

In the Matter of

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

and

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

and

PAUL JOSEPH LAWRENCE OUELLETTE
(the "Former Licensee")

ORDER

As Council made an intended decision on May 15, 2012, pursuant to 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 May 22, 2012; and

As the Former Licensee has 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. A condition imposed on any general insurance licence issued to the Former Licensee requiring him to be directly supervised by a general insurance agent approved by Council, until such time as he has been actively licensed for three years;
2. A condition imposed on any general insurance licence issued to the Former Licensee prohibiting him from conducting any insurance activities outside the premises of any licensee he is authorized to represent until he has been actively licensed for one year;
3. A condition imposed on any general insurance licence issued to the Former Licensee prohibiting him from processing any insurance transactions on his own vehicle(s);
4. The Former Licensee is fined \$3,000.00;

5. The Former Licensee is assessed investigative costs of \$5,000.00; and,
6. As a condition of this order, the Former Licensee is required to pay the above-ordered fine and investigative costs in four instalments of \$2,000.00 each, with the first instalment due **September 12, 2012**, the second instalment due **December 12, 2012**, the third instalment due **March 12, 2013**, and the final instalment due **June 12, 2013**. If the Former Licensee does not pay the fine and investigative costs by the required instalment dates and he holds an insurance licence with Council at that time, his licence is automatically suspended without further action from Council and the Former Licensee will not be permitted to complete any annual filing until such time as the fines and investigative costs are paid.

This order takes effect on the 12th day of June, 2012.



Dan Swanlund, B.Comm, CFP
Chairperson, Insurance Council of British Columbia

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)
respecting
PAUL JOSEPH LAWRENCE OUELLETTE
(the “Former Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Former Licensee acted in compliance with the requirements of the Act. At issue is whether the Former Licensee circumvented the Insurance Corporation of British Columbia’s (“ICBC”) procedures and guidelines for personal gain as well as for the gain of others, and to the detriment of ICBC.

An investigation report was prepared on the matter and presented to an Investigative Review Committee of Council (the “Committee”) on April 12, 2007. The Committee did not reach any conclusions on the report and referred the matter to Council for consideration on May 15, 2007. The Former Licensee provided Council with additional written submissions and these were also considered on May 15, 2007.

In July 2007, Council communicated its findings to the Former Licensee and advised him of its intended action. The Former Licensee requested a hearing on the matter; however, he did not proceed with the hearing and now wishes to reinstate his general insurance licence.

As the hearing neither proceeded nor was the hearing request rescinded, Council and the Former Licensee are seeking to close this matter in order for him to proceed with a licence application. By agreement of both parties, this intended decision is intended to replace the original intended decision dated July 10, 2007.

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 proceed to a hearing. This intended decision operates as written notice of the action Council intends to take against the Former Licensee.

FACTS

Council made the following findings of fact:

Licensing History

1. The Former Licensee was first licensed as a Level 1 general insurance salesperson ("Salesperson") on August 14, 1997, and had been working as a roadrunner since 1999.
2. The Former Licensee's licence was terminated effective March 10, 2006.

Conduct Issues

The Infiniti Transaction

3. On August 10, 2004, the Former Licensee entered into an agreement with Nissan Canada Finance Inc. ("Nissan Canada") to lease a 2004 Nissan Infiniti G35 (the "Infiniti"), of which he was the sole lessee. Pursuant to the lease agreement, he purchased ICBC Autoplan insurance on the Infiniti, which amounted to \$2,377.00 in premiums.
4. The following year, in August 2005, the Former Licensee received a Notice to Renew from ICBC which stated the annual premium for insurance on the Infiniti, which amounted to \$8,970.00, had been surcharged 100 percent.
5. On August 15, 2005, in order to meet his insurance obligations under the lease agreement, the Former Licensee processed the Autoplan insurance on the Infiniti for a one-year term and faxed a copy of the Owner's Certificate of Insurance and Vehicle Licence Registration form to Nissan Canada.
6. Later that day, the Former Licensee voided the above transaction and instead processed a new plate transaction adding K Inc., a company owned and operated by his friend, D.K., as a co-lessee on the Infiniti and reinstated the vehicle's coverage. This transaction caused ICBC's system to view the Former Licensee as a new client, thereby dropping his 100 percent claim surcharge and reducing his annual premium to \$3,427.00.
7. The Former Licensee did not forward the revised Certificate of Insurance to Nissan Canada because he wanted to conceal his conduct in this matter as Nissan Canada had not approved the addition of K Inc. as a co-lessee.

8. The Former Licensee stated that he had D.K.'s authorization to add K Inc. as a co-lessee on the Infiniti's insurance, although D.K. denied having any knowledge that K Inc. had been added as a co-lessee.
9. The Former Licensee's intent of adding K Inc. as a co-lessee was to delay the assessment of his claims surcharge, suggesting the surcharge would reappear when the Infiniti's insurance came due for renewal the following year in 2006.
10. The Former Licensee had "*played with*" the ICBC system by inputting various data and discovered it could be manipulated in such a way that the claims surcharge would attach to a vehicle's plate rather than to the driver and thus, the imposition of a surcharge could be delayed depending on whether a new plate transaction took place.
11. While the Former Licensee acknowledged that other options were available to him at the time, such as terminating his lease agreement or negotiating with another party to assume his interest in the lease, he was concerned that he would have lost the \$13,000.00 down payment that had been paid to Nissan Canada and been faced with a depreciated value for the vehicle.
12. D.K. submitted that, on or about March 18, 2006, he discovered that K Inc. had been added as a co-lessee on the Infiniti without his knowledge or consent. Shortly thereafter, the Former Licensee arranged for the removal of K Inc. as a co-lessee and placed storage insurance on the vehicle, as agreed to by Nissan Canada.
13. When the Former Licensee's employer at the time learned of this matter, it terminated his employment effective March 10, 2006. As a result, his Salesperson's licence was terminated.

ICBC Territory Code Ratings

14. Vehicles with ICBC territory codes D to H are required to pass annual British Columbia government AirCare testing. All other territory codes, including territory code Z, which is used for vehicles primarily driven out-of-province, are exempt.
15. The Former Licensee mis-rated the territory code to territory code Z on his own vehicle on at least two occasions, and those of his friends on at least 12 occasions, for the purposes of circumventing AirCare requirements.

16. While the Former Licensee and his friends paid higher premiums for using territory code Z, they were able to avoid paying for required repairs in order to have their vehicles pass AirCare.

Reduction or Avoidance of Social Services Taxes

17. In August 2004, the Former Licensee sold his 2002 Acura to a woman in Victoria, British Columbia, for \$12,500.00.
18. When the transaction was being finalized, the woman advised the Former Licensee that she did not have extra money to pay for the taxes and, at her request, he declared a false purchase price of \$5,000.00 on the APV9T Transfer of Ownership and Registration form to reduce the amount of taxes owed by the woman by approximately \$500.00.
19. In May 2006, the Former Licensee sold his 1990 Ford Taurus for \$1,000.00 but, at the purchaser's request, declared a purchase price of zero on the APV9T Transfer of Ownership and Registration form, so that she could avoid taxes assessed at \$70.00.

Gift Transfers

20. Between 2002 to 2004, the Former Licensee processed numerous "gift" transfers—all of which he claimed were legitimate—for a flat-deck trailer, two recreational travel trailers and three trucks, a 1990 Ford pick-up, a 1999 Dodge pick-up and a 1998 Chevrolet pick-up.
21. During this time, the Former Licensee, D.K. and another mutual friend often used each others' vehicles. If one of them needed to use another's vehicle for a length of time, the Former Licensee would process a gift transfer. This was done in the event that if there was ever a claim, it would attach itself to the rightful driver.
22. Although there was no evidence to indicate these transfers were processed for a purpose other than that which was stated by the Former Licensee, he worked on commission only and would have received commissions for each transfer.
23. Following his initial submissions with respect to the Infiniti transaction, D.K. refused to cooperate further with Council's investigation and would not provide an explanation for these transfers. The other friend also did not provide any information about the transfers.

Claim Rate Scale ("CRS") Shopping

24. On or about March 18, 2006, the Former Licensee placed storage insurance on the Infiniti and then insured his 1990 Ford Taurus from March 18, 2006 to June 17, 2006. As this transaction required the purchase of a new plate, ICBC discounted his premium by 43 percent because it did not recognize his claims surcharge on this transaction.
25. The Former Licensee sold the Ford Taurus on May 29, 2006. The following day, on May 30, 2006, he registered a 1977 Yamaha motorcycle (the "Motorcycle") that he claimed had been gifted to him by a friend, and insured it, receiving a five percent discount.
26. That same day, the Former Licensee facilitated a new plate transaction on the Infiniti and received a discount based on a level 13 rating on the CRS.
27. The Former Licensee did not possess a class 6 driver's licence for motorcycles or a learner's licence, and he did not have physical possession of the Motorcycle during that time.
28. Because the ICBC system generally recognizes claim surcharges as attaching to a primary vehicle, the claim surcharge attached to the Motorcycle and the Former Licensee was able to obtain a higher discount for the insurance on the Infiniti.
29. The Former Licensee denied purchasing the insurance on the Motorcycle first so that he could benefit from a lower ICBC premium on the Infiniti; he stated that he had the right to insure both vehicles.
30. ICBC subsequently discovered the Former Licensee did not have a learner's licence to ride a motorcycle and, as a result, listed the Infiniti as his primary vehicle and charged him the difference in premiums at approximately \$120.00 per month.
31. The Former Licensee cancelled the insurance on the Motorcycle on October 1, 2006.

The Acura Transaction

32. On August 31, 2001, the Former Licensee leased a 2002 Acura RSX (the "Acura") through Honda Canada Finance Inc. ("Honda Canada") and purchased insurance for a one-year term.

33. The insurance on the Acura was renewed the following year on September 1, 2002, however, shortly thereafter on September 11, 2002, the Former Licensee's driver's licence was suspended for a six-month-period as a result of multiple speeding infractions.
34. That same day, the Former Licensee changed the Acura's insurance to reflect D.K. as the lessee of the Acura until his suspension ended on March 11, 2003. On March 20, 2003, the Former Licensee amended the policy again to show himself as the lessee.
35. The insurance on the Acura was again renewed on September 1, 2003, and not long afterwards, on or about December 1, 2003, the Former Licensee received another suspension, this time for three months.
36. On December 9, 2003, shortly after his suspension began, the Former Licensee switched the lessee on the Acura's insurance to D.K.'s name. After the suspension ended on March 1, 2004, he reverted the insurance back to himself as the lessee.
37. The Former Licensee remained the principal operator of the Acura during both suspensions, but stated that he had changed the lessee to D.K.'s name so that D.K. could drive him around during his suspension.
38. According to the Former Licensee, D.K. was fully aware that he was named as the lessee on the Acura. D.K. refused to provide any evidence to corroborate or refute this assertion.
39. The Former Licensee conceded that he did not have authorization from Honda Canada, on either of the two occasions, to change the lessee to D.K.'s name.

The PT Cruiser Transaction

40. On or about January 26, 2001, the Former Licensee was approached by an individual who offered him \$500.00 to purchase a new 2001 PT Cruiser from Carter Dodge Chrysler Ltd.
41. The individual deposited funds in his bank account in advance and the Former Licensee paid for the vehicle with a \$33,000.00 bank draft.
42. Although the Former Licensee thought the transaction was suspicious, he did not view it as illegal and was motivated by the \$500.00 he was to earn from it.

43. The Former Licensee processed an APV9T Transfer of Ownership and Registration form. That same day, another form was completed denoting the Former Licensee as the seller and Orca Auto Sales Ltd. as the purchaser.
44. The Former Licensee stated that he did not feel comfortable once the transaction was completed and therefore, when he was asked by the same individual to purchase another vehicle in the same manner, he declined.

Submissions from the Former Licensee

45. The Former Licensee had been working two days per week as a roadrunner prior to his termination. His salary was entirely based on commissions and he was earning approximately \$4,000.00 per month.
46. Since becoming unlicensed, the Former Licensee has had interim employment selling cars at a dealership, doing irrigation work and, for a period of time, was collecting Employment Insurance (EI) while unemployed.
47. The Former Licensee no longer associates with the same friends as before and, as a result, is no longer influenced by them to manipulate ICBC's system. He is prepared to accept whatever discount or surcharge is assessed to him based on his CRS rating.
48. The Former Licensee understands that any claims made by him or his friends could be denied by ICBC as a result of his actions, and he acknowledged that he put his former employer at risk for potential errors and omissions claims.
49. The Former Licensee submitted that he regrets his actions and believes he deserves a second chance to work in the insurance industry.

Excerpts from the ICBC Autoplan Manual

50. The ICBC Autoplan Manual states that lease arrangements on an Owner's Certificate and Vehicle Licence Registration may only indicate a lessor and a lessee. A change of lessee is not permitted as a new plate policy is required for a new lessee.

51. The ICBC Autoplan Manual states that, in leased vehicle arrangements, a letter of authorization or a Power of Attorney is required in order for the lessee to sign for new plate, renewal or change transactions and, although a leasing company may provide ICBC with a blanket letter of authorization, the authorization is limited to initial registration, new plates and renewals.
52. ICBC considers CRS "shopping" to be a serious offence.

FINDINGS

Council found the Former Licensee failed to act in a trustworthy manner, in good faith and in accordance with the usual practice of the business of insurance.

The Former Licensee admitted to changing or adding the lessee on Autoplan policies on three separate occasions, once on the Infiniti and twice on the Acura. Regardless of whether or not he had D.K.'s consent to add him or K Inc. as a lessee, the Former Licensee's actions in this regard were contrary to ICBC procedures and to the usual practice of the business of insurance. In order to change a lessee to a different lessee on a vehicle and an Autoplan policy, a new plate policy must be processed, and this was not done in any instance by the Former Licensee. Council found that, on a balance of probabilities, the Former Licensee was aware of ICBC's procedures to process a new plate transaction in order to add K Inc. as a co-lessee to the Infiniti insurance policy and change the lessee from himself to D.K. on the insurance for the Acura, yet he chose to disregard these rules.

The Former Licensee also did not have authorization from the lessors to make the changes to the insurance on the leased vehicles, although he knew that authorization was required. Even more aggravating was the fact that, in the case of the Infiniti, the Former Licensee deliberately tried to conceal the change in lessee from Nissan Canada because he knew that he needed its authority to do so. In changing the lessee to different lessees, the Former Licensee was only motivated by personal benefit. He used his position and knowledge as a Salesperson to manipulate the ICBC system so that he could avoid paying higher insurance premiums and avoid the effects of his driving suspensions. This misconduct amounted to a failure on the part of the Former Licensee to act in a trustworthy manner, in good faith and in accordance with the usual practice of the business of insurance.

The Former Licensee also admitted to improperly rating territory codes for his own and his friends' vehicles. The Former Licensee rated the vehicles territory code Z and later amended the Autoplan policies to the correct territory codes. The Former Licensee failed to act in a trustworthy manner and in accordance with the usual practice of the business of insurance in this regard. Council concluded that he again abused his position as a Salesperson for personal benefit and for the benefit of his friends so they could avoid AirCare requirements. These transactions were processed to the prejudice of ICBC and could have been detrimental to the policyowners should claims have arisen.

The Former Licensee also conceded that he had falsely declared the purchase price on two vehicles in order to assist the purchasers in reducing the social services taxes they were required to pay. Although the APV9T Transfer of Ownership and Registration form was not an insurance transaction that required completion by a licensed insurance salesperson or agent, the Former Licensee's failure to declare the accurate purchase price nonetheless reflects on his trustworthiness. On both occasions, the Former Licensee reduced the purchase price at the request of the purchasers. Council noted that he granted their requests because he was desperate to sell his vehicles and the reduction in social services taxes would ensure the sales transactions would be completed. Therefore, these dishonest acts were again motivated by personal gain.

With respect to the allegation the Former Licensee processed numerous, unnecessary gift transfers during a two year span, Council could not conclude, on a balance of probabilities, the transfers were processed for the primary purpose of generating commissions. Council noted there was no information available from either D.K. or the other friend and, as such, there was insufficient evidence to establish the transfers were improper.

Council also did not conclude the Former Licensee had engaged in CRS "shopping", as the term itself is one to be defined by ICBC and consequently, it should be left to ICBC to determine whether the Former Licensee acted contrary to ICBC guidelines in this regard. Notwithstanding, Council acknowledged the Former Licensee, admittedly and on several occasions, used his position as an insurance licensee to manipulate the ICBC system to delay or avoid the assessment of his claims surcharges. It was clear from the evidence the Former Licensee only registered and insured the Motorcycle to avoid paying the claims surcharge on the Infiniti. These were acts of dishonesty that again reflected on the Former Licensee's trustworthiness.

Similar to his false declaration of the purchase price on two vehicles on APV9T Transfer of Ownership and Registration forms, in order to facilitate the sales of the same, the Former Licensee facilitated the purchase and sale of a PT Cruiser for an individual who paid him \$500.00. Council observed that even though the Former Licensee viewed the transaction as suspicious, he nonetheless carried it out. Council noted the Former Licensee was motivated by financial gain and, although this was not an insurance transaction, it was another act of dishonesty that spoke to his lack of trustworthiness.

INTENDED DECISION

In cases of repeated and harmful insurance related misconduct for self-serving purposes, which occurred in this case, Council noted that it generally imposes a lengthy period of licence cancellation as well as a maximum fine, which for an individual is \$10,000.00.

In this situation, Council took into consideration the Former Licensee's general insurance licence was terminated on March 10, 2006, as a result of his misconduct and he has not worked in the industry for over six years, primarily as a result of this matter. Council accepts the Former Licensee has, in effect, served a very lengthy period of licence cancellation and it is therefore no longer necessary to preclude him from licensing or impose a maximum fine. Council did, however, feel some level of fine was necessary to admonish the Former Licensee's self-serving behaviour, which was contrary to the principles of trustworthiness, good faith, and acting in accordance with the usual practice of the business of insurance.

As for any risk the Former Licensee may pose to the public should he qualify to hold an insurance licence in the future, Council determined that this can be addressed through measures which restrict and provide greater oversight of his insurance activities. Council concluded that greater oversight will ensure there is an adequate level of public protection during the rehabilitation process.

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

1. Impose a condition on any general insurance licence issued to the Former Licensee requiring him to be directly supervised by a general insurance agent approved by Council, until such time as he has been actively licensed for three years.
2. Impose a condition on any general insurance licence issued to the Former Licensee prohibiting him from conducting any insurance activities outside the premises of any licensee he is authorized to represent until he has been actively licensed for one year.
3. Impose a condition on any general insurance licence issued to the Former Licensee prohibiting him from processing any insurance transactions on his own vehicle(s).
4. Fine the Former Licensee \$3,000.00.
5. Assess the Former Licensee investigative costs of \$5,000.00.

Intended Decision
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May 22, 2012
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The Former Licensee is advised that should the intended decision become final, the fine and investigative costs which form part of the order will be payable in four instalments of \$2,000.00 each, with the first instalment due **September 12, 2012**, the second instalment due **December 12, 2012**, the third instalment due **March 12, 2013**, and the final instalment due **June 12, 2013**. If the Former Licensee does not pay the fine and investigative costs by the required instalment dates and he holds an insurance licence with Council at that time, his licence is automatically suspended without further action from Council and the Former Licensee will not be permitted to complete any annual filing until such time as the fines and investigative costs are paid.

The intended decision will take effect on **June 12, 2012**, 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, the Former Licensee 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 Former Licensee must give notice to Council by delivering to its office written notice of this intention by **June 11, 2012**. 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 **June 11, 2012**, 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.fst.gov.bc.ca or contact them directly at:

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

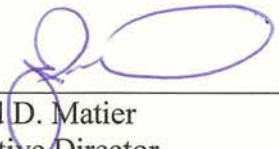
Reception: 250-387-3464
Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

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Dated in Vancouver, British Columbia, on the **22nd** day of **May, 2012**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cc