In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

BANNISTER CHEVROLET BUICK GMC VERNON INC.
(the "Agency")

and

THERESA MICHELLE LADUKE
(the "Nominee")

ORDER

As Council made an intended decision on April 14, 2015, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Agency and the Nominee with written reasons and notice of the intended decision dated May 4, 2015; and

As the Agency and the Nominee have not requested a hearing of Council's intended decision within the time period provided by the Act;

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

1. The Agency is fined $2,250.00.
2. The Nominee is fined $1,125.00
3. The Agency is assessed Council's investigative costs of $787.50.

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4. A condition is imposed on the Agency's general insurance licence that requires it to pay the above-ordered fine and investigative costs no later than **August 26, 2015**. If the Agency does not pay the ordered fine and investigative costs in full by this date, the Agency's general insurance licence is suspended as of **August 27, 2015**, without further action from Council and the Agency will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.
5. A condition is imposed on the Nominee's general insurance licence that requires her to pay the above-ordered fine no later than **August 26, 2015**. If the Nominee does not pay the ordered fine in full by this date, the Nominee's general insurance licence is suspended as of **August 27, 2015**, without further action from Council and the Nominee will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

This order takes effect on the **26th day of May, 2015**.

Ruth Hoyte
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

BANNISTER CHEVROLET BUICK GMC VERNON INC.
(the "Agency")

and

THERESA MICHELLE LADUKE
(the "Nominee")

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Agency and the Nominee acted in compliance with the requirements of the Act.

As part of Council's investigation, on March 9, 2015, a Review Committee (the "Committee") met with the Nominee and the Agency's General Manager, via conference call, to discuss allegations that the Agency and the Nominee failed to provide written disclosure prior to the sale of its extended warranty refund policy (the "Policy"), in accordance with the Agency's licence condition.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee's meeting with the licensees, an investigation report was distributed to the Committee, the Agency, and the Nominee for review. A discussion of this report took place at the meeting and the Agency and the Nominee were provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Agency and the Nominee, the Committee prepared a report to Council.

The Committee's report, along with the aforementioned investigation report, were reviewed by Council at its April 14, 2015 meeting, where it was determined the matter should be disposed of in the manner set out below.

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PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Agency and the Nominee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Agency and the Nominee 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 Agency and the Nominee.

FACTS

The Agency was first licensed with a restricted general insurance licence on March 16, 2010. On March 14, 2013, the Agency's restricted general insurance licence was amended to allow for the sale of the Policy.

The Agency's restricted general insurance licence includes a condition requiring it to provide written disclosure to a client prior to the sale of the Policy, in the form and manner required by Council. The written disclosure informs the client that the purchase of the Policy is optional and can be declined and requires that the premium, as set by the insurer, be disclosed and listed along with any other associated fees.

The disclosure requirements were provided to the Agency and the Nominee. In addition, the Agency and the Nominee received an email reminder, as well as a Notice published by Council to all motor vehicle dealers that held a restricted general insurance licence. Following all of this communication, on March 21, 2014, the Agency was inspected and it was found that the required written disclosure was not provided to five different clients at the time of sale of the Policy.

ANALYSIS

Council found that the Agency breached its licence condition on five occasions, when it permitted the sale of the Policy without the client being provided written disclosure in the form and manner required.

Council noted that the disclosure form is an important aspect of transacting the sale of the Policy, as it helps consumers make informed decisions prior to purchasing the Policy.

Council noted that since Council's inspection, the Agency is using the required disclosure forms. However, Council also noted that the Agency had received more than adequate notification, through licence conditions and Notices, of its obligation to provide the required written disclosure, but had failed to comply.

Council determined that it was appropriate in the circumstances to fine the Agency for both specific and general deterrence purposes. Council determined that a base fine of $1,000.00, along with an additional fine of $250.00 for each specific breach, would be appropriate for the Agency.

As the Nominee had the responsibility to ensure the Agency and all of its licensed staff acted in accordance with its licence conditions, Council determined that a fine equal to half of the Agency fine was appropriate.

As for the investigative costs of $787.50, Council determined these should be assessed to the Agency.

INTENDED DECISION

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

1. Fine the Agency $2,250.00.
2. Fine the Nominee $1,125.00.
3. Assess the Agency Council's investigative costs of $787.50.

The Agency and the Nominee are advised that should the intended decision become final, the fines and investigative costs will be due and payable within 90 days of the date of the order.

The Nominee is advised that failure to pay the fine within the 90 days will result in the automatic suspension of her general insurance licence and the Nominee will not be permitted to complete any annual filing until such time as the fine is paid in full.

The Agency is advised that failure to pay the fine and investigative costs within the 90 days will result in the automatic suspension of its general insurance licence and the Agency will not be permitted to complete any annual filing until such time as the fine is paid in full.

The intended decision will take effect on **May 26, 2015**, subject to the Agency's and the Nominee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Agency or the Nominee wishes to dispute Council's findings or its intended decision, the Agency or the Nominee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Agency or the Nominee must give notice to Council by delivering to its office written notice of this intention by **May 25, 2015**. 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 Agency or the Nominee does not request a hearing by **May 25, 2015**, the intended decision of Council will take effect.

Even if this decision is accepted by the Agency and the Nominee, 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 fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464
Fax: 250-356-9923
Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **4th day of May, 2015.**

For the Insurance Council of British Columbia

per

Gerald D. Matier
Executive Director
604-695-2001
gmatier@insurancecouncilofbc.com

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