner, in good faith and in accordance with the usual practice of the business of insurance in this matter by:
 - (i) breaching the conditions of the Accost Insurance & Financial Centre Inc. (the "Agency") Autoplan Agency Agreement with the Insurance Corporation of British Columbia ("ICBC");
 - (ii) using their position as directors and principal owners, as well as Autoplan agents for ICBC to issue and/or to permit the issuance of, and then improperly void ICBC insurance certificates for the benefit of customers and friends;
 - (iii) allowing employees of the Agency or other individuals to access ICBC's system to obtain the personal information of an ICBC customer for an improper purpose;
 - (iv) in failing to comply with ICBC directives and/or to take corrective measures after receiving ICBC warnings regarding improper insurance transactions conducted by Agency employees;
 - (v) in any other manner;
- (b) are able to continue to carry on the business of insurance in a trustworthy and competent manner, in good faith and in accordance with the usual practice, as required under Rule 3(2) of the *Council Rules* and section 231(1)(a) of the Act; and
- (c) should be subject to any disciplinary or other action in the circumstances.

The Hearing Committee was constituted under section 223 of the Act. This is the report of the Hearing Committee as required by section 223(4) of the Act.

Evidence

Evidence reviewed by the Hearing Committee in consideration of this matter:

- Exhibit 1: Book of Documents of Council
- Exhibit 2: Agreed Statement of Facts – provided by Lehal and Mann's counsel and counsel for Council
- Exhibit 3: October 1, 2002 letter from Mann
- Exhibit 4: Share Purchase Agreement dated August 29, 2008
- Exhibit 5: Request for exemption with respect to Level 3 general insurance agent licence from Lehal
- Sworn testimony of Mann
- Sworn testimony of Lehal

Background

The Agency was incorporated on November 23, 1998. At all material times, Mann and Lehal each owned 50 percent of the Agency. Mann was the President of the Agency and Lehal was the Secretary and Treasurer of the Agency. The nominee of the Agency from the period of 2004 until June 3, 2007, was Raghbir Kaur Atwal (“Atwal”). The Agency’s main office is located at 220 – 7093 King George Highway, Surrey, British Columbia. Mann and Lehal worked at the Agency’s King George Highway location.

The Agency had a second location at 12829 - 96 Avenue, Surrey, British Columbia (“96th Avenue”), which was purchased by Atwal’s husband, Manjat Atwal, in November 2006, and renamed Atwal’s Insurance and Financial Centre. Atwal worked out of the Agency’s 96th Avenue location.

In 2007, ICBC conducted an investigation into the conduct of the Agency and its two principals, Lehal and Mann. A hearing into ICBC’s investigation was scheduled to be heard on March 11, 2008, before ICBC’s Vice President of Claims Field Service. On March 7, 2008, ICBC and the Agency reached a settlement agreement with respect to ICBC’s investigation (the “Settlement Agreement”). Pursuant to the Settlement Agreement, the Agency agreed on termination of the Autoplan Agency Agreement effective December 31, 2008, unless the Agency was sold in the interim.

Council received notice of the Settlement Agreement on May 29, 2008, and the ICBC hearing materials on June 3, 2008. In addition to the two admitted breaches in the Settlement Agreement, the hearing material also revealed additional incidents of improper transactions within the Agency and a history of ICBC investigations, of which Council was unaware of at the time.

The Settlement Agreement provided that the Agency could assign or transfer the Autoplan Agency Agreement to an arm’s length party. An arm’s length party was defined to be a party in which neither Mann or Lehal had a direct or indirect interest. The Settlement Agreement was signed by Lehal and Mann as authorized signatories of the Agency.

Pursuant to the Settlement Agreement, the Agency did not contest any of ICBC’s hearing materials including that two material breaches of the Autoplan Agency Agreement had been committed by the Agency:

- a) misuse of Temporary Operating Permits (“TOPs”); and
- b) inappropriate access to ICBC systems.

The Agency acknowledged that the material breaches of the Autoplan Agency Agreement constituted just cause pursuant to the *Insurance Act* entitling ICBC to terminate the Autoplan Agency Agreement.

ICBC reviewed the TOPs voided by the Agency in 2006 and found that of the 33 TOPs voided by the Agency in 2006, 12 were improperly issued and voided.

ICBC's investigation into the misuse of the TOPs fell into three categories:

- a) the Agency assisted friends and favoured clients by issuing and then voiding TOPs after the subject vehicle had passed AirCare;
- b) the Agency assisted MS Punjab Excavating & Demolition Ltd. ("MS Punjab") to obtain insurance without paying by issuing and voiding TOPs four times in 2006; and
- c) excessive time between issuing and voiding of TOPs led to the conclusion that the Agency assisted customers in obtaining insurance without paying for it.

Testimony of Mann

Under direct and cross examination, Mann testified under oath to the following:

1. he is presently 29 years old and was first licensed as a Level 1 general insurance salesperson in September 1998. His licence was then upgraded to a Level 2 general insurance agent in November 15, 1999;
2. he invested in the Agency in 2001. He was a 50 percent owner and President;
3. he started a construction business early 2007, and has been working at this venture full time since the termination by Council of his Level 2 general insurance agent's licence;
4. he has no interest in carrying on business in the insurance industry. He requested a hearing from Council as he wants his name cleared;
5. he has never done an ICBC 'batch' in his career, but is aware of the purpose and procedures involved;
6. he stated that the ICBC batching was done by other employees; Harm Atkar or Raj Lehal;
7. ICBC conducted an investigation in 2007 into the Agency and its two principals, Mann and Lehal. A hearing into ICBC's investigation was scheduled to be heard on March 11, 2008;
8. on March 7, 2008, the Settlement Agreement with ICBC was agreed to and uncontested; as Mann believed that 'you cannot go against ICBC and win'. He agreed to the facts in the Settlement Agreement as he wanted to maintain the value of the Autoplan contract as part of any agreement to sell the Agency;

9. he was not aware of any concerns that ICBC had with the Agency until meeting with the ICBC Special Investigations Unit (SIU) investigators;
10. he was aware of ICBC's rules with respect to 'conflict of interest' prior to processing the transaction for his mother and brother. He stated that his brother, mother and father as well as himself, all reside in the same house. He could not explain why his mother and brother told ICBC claims staff that Mann had indicated his mother as the principal operator when that was not the case;
11. he stated that ALL Agency staff, himself included, has successfully completed the ICBC Autoplan Essentials course, and that all staff were aware of ICBC's rules with respect to the use of personal information from the computer system;
12. he personally did not issue TOPs incorrectly, but the Agency did. He acknowledged he did process the TOP for his friend, D.R., however he was not the person who wrote VOID on the TOP. He also admitted that he did not sign the British Columbia driver's licence although he indicated otherwise on the form;
13. he concentrated on commercial insurance and his partner Lehal was responsible for the supervision of the personal lines and Autoplan; and
14. both he and Lehal were responsible for the hiring of staff members.

Testimony of Lehal

Under direct and cross-examination, Lehal testified under oath to the following:

1. he was a previous law graduate in India and practiced law from 1990 to 1994;
2. he was first licensed as a Level 1 general insurance salesperson on January 16, 2001, and subsequently upgraded to a Level 2 general insurance agent's licence on July 12, 2001. Lehal was also licensed as a life and accident and sickness insurance agent with Lifeview Financial Services Inc.;
3. when he began working with the Agency, he focused on Autoplan. He then moved into Personal Lines and became responsible for ICBC and Personal Lines in the office;
4. he became a 50 percent shareholder in the Agency in June 2004 (and Secretary and Treasurer);
5. he stated that both himself and Mann were responsible to train staff with respect to ICBC Autoplan;
6. both himself and Mann had advised ALL staff that ICBC documents need to be initialed as to who had processed the transaction;

7. ICBC batching was done approximately twice a week;
8. if there were problems in the office, he always discussed them with Mann;
9. he acknowledged that some clients could phone the office for TOPs and the office would issue them on request. He stated that he would recognize their voice and while he would indicate to the contrary on the ICBC document, British Columbia driver's licences were not always sighted;
10. he admitted to voiding TOPs on two occasions, as they were NOT paid for nor used, and the documents never left the office;
11. on one of these occasions, he voided the transaction because the client bought the plate (i.e. renewed the insurance);
12. he stated that if a client was involved in an accident while operating a vehicle under a TOP, the client would then be expected to pay the applicable premium;
13. he stated he had read the ICBC Settlement Agreement; fully understood; and did not contest any of the content or material;
14. Atwal was nominee of the Agency, and she attended meetings a few times;
15. he had no knowledge about the arrangement for the Atwals to purchase the 96th Avenue location in 2006, after two years of involvement. Mann never disclosed this to him until the actual sale took place; and
16. he stated he was unaware of the previous incidents that Mann was involved with regarding ICBC transactions.

Closing Arguments of Council by David McKnight

1. The evidence supports the conclusion that Mann and Lehal knowingly altered TOPs to falsely misrepresent that their clients were insured when they were not, thereby defrauding ICBC of insurance premiums.
2. Mann, Lehal and Agency employees assisted friends and favoured clients by improperly issuing and then voiding TOPs in order to assist their clients in completing AirCare.
3. In 2006, the Agency improperly issued and voided twelve TOPs. These include:
 - that Mann assisted his friend and client in the issuance and voiding a TOP so that his friend could attend AirCare;

- the Agency assisted a regular corporate customer on four occasions in 2006 by issuing TOPs to this corporate customer without requiring the corporate customer to pay for it; and
- Lehal assisted his friend and another client in the same manner.

This was supported by Gurinder Singh Dhesi (“Dhesi”), a Level 1 general insurance salesperson employed at the Agency at the time. Dhesi indicated that Lehal actively instructed him and other Agency employees on how to void TOPs in order to avoid payments. It is significant that Lehal did not challenge or contest any assertion by ICBC or by Dhesi that he had instructed and encouraged Agency employees to assist friends and preferred customers in the issuance of TOPs to avoid insurance.

4. It does not matter who was responsible for issuing and voiding corporate customers’ TOPs because both Mann and Lehal, as principal owners of the Agency, engaged in this practice, and encouraged other employees to do the same. The evidence establishes a culture of unethical business practices, compliance issues and, inappropriate and untrustworthy business dealings with ICBC. As a result of the Agency’s misuse of TOPs, ICBC was denied an insurance premium but was put “on risk” should one of the Agency’s customers been in an accident on the way to or from AirCare.
5. While Lehal and Mann argue they did not receive a “direct” benefit from their actions, this is irrelevant. The “motive” and most plausible explanation for their actions in voiding TOPs was that they were attempting to garner favour with preferred clients and customers, which ultimately would lead to other beneficial business opportunities such as clients keeping their business with the Agency and encouraging others to place insurance business through the Agency. In this regard, Mann and Lehal implemented a practice to manipulate the system for their personal benefit.

Inappropriate Access to ICBC Systems

1. Evidence exists that Dhesi called someone at the Agency to access the ICBC system on his behalf. While Dhesi never stated it was Lehal or Mann, or that they had knowledge, the evidence suggests Dhesi was acting in concert with someone at the Agency. This in itself is evidence of improper and inadequate management practices at the Agency.

2. While both Dhesi and Mann's brother are careful not to implicate Mann as being involved in improperly accessing the ICBC database in order to assist Mann's brother in identifying persons relating to one of his businesses (a truck park), it is clear that this practice took place. Both Mann's brother and father were both owners of the truck park and Mann was the previous owner of the property. It seems highly improbable that Mann would not have been aware that the access was taking place even if he did not personally partake in the inappropriate access of the ICBC database.
3. Regardless of Mann's evidence in this regard, he lacks credibility and it is open for the Committee to conclude that Mann's involvement in this matter was greater than he is willing to acknowledge. At the very least, it again speaks to a lack of proper supervision and management at the Agency with respect to the ICBC database. It is further indicative of a pervasive culture of improper conduct and unethical business practices at the Agency.

Misstating Principal Operators and Prior Breaches

1. With respect to Mann's brother and mother, and in another case involving Mann's friends, the evidence established that Mann knowingly misrepresented the principal operator of the vehicles in order to avoid, and thereby defraud, ICBC of a higher premium. At the very least, the evidence establishes that Mann and Lehal failed to disclose the truth of the altered document or misrepresented that their clients were insured when they were not by knowingly failing to comply with the Autoplan Agency Agreement guidelines.
2. Mann's submissions that he was not involved in misrepresenting his mother as principal operator of the vehicle, or with respect to his friend, H.S., should be given no weight by the Committee. In order to accept Mann's submissions, one has to discount ICBC's materials in which Mann's mother and brother clearly state that the principal operator was misrepresented in both instances in order to avoid paying a higher premium. Again, these submissions were included with the materials that ICBC submitted as part of the Settlement Agreement and were not contested by Mann in March 2008. It brings into question Mann's credibility to now contest or challenge ICBC's findings. It further speaks to Mann's lack of credibility and illustrates a lack of contriteness that he is now attempting to deflect blame for his involvement in what can only be seen as a fraudulent misrepresentation against ICBC in order to save money.
3. On a lesser level, it is not disputed that Mann was not complying with ICBC policy with respect to conflict of interest issues.

4. Both Mann and Lehal were experienced agents with Level 2 general insurance agent's licences. Both Mann and Lehal provided letters to Council confirming that they were involved in the management of the Agency. Atwal had no involvement in batching of ICBC documents or the day-to-day operations of the business. Atwal as a "lame-duck" nominee who in actual fact had little, if any, involvement or knowledge in the day-to-day operations of the Agency. This allowed Mann and Lehal to engage in a premeditated practice to manipulate the system without recourse and without the watchful eye of a nominee. They did this with respect to TOPs which they batched so that they could control the degree to which the improper access to the TOPs would become known; by allowing Dhesi unfettered access to the ICBC database, and with respect to misrepresenting principal operators on vehicles in order to avoid paying a higher premium.
5. Atwal's statement is consistent with the finding that she had no knowledge that the TOPs or any other inappropriate conduct was taking place at the Agency. Upon finding out of the allegations through ICBC's investigation, Atwal promptly resigned.
6. If this evidence does not establish the direct culpability of Mann and Lehal in terms of the extent of their involvement in the inappropriate conduct, it certainly speaks to their lack of competence in managing an Agency in which they were the owners and operating minds.

Closing Submission of Lehal and Mann by J.J. McIntyre ("McIntyre")

1. Council's case is based primarily on the ICBC Investigation and Settlement Agreement. McIntyre acknowledged that two material breaches took place, conclusions admitted, but not 'how the conclusions were arrived at.'
2. Out of 33 TOPs, ICBC only has 'problems' with 12. As such, 21 TOPs were fine.
3. There is no dispute that Dhesi accessed ICBC's database for his own personal benefit.
4. With respect to the previous incidents involving Mann, Mann never agreed with ICBC conclusions such as the example relating to Mann's friend, H.S.
5. McIntyre suggested the Hearing Committee give limited weight to ICBC's argument and conclusions with respect to accuracy. While Lehal and Mann agreed to the information contained in the Settlement Agreement, he argued they had no alternative. It was a business decision.
6. Mann's responsibility was ICBC fleets and commercial insurance, and Lehal's responsibility was Personal Lines and ICBC.

7. Mann admits to not sighting the British Columbia driver's licence when completing the insurance transaction TOP for client D.R.
8. There is no evidence that Mann issued TOPs incorrectly, with the purpose of benefiting Agency clients.
9. Lehal admits to not handling the TOP transactions correctly for two clients, and he assisted clients for the benefit of the Agency.
10. McIntyre stated that it is a competence issue only with respect to the issuance of TOPs.
11. McIntyre argued little or no weight should be given to Dhesi's interview. Mann terminated Dhesi as soon as he received full facts and information from the ICBC SIU investigators. The question was never asked of Agency staff in regards to who assisted Dhesi in accessing the ICBC database.
12. While there may have been a lack of guidelines for the Agency itself and Agency staff, there is no evidence that Lehal or Mann failed to follow directives that ICBC provided.
13. Conduct is different for both individuals:
 - Mann had very little involvement. There is no indication that Mann was trying to sidestep guidelines. He did not instruct; did not supervise; was not incompetent and should be able to carry on in the business of insurance if he so desired.
 - There is no evidence that Lehal was not competent, untrustworthy or did not act in good faith.
14. Lehal and Mann were not aware of Dhesi accessing the ICBC system for personal use. Upon knowledge of this conduct, they terminated Dhesi's employment.

Hearing Committee Findings

After evaluating the evidence put before it, the Committee concluded that Lehal and Mann's conduct in this matter constituted a breach of section 231 of the Act and Principles of the Code of Conduct pursuant to section 7(8) of the *Council Rules*, in that they failed to act in a trustworthy and competent manner, in good faith and in accordance with the usual practice of the business of insurance.

More specifically, the Committee found that Lehal and Mann:

1. used their position as general insurance agents and as officers, directors and principal owners of an insurance agency, to benefit their friends, family and clients, prejudicing ICBC in the process through the misuse of TOPs;

2. allowed, either by act or omission, the Agency to breach the conditions of its Autoplan Agency Agreement with ICBC;
3. allowed or failed to prevent employees of the Agency from accessing ICBC's database to obtain the personal information on ICBC customers for purposes other than intended;
4. failed to comply with ICBC directives and/or take corrective measures after receiving ICBC warnings regarding improper insurance transactions and improper use of ICBC database by Agency employees; and
5. failed to ensure that the Agency's operations were properly supervised by a qualified nominee.

The Committee's reasons for these findings are set out below:

Code of Conduct – Principle 3 – Trustworthiness

Section 3.2

You must be trustworthy, conducting all professional activities with integrity, reliability and honesty. The principle of trustworthiness extends beyond insurance activities. Your conduct in other areas may reflect on your trustworthiness and call into question your suitability to hold an insurance license.

Code of Conduct – Principle 4 – Good Faith

Section 4.2

You must carry on the business of insurance in good faith. Good faith is honesty and decency of purpose and a sincere intention on your part to act in a manner which is consistent with your client's or principal's best interests, remaining faithful to your duties and obligations as an insurance licensee. You also owe a duty of good faith to insurers, insured's, fellow licensees, regulatory bodies and the public.

Code of Conduct – Principle 5 – Competence

Section 5.2

You must conduct all insurance activities in a competent manner. Competent conduct is characterized by the application of knowledge and skill in a manner consistent with the usual practice of the business of insurance in the circumstances. You must continue your education in insurance to remain current in your skills and knowledge.

Code of Conduct – Principle 7 – Usual Practice: Dealing with Clients

Section 7.2

When dealing with clients you must:

- *protect clients' interests and privacy;*
- *evaluate clients' needs;*
- *disclose all material information; and*
- *act with integrity, competence and the utmost good faith*

Code of Conduct – Principle 8 – Usual Practice: Dealing with Insurers

Section 8.2

You have a duty to insurers with whom you are transacting business to:

- *make reasonable inquiries into the risk;*
- *provide full and accurate information;*
- *promptly deliver all insurance documents and monies due;*
- *represent the insurer's products fairly and accurately;*
- *adhere to the authority granted by the insurer; and*
- *promptly report all potential claims.*

You must not defame or discredit insurers

Trustworthiness and utmost good faith are essential elements in every insurance transaction. The Committee finds that Lehal and Mann did not meet these requirements in that they knowingly issued or allowed to be issued TOPs and then subsequently voided them for certain friends and favoured clients. While it was argued that these occurrences were few and represented small amounts of money, the issue is that Lehal and Mann had a duty to ICBC to ensure that insurance documents were prepared and issued properly and that the appropriate premiums were collected and remitted to ICBC. Instead, Lehal and Mann prepared or allowed to be prepared TOPs in an inappropriate manner and then improperly voided the contracts when the client “no longer required them.” By executing the above, they allowed members of the public to operate vehicles that may or may not have actually been insured, as well as denying ICBC the correct premiums when the TOPs were voided.

The Committee found there is clear evidence that improper use and access of the ICBC database was occurring at the Agency. The evidence demonstrated that the Agency employee, Dhesi, accessed the ICBC database on numerous occasions for reasons other than intended or permitted. Some of the accesses by Dhesi were to assist Mann's brother in obtaining information relating to a truck park that Mann's brother and father operated.

The fact that Mann lived in the same home as his brother and father, makes it difficult for the Committee to believe that Mann was not aware this was occurring.

As officers, directors and major shareholders of the Agency, Lehal and Mann had a duty to ensure the privacy of the public's information was maintained. The need to maintain the confidentiality of the public's information is a key factor in the public having confidence in the insurance industry. Lehal and Mann, regardless of whether they were aware of the breaches in confidentiality, had a duty to ensure such breaches did not occur. The fact that they did not have a nominee or Level 3 general insurance agent in regular attendance at the Agency office, only places a greater responsibility on both individuals to ensure such events did not occur.

The Committee concluded that Lehal and Mann demonstrated a lack of competence in ensuring that these violations did not occur, and this was compounded by the fact that even after receiving notices and reminders from ICBC regarding these violations, they continued to occur. The fact that both Lehal and Mann denied knowledge about any breaches in confidentiality was not credible. Furthermore, even if the Committee found Lehal and Mann to be credible, the fact such breaches had occurred, reflected directly on their ability to properly manage and operate an insurance agency.

In the matter involving Mann's brother and mother, and the misrepresentation of who was the principal operator of a motor vehicle, the Committee found that Mann processed these transactions and they were proceed in a manner in order to avoid, and thereby defraud, ICBC of the correct and higher premium. Mann's submissions that he was not involved in misrepresenting his mother as principal operator of the vehicle were not accepted.

In addition to the issues above, the Agency was subject to disciplinary action by ICBC on two occasions between 2003 and 2005. In these cases, a number of improper practices were identified including:

- a) enrolling new Autoplan 12 accounts by accepting non-personalized voided cheques;
- b) accessing previous plate history to obtain bank account information;
- c) obtaining information from a policy belonging to another person in the same household, rather than the intended registered owner;
- d) knowingly recording, incorrectly, who the principle driver of a vehicle was; and
- e) accepting cheques for transactions from customers with "cash only" status, contrary to the Autoplan Manual.

These actions only supported the Committee's findings that Lehal and Mann did not operate as insurance agents and agency owners in accordance with Council's Rules. Even though the Agency had been the subject of two disciplinary actions by ICBC, Lehal and Mann allowed the Agency to carry on business contrary to its Autoplan contract and ICBC policies. Lehal and Mann challenged these events as well as the findings set out in the Settlement Agreement with ICBC, arguing you cannot fight ICBC. The Committee does not accept this argument. Lehal and Mann voluntarily entered into the Settlement Agreement with ICBC, which set out their conduct and breaches. The Committee is not prepared to discount the facts contained in the Settlement Agreement on the basis that it was convenient for Lehal and Mann to agree to them. Furthermore, the Committee found Lehal and Mann's attempts to distance themselves from the statements in the Settlement Agreement, brought into question their credibility and a lack of willingness to accept responsibility for what was going on at the Agency, a responsibility as officers, directors and majority shareholders which was entirely theirs.

Recommendations of the Hearing Committee

The Committee considered the principles of sentencing and Council's sentencing guide, articulated in Council Policy 54.1, when preparing a recommendation to Council on penalty. The Committee also reviewed previous cases and, in particular, considered the following precedents:

- Jagjit Cheema's ("Cheema") life and accident and sickness insurance agent licence was cancelled for a minimum period of two years after Council determined he was not trustworthy and did not intend to publicly carry on the business of insurance in good faith. He improperly accessed ICBC's database to obtain sensitive personal and confidential information about another person with the intention of sharing that information with a third party he knew was involved in criminal activity.
- Apex Insurance Services Ltd. et al. (the "Agencies") and Amy Man Mee Lau ("Lau") processed unnecessary Autoplan transactions on their own vehicles or on other Lau family members' vehicles for the sole purpose of generating extra commissions and fees for the agencies. Lau was a Nominee for one of the Agencies and acknowledged that over a three year period, 243 ICBC transactions had been processed on vehicles owned by her or family members at one of the Agencies, when she was the Nominee. Lau claimed that she did not process any of the transactions herself, or have any knowledge that the transactions had been carried out. She denied that she had any involvement in effecting excessive transactions for personal gain.

Council submitted that Lau's ignorance regarding the excessive transactions spoke to her incompetence, negligence and inability to manage as Nominee. As a result, Lau's Level 3 general insurance agent nominee's licence was cancelled for a minimum period of two years. During this period, she was issued a Level 2 general insurance agent's licence which was suspended for a period of nine months. Lau was fined \$5,000.00, the Agencies were each fined \$20,000.00 and Lau and the Agencies were held jointly and severally liable to pay Council's costs of investigating the matter, assessed at \$7,800.00.

- Glenn Frank Bergen accepted investment monies for a development project located in the Barbados from two of his clients and deposited the funds into a personal bank account for use. The licensee failed to keep his clients informed of the investment and failed to provide the clients the comfort that they were looking for to ensure their investment was safe. While the monies were eventually repaid to the clients, by misusing the funds and breaching his clients' trust, Council found the licensee did not act in good faith and in a trustworthy manner. As a result, the licensee's life and accident and sickness insurance agent licence was cancelled for a minimum of 12 months from the date of Council's order, the licensee was fined \$6,000.00, and was liable to pay Council's cost in the investigation of the matter, assessed at \$1,264.20.
- Baljinder Singh Takhar abused his position as an insurance salesperson by processing 163 Autoplan transactions on his own wife's vehicles over a 26 month period, thereby earning in excess of \$4,700.00. Council concluded that the licensee falsely executed insurance documents by signing on behalf of his wife, the insured, without proper authorization, and made material misstatements to ICBC regarding the insurance claim. As a result, the licensee's licence was cancelled for a minimum period of one year from the date Council's order took effect; the licensee was fined \$5,000.00; and the licensee was liable to pay half of Council's investigation costs into the matter.
- Aurora Underwriting Services Inc. ("Aurora"), Nona Erie McCreedy ("McCreedy") and Linda Dianne Hayne ("Hayne") altered Policy Declaration pages and proposals to increase the amount of premiums and failed to disclose the increase of the premiums to the clients. Further, the Aurora parties failed to place insurance coverage as instructed by not providing complete and accurate risk information to the sub-broker and failed to confirm that coverage was in place. As a result, Council found that the Aurora parties failed to act in good faith, in a trustworthy and financially competent manner, and ordered that the licensees be suspended for a period of 18 months; that the Agency be fined \$20,000.00; that McCreedy be fined \$10,000.00; that Hayne be fined \$5,000.00; and that all of the parties be held jointly and severally liable for Council's investigative costs and hearing costs.

- Derek David Henneberry (“Henneberry”) improperly accessed ICBC’s database to provide a third party with personal information about an ICBC client who then used the information to threaten the client during a road rage incident. He also improperly rated his own vehicle and vehicles owned by acquaintances, on at least 17 occasions, in order to circumvent AirCare. He was found not suitable to hold an insurance licence for a minimum period of two years and was required to pay Council’s investigation costs.
- Jocelyn Fenelon (“Fenelon”) was found to have backdated an ICBC Autoplan policy in order to circumvent a violation ticket that had been issued to him by the RCMP for driving without insurance; had driven vehicles without insurance; and had taken and misused ICBC validation decals for personal use on his own vehicles to give the appearance that they were insured when they were not. As a result, the Hearing Committee found that, pursuant to section 238, Fenelon’s life and accident and sickness insurance agent licence should remain cancelled for a minimum period of three years commencing from February 15, 2008, that he be fined \$5,000.00; that he pay Council’s investigation costs assessed at \$10,187.50; and that he pay Council’s hearing costs assessed at \$5,786.22. As a condition of this decision, Fenelon must first pay the above mentioned fines and costs if he intends to make an application for an insurance licence after February 15, 2011.

Note: Fenelon appealed to the Financial Services Tribunal, and the Appealed Order was varied by:

1. changing the commencement date of the three year period during which Fenelon cannot hold a general insurance agent licence from February 15, 2008 to November 7, 2007;
2. allowing Fenelon to attempt to resume working in a field of insurance other than general insurance two years after February 15, 2008;
3. eliminating the fine of \$5,000.00; and
4. changing the deadline for paying the awarded costs to a date prior to Fenelon making an application for any insurance agent’s licence under the Act.

Based on the above, the Committee is recommending the following disciplinary action to Council:

1. Lehal
 - a) should be prohibited from being an officer, director, shareholder, partner or Level 3 general insurance agent of a general insurance agency for a minimum of ten years;
 - b) should be prohibited from holding an insurance agent, adjuster or salesperson’s licence for a period of three years;

- c) be required to disclose this decision to any future employer during the first year should he decide to return to the general insurance industry; and
- d) should be fined \$7,500.00.

2. Mann

- a) should be prohibited from being an officer, director, shareholder, partner or Level 3 general insurance agent of a general insurance agency for a minimum ten years;
- b) should be prohibited from holding an insurance agent, adjuster or salesperson's licence for a period of three years;
- c) be required to disclose this decision to any future employer during the first year should he decide to return to the general insurance industry; and
- d) should be fined \$7,500.00.

In developing its recommendations, the Committee was also prepared to assess a portion or all of the Council's investigation costs. Before it had completed its deliberations, the hearing for the Agency was completed and the Committee noted that the Agency was assessed all of these costs. As it did not want to create confusion, the Committee, while believing Lehal and Mann should be liable for some or all of the investigation costs, decided not to make a recommendation on investigation costs.

With regards to the three year licence prohibition, the Committee feels the three year period should commence from when Lehal and Mann last held an insurance licence. The Committee also feels that the prohibition should apply to every class or category of licence. The actions of Lehal and Mann go to the heart of every licensee's suitability and the Committee feels they are not suitable to hold any insurance licence.

On the issue of hearing costs, the Committee recommends that both Lehal and Mann be assessed, both jointly and severally, all of Council's costs. The Committee's findings go directly to Lehal and Mann's suitability, and based on Council's policies, the assessment of Council's hearing costs are warranted in this situation.

Dated in Vancouver, British Columbia on the 5th day of August, 2009.



Barbara MacKinnon CAIB, Chair of the Hearing Committee