

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

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

and
BALWINDER KAUR GILL
(the “Licensee”)

ORDER

As Council made an intended decision on July 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 July 27, 2009; 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 which prohibits her from upgrading her licence to a Level 2 general insurance agent’s licence before February 2010;
2. a condition is imposed on the Licensee’s licence that she is required to successfully complete IBABC’s ethics course within six months of the date of this decision;
3. the Licensee pay \$487.50, which is one third of the cost of Council’s investigation into this matter; and,
4. a condition is imposed on the Licensee’s licence that she pay the above mentioned costs by **November 24, 2009**. If the Licensee does not pay the ordered costs by this date, the Licensee’s licence is suspended as of **November 25, 2009**, without further action from Council.

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



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

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

BALWINDER KAUR GILL
(the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee’s actions were in compliance with the requirements of the Act.

As part of Council’s investigation, on June 15, 2009, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss allegations the Licensee cheated on her Canadian Accredited Insurance Broker (“CAIB”) 2 examination.

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 July 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 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 on April 25, 2008; she is currently licensed as a Level 1 general insurance salesperson with Gold Key Insurance Services Ltd. (the "Agency");
2. the Licensee has not been disciplined by Council in the past;
3. the Agency submitted that the Licensee is a hard worker and she is considered to be a valued employee who works well with others;
4. the Agency does not conduct ICBC mobile road service. There are sixteen other employees at the Agency, including a nominee and a Level 3 agent licensee.

CAIB 2 Examination

5. on February 11, 2009, the Licensee wrote the CAIB 2 examination; she was seated beside Manjit Kaur Bains ("Bains"). Kuljit Pannu ("Pannu") was seated on the other side of Bains. Bains and Pannu are also employed at the Agency as Level 1 general insurance salespersons;
6. the Licensee was caught speaking with Bains during the examination, and as this was contrary to the examination rules, her examination was disqualified on the basis of academic dishonesty;
7. the Insurance Brokers Association of British Columbia ("IBABC"), who administers the CAIB program, prohibited the Licensee from writing another CAIB examination before February 2010;

Licensee's Submissions

8. during the last twenty minutes of the CAIB 2 examination, the Licensee and Bains discussed examination material on two occasions. On one occasion, Bains read to the Licensee an examination answer. Bains asked the Licensee if her answer was correct and the Licensee confirmed that it was. On the second occasion, the Licensee asked Bains what her answer was to a certain question. Bains advised the Licensee that she could not discuss it, as the examination proctor was approaching;
9. the Licensee admitted that she did discuss material with Bains during the examination, but did not alter any of her questions as a result;
10. this was her first attempt at upgrading her licence;

11. she advised that she will never cheat on an examination again; and,
12. she expressed remorse for her actions and emphasized that she had not planned on cheating. She asserted that she had made a mistake.

LEGISLATION

Rule 7 of the *Council Rules* Licence Conditions

Applicable to All Classes of Licences

(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 2 – Insurance Council of British Columbia

Power to impose conditions

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

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

Assessment of Costs

- (1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, or either or both of the following in accordance with the regulations:
- (a) an investigation;
 - (b) a hearing.

- (2) Costs assessed under subsection (1)
 - (a) must not exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and
 - (b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing.
- (3) If a person fails to pay costs as ordered by the date specified in the order or by the date specified in the order made on appeal, if any, whichever is later; the commission, superintendent or council, as the case may be, may file with the court a certified copy of the order assessing the costs and, on being filed, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the court.

FINDINGS

Council determined that the aforementioned facts constituted a breach of section 231(1)(b) of the Act in that the Licensee did not act in a trustworthy manner as required by Council's Code of Conduct. In particular, the Committee concluded that on February 11, 2009, the Licensee cheated on her CAIB 2 examination.

Council determined the Licensee had not coordinated a plan to share answers with Bains and Pannu prior to the examination, or pre-mediated cheating in any other manner. Council also found the Licensee had accepted responsibility for her actions and understood the significance of cheating on an examination that is used toward upgrading her licence.

Cheating on an insurance examination, particularly one that can assist in qualifying for a higher level of licence, is clearly inconsistent with the principle of trustworthiness. It is a critical aspect of the competency requirement under Council Rules that the Licensee demonstrate she possesses satisfactory knowledge of the material.

In considering the appropriate disposition in this matter, Council reviewed three cases in which licensees were found to be cheating, or attempting to cheat, on licence qualifying examinations. In Council's recent *Maninder Kaur Ravinder Benipal* decision, the licensee was found to have allowed her sister to cheat off of her during a CAIB 2 examination. The licensee did not admit to her role in the incident. Rather, she claimed ignorance for a sixteen month period, thereby prolonging Council's investigation. The licensee only admitted to assisting her sister just before a hearing on the matter commenced. Council suspended the licensee for four months, ordered her to pay for fifty percent of the investigation costs and one hundred percent of the hearing costs, and barred her from writing a CAIB examination for a one year period. The licensee was also required to complete a course in ethics.

In the case of *Swee Heng Teh*, the licensee completed an online examination for another licensed agent, for compensation, in order to assist him in obtaining the continuing education (CE) credits required for the renewal of his licence. The licensee was found to have failed to act in a trustworthy manner, in good faith and in accordance with the usual practice of the business of insurance and was suspended for two months and fined \$2,000.00.

In the third case discussed by Council, *Hee Dong Hong*, the licensee had obtained and disseminated study sheets for the Life Licence Qualification Program (“LLQP”), based on questions taken from a previous LLQP examination administered by Council. The licensee also attempted to mislead Council about the source of the questions by implicating his former girlfriend, asking her to lie to Council and say that she was the one who provided him with the LLQP questions. The licensee was found not to be trustworthy or able to carry on the business of insurance in good faith and found not suitable to hold an insurance licence for a period of two years.

In the present case, the Licensee’s actions were found to be less egregious than those in the *Hee Dong Hong* case. The Licensee’s conduct was also distinguished from the individuals implicated in the *Swee Heng Teh* and *Benipal* decisions, in that the Licensee did not: mislead Council in its investigation; premeditate cheating during the examination; or engage in dishonest acts for personal monetary gain.

While the Licensee is guilty of cheating, because of the absence of the aggravating factors which were present in the above cited cases, Council felt that a lesser disciplinary measure was warranted. The Licensee’s breach speaks to her trustworthiness, but ultimately, in contrast to the foregoing cases, the Licensee has not shown that she lacks the capacity to carry on the business of insurance in good faith or in accordance with the usual practice. Council found the Licensee credible in that she was forthcoming with her evidence, did not attempt to mislead Council and acknowledged her guilt. Council also determined that the Licensee’s lack of previous disciplinary issues was a relevant mitigating factor in considering the appropriate discipline.

Based on the foregoing, Council concluded that the circumstances did not warrant a suspension of her licence. Instead, Council was of the view that the sentencing principles of reform, deterrence and punishment, could be met by barring the Licensee from upgrading her licence to a Level 2 general insurance agent licence for a period of 12 months, in correlation with the sanction imposed by IBABC. In addition, Council concluded that an ethics course would be of rehabilitative benefit to the Licensee and that she should pay one third of the investigative costs, since she was one of three licensees investigated in this matter.

INTENDED DECISION

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

1. a condition be imposed on the Licensee's licence which prohibits her from upgrading her licence to Level 2 general insurance agent's licence before February 2010;
2. a condition be imposed on the Licensee's licence that she be required to successfully complete IBABC's ethics course within six months of the date of the final order; and,
3. the Licensee pay \$487.50, which is one third of the costs of Council's investigation into this matter and these costs be paid within 90 days of the final order.

The intended decision will take effect on **August 22, 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 **August 21, 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 writer's attention.


If the Licensee does not request a hearing by **August 21, 2009**, the intended decision of Council will take effect.

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

Suite 1200, 13450 102nd Avenue
Surrey, BC
V3T 5X3
Phone 604-953-5300

Dated in Vancouver, British Columbia on the 27th day of July, 2009.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/RT/cs