In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

INDERPAUL KHABRA
(the "Licensee")

ORDER

As Council made an intended decision on May 11, 2010, 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 May 12, 2010; and

As the Licensee has not requested a hearing of Council's intended decision within the time provided by section 237 of the Act;

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

1. the Licensee's life and accident and sickness insurance agent's licence is cancelled for a minimum period of two years;

2. the Licensee is fined $10,000.00;

3. the Licensee pay the costs of Council's investigation into this matter assessed at $3,312.50; and

4. the Licensee to pay the above mentioned fine and investigative costs by September 8, 2010.

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This order takes effect on the **8th day of June, 2010.**

Barbara MacKinnon, CAIB
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

INDERPAUL KHABRA
(the "Licensee")

INTRODUCTION

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

As part of Council's investigation, on April 19, 2010, an Investigative Review Committee (the "Committee") met with the Licensee via conference call to discuss allegations he improperly handled funds collected from a client for the purpose of a non-insurance related investment.

The Committee is comprised of one voting member 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 was 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.

A report setting out the Committee's findings and recommended disposition, along with the aforementioned investigation report, was presented to Council at its May 11, 2010 meeting. At the conclusion of its meeting, Council accepted the Committee's recommended disposition and 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 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.

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FACTS

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

Licensing and Employment Information:

1. the Licensee obtained a Level 1 life insurance agent's licence on December 31, 2002;
2. he is currently licensed as a life and accident and sickness insurance agent;
3. he has recently enrolled in a Certified Financial Planner program at Ashton College;
4. the Licensee was contracted with the Manufacturer's Life Insurance Company ("Manulife") from around 2003/2004 to 2009;

Management of Non-Insurance Investment:

5. the Licensee met his client (the "Client") in June 2009, at an informal gathering in which the Licensee and a wealth management specialist from a life insurance agency (and managing general agent) with whom the Licensee does business with, presented information about a Canada Life Generations segregated fund;
6. the Client decided to purchase the Canada Life Generations product through a leveraging strategy from the Licensee;
7. at a subsequent meeting, the Client and the Licensee discussed the fact the Client had $8,000.00 in an account with the Bank of Montreal ("BMO");
8. the Licensee suggested to the Client that it was preferable to invest the funds outside of BMO, as the Client's funds were not earning any significant return inside the BMO account;
9. the Client stated the Licensee specifically suggested an investment into a "closed end mutual fund";
10. the Client learned from BMO that he could not access the funds in his account because it was in an investment with a fixed term that had not yet expired. In order to access the funds in his account, BMO explained to the Client that he would have to demonstrate financial hardship;
11. the Client discussed the situation with the Licensee. The Licensee acknowledged that he assisted the Client by advising him with respect to accessing the funds held by BMO, but denies that he was directly involved in preparing a letter to BMO regarding the Client's financial hardship. The Licensee advised he was unaware that the funds were held in a registered retirement savings plan ("RRSP") account;
12. in or around June 24, 2009, the Client successfully accessed the funds held by BMO. He received a cheque for the $8,000.00 in his RRSP account, less a withholding fee;

13. according to the Client, on July 17, 2009, he met with the Licensee in the Licensee's office to discuss an investment strategy for the funds obtained from BMO. The Client apparently observed that the Licensee's full and precise name and the phrase "Retainer 68363#" were written on a white board in his office;

14. the Client made a cheque in the amount of $9,000.00 payable to the Licensee and wrote "Retainer 68363#" on the cheque;

15. when asked by the Committee what "Retainer 68363#" referred to, the Licensee stated that he did not know;

16. the Client recalls that the Licensee advised him that the closed end mutual fund was with Manulife. The Client did not receive any documents from the Licensee to explain or confirm the details of the investment;

17. on July 21, 2009, the cheque to the Licensee was cashed, as confirmed by the Client's bank records;

18. on March 17, 2010, Council staff conducted an interview with the Licensee. During the interview, the Licensee submitted the following:

> *He told the Client about the type of products he could offer, including: life insurance; segregated funds; disability; and critical illness insurance. The Client did not want another segregated fund. Instead, the Client wanted to purchase a mutual fund. The Licensee told the Client that he was not personally qualified to provide mutual funds. The Licensee referred the Client to "Randy" of Cannacord to complete the transaction. The Licensee could not recall Randy's last name, as the Licensee was at his home at the time and he had Randy's business card at his office. The Licensee had the Client make the cheque payable to the Licensee so that the Licensee could subsequently transfer the money to Randy in accordance with Randy's instructions. The Licensee reported that he has referred three other clients to Randy. The Licensee reported that he did not know that an agent shouldn't have a client make a cheque out to the agent. The Licensee stated that Randy told him to do it that way.*

19. according to the Client, in September 2009, he contacted the Licensee and requested that he remove a portion of the funds from the mutual fund account to help him finance a condominium payment. The Licensee apparently assured the Client that he would see to it, and advised the Client he would receive the funds in a timely turnaround;

20. as of November 3, 2009, the Client had not received the funds;

21. the Client advised that he was not able to reach the Licensee for several days and decided to contact Manulife directly. Representatives for Manulife apparently advised the Client that they would not be able to find information regarding his request, as a closed end mutual fund is invested in the open market and, as such, is personally invested by a financial advisor;

22. the Client advised that he continued in his efforts to contact the Licensee as he still did not know what had happened to the funds from the cheque he had written for $9,000.00 made payable to the Licensee;

23. on March 23, 2010, the Licensee reported to Council staff that his submissions to Council on March 17, 2010, were false. The Licensee reported that he was not sure what to say at the time, and apologized for not providing accurate information. The Licensee provided the following alternate explanation:

> *He told the Client that the money was for an investment. The Licensee told the Client that he would research and identify a good investment for the Client. The Licensee deposited the cheque about one week after meeting with the Client. The Licensee understood that the Client did not want to lose a penny of the $9,000.00. The Client appeared interested in a low risk investment that would provide a better rate of return than that which was offered by the bank.*
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> *The Licensee looked at different options for the $9,000.00 investment, with this in mind. He looked at segregated funds, mutual funds, alternative investments, and private investments. He spent about one week thinking about what he should do. He concluded that segregated funds and mutual funds were volatile. He considered alternative investments through Walton International Group Inc. and Northern Resources Ltd., each of which he had a contract with. Then he looked at what he could do with private investments. The Licensee knew a developer named Baldeep Moore ("Moore") of Moore Developments. Moore had previously approached the Licensee about investing in his company which is engaged in the business of renovations and large town house developments. Moore was looking for capital for his projects. The Licensee's father had invested a few years before with Moore Developments and had made his money back with interest.*
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> *After considering the options, the Licensee decided to give the money to Moore to use for his development projects. The Licensee gave $9,000.00 to Moore in three different payments all within a period of about one week: a $4,500.00 money order on Friday; $2,000.00 cash on the following Wednesday; and $2,500.00 cash on the following Friday. The funds for all of these transactions came from the Licensee's Royal Bank of Canada bank account approximately one week after receiving the cheque from the Client.*
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> *In exchange for investing the $9,000.00 in Moore's company, the Client was to get an 8% rate of return over a 6 month period and a return of the principal. The Licensee was not promised anything personally from Moore for providing the money. The Licensee knew that he would get something out of it, although the details were not discussed. The Licensee reported that the Client was his only client whose monies were invested in Moore's company.*

24. in March 2010, the Client met with the Licensee. The Licensee gave him a personal cheque for $9,800.00, which the Licensee said was a return of the principal investment into the construction company, plus interest;

25. Council staff asked the Licensee why he only repaid the Client once he had been contacted by Council. The Licensee reported that the amended promise date from Moore regarding the receipt of the $9,000.00 plus interest, was March 24, 2010. The Licensee explained that he just asked Moore to send it a few days earlier;

26. as of the date of the meeting with the Committee, the Licensee's $9,800.00 cheque to the Client had been returned due to insufficient funds in the Licensee's account;

27. the Licensee advised Council staff that he would supply Council with copies of his bank records within one week of the meeting held on March 23, 2010. As of the date of the meeting with the Committee on April 19, 2010, Council had not received the Licensee's bank records. During the meeting, the Licensee advised the Committee that he would personally drop off the records on the day after the meeting;

28. the Committee questioned the Licensee why the cheque did not clear if he had received the funds from Moore;

29. the Licensee submitted that this was a consequence of pre-authorized debits, and indicated he intended to remedy the situation as soon as possible;

30. on April 8, 2010, Council searched the Public Registry of Residential Builders on the database of the Homeowner Protection Office. It is mandatory that any builder who does business in new home construction be registered with the Homeowner Protection Office and a warranty provider;

31. the database search did not show any registered builders under the name "Moore Developments", "Moore", or "Baldeep Moore". Council also conducted corporate searches and 'white pages' searches for a company doing business as "Moore Developments" and did not find an identical match;

32. the Licensee submitted to the Committee that Council staff had searched under the wrong name, as it was Pardip Moore, and not Baldeep;

33. the Licensee submitted that he never told the Client where he had invested his funds, other than to say that it was invested in a real estate fund. The Licensee explained that he did not specify further because he did not know how to resolve the situation, and the situation was getting away from him;

34. the Licensee maintained that he never told the Client that the $9,000.00 was in a closed end mutual fund. The Licensee stated that he does not know what a closed end mutual fund is, and he is not licensed with the Mutual Fund Dealers Association;

35. the Licensee acknowledged that he made a mistake in accepting a personal cheque from the Client, and made matters worse by mishandling the communication between him and the Client; and

36. the Licensee emphasized that it is important for him to take responsibility for his mistakes, and he viewed insurance as a career he intended to pursue.

LEGISLATION

Rule 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 Licensee failed to act in a trustworthy manner and in good faith. In particular, Council determined the Licensee, upon accepting funds from a client for the purpose of an investment, misled the Client about the nature of the investment, which has yet to be substantiated. The Licensee also misled Council staff during the investigation to conceal the truth about his dealings with the Client.

While the Licensee admitted that he mishandled the purported investment transaction with the Client, he was not completely forthcoming with his explanation of the events. In his first interview with Council staff, the Licensee confirmed the Client's submission that the investment was with a closed end mutual fund. However, a few days later, he recanted his submission, and denied that he advised the Client to purchase a closed end mutual fund. In the meantime, the Client has consistently maintained the Licensee advised the investment was with a closed end mutual fund.

Upon further inquiry from Council staff, the Licensee provided another explanation about the investment, which was that he had invested the Client's funds with a privately owned construction company. The Committee asked the Licensee if he thought it was prudent to invest a client's funds in an unregulated company without obtaining or even asking for any documentation to confirm the transaction, and without detailing the risks of the investment to a client. The Licensee acknowledged that he had not acted with due diligence in this regard.

Adding to Council's concern is that the Licensee has repeatedly represented to Council staff that he can provide records to substantiate his submissions respecting the investment. However, to date, the Licensee has not followed through in this regard. As well, the Licensee appeared to have evaded direct correspondence with the Client for approximately three months, making arrangements to return funds to the Client only after Council had commenced its investigation.

Ultimately, Council found the Licensee lacked credibility due to the inconsistency of his explanations and the lack of evidence corroborating the investment, leading Council to view the investment as suspect. Regardless of whether or not the investment took place as represented by the Licensee, his behaviour in dealing with the Client and Council staff lacked trustworthiness, good faith and demonstrated his propensity to put his interests before others.

Council considered a number of precedents in deciding on the appropriate disposition of this matter. In the *Glenn Bergen* decision, Council determined that the licensee failed to act in good faith and in a trustworthy manner, made a material misstatement in reply to an inquiry from Council and failed to reply to Council in a prompt manner. The licensee had deposited a client's investment funds into his personal bank account, and used the funds for his own benefit for approximately two months. Council cancelled the licensee's life and accident and sickness insurance agent's licence for a minimum of 12 months, imposed a fine of $6,000.00, and ordered that the licensee complete the Life Licence Qualifying Program before applying for an insurance licence following the one year cancellation.

In the *Michael Wells* decision, the licensee was found to have raised capital for his agency from clients without disclosing they were investing in the agency, and without providing material information to them about the investment, such as agency financial statements and disclosure on how the investments would be used. Council also determined that the licensee had created false documents for investment applications, misinformed clients with respect to the tax implications of their investments and was unable to pay investment monies owed to his clients. In the circumstances, Council determined that the licensee was not trustworthy, financially reliable and could not be relied upon to publicly carry on the business of insurance in good faith and in accordance with the usual practice. The licensee's Level 2 life insurance agent's licence was cancelled and a number of conditions were placed on the agency to prevent the licensee from accepting any funds in his name or that of a corporation controlled by him.

Council also reviewed the *Balwinder Singh Mand* decision, wherein the licensee knowingly and repeatedly breached a condition on his licence. The licensee was restricted from performing Autoplan transactions at any dealership at which he was employed. Contrary to the restriction, the licensee had processed a large volume of Autoplan transactions at a dealership at which he was employed and, moreover, one in which he had ownership. Early in Council's investigation, the licensee had admitted to three transactions, and rationalized the transactions as an effort on his part to convenience his clients. Council concluded that the licensee had purposefully and deliberately disregarded the restriction on his licence, and this reflected on his intention to practice the business of insurance in good faith and in a trustworthy manner. Council determined that the licensee was not suitable to hold an insurance licence for a minimum period of two years, following which time his suitability would be reviewed again should he reapply for a licence in the future. Further, Council found that it was appropriate to fine the licensee $5,000.00, and that he pay the costs of Council's investigation.

In the present case, Council felt the evidence was clear and sufficiently compelling to demonstrate on a balance of probabilities that the Licensee was no longer suitable to hold an insurance licence. In the circumstances, Council was of the view that the Licensee posed a risk to the public, and could not be relied upon to publicly carry on the business of insurance in a trustworthy manner, in good faith and in accordance with the usual practice. Council considered the *Glenn Bergen* precedent to be comparable in that it involved a licensee accepting funds from a client for deposit into a personal account without disclosing the true nature of the investment to the client. The *Michael Wells* case illustrated a lack of financial reliability and trustworthiness in dealing with clients on a large scale. Therein, the licensee's licence was cancelled indefinitely. Council viewed the *Balwinder Singh Mand* decision as a useful guide in that the licensee had shown a disregard for the conditions on his licence, and obstructed Council from learning of the full extent of his activity during its investigation.

In making its decision in the present case, Council took into account the above cited precedents and considered a two year licence cancellation appropriate in the circumstances. Further, Council found the Licensee's lack of forthrightness repeatedly throughout the investigation to be egregious in that he showed complete disregard of his obligation to act in good faith in his dealings with Council, and this warranted a fine of $10,000.00.

Council viewed a two year period prohibiting the Licensee from working in the insurance industry as a means of protecting the public and serving to provide the Licensee with an opportunity to rehabilitate. Cumulatively with the fine, the penalties would also act as a sufficient deterrent for the Licensee as well as others to not engage in such conduct. Council also noted that the fine includes a punitive element.

INTENDED DECISION

Pursuant to sections 231, 236 and 241.1 of the Act, Council made the following intended decision:

1. the Licensee's life and accident and sickness insurance agent's licence be cancelled for a minimum period of two years;

2. the Licensee be fined $10,000.00;

3. the Licensee pay the costs of Council's investigation into this matter assessed at $3,312.50; and

4. as a condition of the order, the Licensee be required to pay the fine and investigative costs within 90 days from the date of the order.

The intended decision will take effect on **June 8, 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, he may present his case at a hearing before Council where he 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 **June 7, 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 **June 7, 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
Telehone: 604-953-5300

Dated in Vancouver, British Columbia, on the **12th day of May, 2010**.

For the Insurance Council of British Columbia

Gerald D. Matier
Executive Director

GM/tlh