In the Matter of

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

and

THE INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

KRISTY LEA WAGENAAR
(the "Former Licensee")

ORDER

As Council made an intended decision on November 17, 2009, under sections 231, 236 and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated December 9, 2009; and

As the Former 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. the Former Licensee is not suitable to hold an insurance licence for a minimum period of two years from the date she completes all of the conditions of the restorative justice agreement with Envision Insurance Services Ltd.;

2. the Former Licensee pay the costs of Council's investigation in the amount of $706.25; and

3. as a condition of this decision, the Former Licensee is required to pay the above mentioned costs by **April 5, 2010**.

This order takes effect on the **5th day of January, 2010**.

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

INTENDED DECISION
of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

KRISTY LEA WAGENAAR
(the "Former Licensee")

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether there had been compliance by the Former Licensee with the requirements of the Act.

In particular, the investigation related to allegations that the Former Licensee misappropriated funds belonging to her employer at the material time, Envision Insurance Services Ltd. (the "Agency"), for her own personal benefit in the amount of $28,340.00.

An investigation report was presented to Council at its November 17, 2009 meeting. At the conclusion of its meeting, Council determined 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 Former 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 Former 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 Former Licensee.

FACTS

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

1. The Former Licensee was first licensed with Council on February 15, 2001, as a Level 1 general insurance salesperson.

2. The Former Licensee's Level 1 general insurance salesperson's licence with Council became inactive effective October 2, 2008, after she ceased to have authority to represent the Agency. The Agency advised Council that the Former Licensee's employment had been terminated for the misappropriation of Agency funds.

3. On the date of termination, the Former Licensee provided the Agency with a handwritten admission of the alleged misconduct.

4. Upon conclusion of an internal audit and investigation into the matter, the Agency determined that the Former Licensee had misappropriated $28,340.00. The Agency subsequently provided Council with a summary of its findings, which reported that the Former Licensee:

    a. misappropriated cash payments made by clients and substituted the payment with a cheque drawn on the Agency's operating account (Total: $16,128.00);

    b. misappropriated cash payments made by clients and created a journal entry (for the amount owing) on another account (Total: $9,785.00); and

    c. issued/entered gift certificates/credits to the amount owing to reduce the ongoing total (Total: $2,427.00).

5. The Agency opted to pursue a restorative justice initiative rather than proceeding with criminal charges against the Former Licensee.

6. To that end, the Former Licensee agreed to bear responsibility for her misconduct by:

    a. paying the Agency financial restitution for the full amount of $28,340.00;

    b. providing an apology letter addressed to the staff at the Agency; and

    c. completing 100 community service hours.

7. A report has been filed with the Langley Royal Canadian Mounted Police, in the event the Former Licensee does not comply with all of the foregoing conditions.

8. The Former Licensee has made restitution to the Agency, and provided a written apology as required under the restorative justice process. She is in the process of completing her community service hours at a senior citizen's centre.

ISSUES

Council identified the following issues:

1. Does Council find the Former Licensee suitable to hold an insurance licence? In particular, did the Former Licensee fail to act in a trustworthy, competent, and financially reliable manner, in good faith, and in accordance with the usual practice of the business of insurance?

2. What is the appropriate action in the circumstances?

LEGISLATION

Rules 3(2) of Council Rules

Applicants to Satisfy Council

(2) If an applicant satisfies Council that the applicant:

(a) has met all of the requirements set out in the Act and Council Rules;

(b) is trustworthy, competent and financially reliable;

(c) intends to publicly carry on business as an insurance agent, salesperson or adjuster in good faith and in accordance with the usual practice of the business of insurance;

(d) has not in any jurisdiction:

(i) been refused, or had suspended or cancelled, an insurance licence or registration;

(ii) been convicted of an offence; or

(iii) been refused or had suspended or cancelled a licence or registration in any other financial services sector or professional field;

for a reason that reveals the applicant unfit to be an insurance agent, salesperson or adjuster; and

(e) does not hold other business interests or activities which would be in conflict to the duties and responsibilities of a licensee, or give rise to the reasonable possibility of undue influence.

then the Council may consent to issuing a licence.

Rules 7(8) of 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 Former Licensee failed to act in a trustworthy and financially reliable manner, and in good faith, as required by Council's Code of Conduct (the "Code"). In particular, Council concluded the Former Licensee misappropriated Agency funds for her own personal benefit. Trustworthiness is a fundamental element of each of the professional requirements defined in the Code. Licensees must adhere to a strict standard of personal integrity, reliability and honesty. Further, the Code expressly requires that a licensee demonstrate financial reliability. This means that a licensee can be relied upon to properly safeguard and account for money and property entrusted to the licensee, and to promptly deliver them in accordance with the circumstances. The insurance industry is based on fiduciary relationships. Accordingly, the exercise of good faith by licensees in the practice of the business of insurance is essential to public confidence in the industry. As set out in the Code, good faith is honesty and decency of purpose, and a sincere intention to act in a manner which is consistent with the client or principal's best interests, as well as remaining faithful to the duties and obligations of an insurance licensee.

The Former Licensee committed a breach of the Act while she was licensed as a Level 1 general insurance salesperson. Council determined the Former Licensee had taken cash payments from the Agency's clients, and attempted to conceal her actions through substitute cheques drawn on the Agency's operating account, false journal entries in the Agency's internal record keeping system, and gift certificates/credits issued to reduce the ongoing total owing. According to the Agency, the Former Licensee was the only employee with access to taking payments at the branch level and had system posting privileges to enable her to move outstanding receivables among client accounts because she also worked one day per week in the Agency's accounting department. The Former Licensee intentionally manipulated the Agency's receivable balances on client accounts to conceal her misconduct, which was carried out over several months in her capacity as an insurance licensee. The Former Licensee's actions clearly reflect adversely on her trustworthiness, financial reliability and intention to act in good faith.

As the Former Licensee was co-operative with the Agency during its investigation, the Agency chose to pursue a restorative justice initiative to address the incident. In this regard, an agreement between the Agency and the Former Licensee was executed pursuant to which the Former Licensee agreed to:

a. pay financial restitution for the full amount of $28,340.00;

b. issue an apology letter addressed to the staff at the Agency; and

c. complete 100 community service hours.

If the Former Licensee fails to complete the foregoing conditions, she may be charged criminally and subject to sanctions imposed by the Crown.

Council found the Former Licensee's misappropriation in excess of $28,000.00 was tantamount to an indictable offence, and therefore, Council policies relating to criminal convictions can be applied. On this basis, Council deemed the Former Licensee to be unsuitable to hold an insurance licence for a minimum period of two years commencing from the date she completes all of the conditions of her restorative justice agreement.

Council noted that this determination was comparable to the disposition in the case of *Sung-Min (Scott) Kim*, who, as a Level 1 general insurance salesperson, collected insurance premiums from a client, which he then deposited into his own personal bank account. In this matter, the licensee pled guilty to five counts of theft under $5,000.00, and he received a suspended sentence where he was placed on probation for three years, and was required to make restitution to his previous employer. Council found the licensee unsuitable to hold a licence for a minimum period of two years commencing from the completion date of his sentence. Compounding the concerns with the licensee, was his lack of forthrightness about his conviction when the matter was considered by Council.

Council noted it has imposed fines in the past where licensees act for personal benefit to the detriment of others, and where the misconduct has not been addressed in another proceeding. As the Former Licensee has already been subject to penalties pursuant to the restorative justice agreement, Council did not believe it was necessary to further penalize the Former Licensee.

INTENDED DECISION

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

1. the Former Licensee is not suitable to hold an insurance licence for a minimum period of two years from the date she completes all of the conditions of the restorative justice agreement with the Agency;

2. the Former Licensee pay $706.25, which represents Council's investigative costs into this matter, and these costs must be paid within the later of 90 days from the date of Council's final decision.

The intended decision will take effect on **January 5, 2010**, subject to the Former Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Former 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 Former Licensee must give notice to Council by delivering to its office written notice of this intention by **January 4, 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 Former Licensee does not request a hearing by **January 4, 2010**, the intended decision of Council will take effect.

Even if this decision is accepted by the Former Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at www.fic.gov.bc.ca/fst/ 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 **9th day of December, 2009**.

For the Insurance Council of British Columbia

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Gerald D. Matier
Executive Director

GM/SH/RT/cc