

In the Matter of

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

and

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

and

CANDICE SAMANTHA SHARPE-TERREAULT
(the "Former Licensee")

ORDER

As Council made an intended decision on August 16, 2011, pursuant to sections 231, 236 and 241.1 of the Act; and

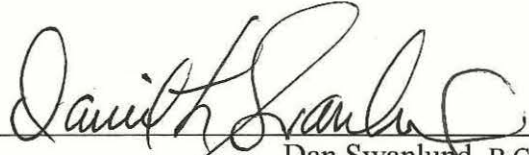
As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated September 13, 2011; and

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. the Former Licensee is not eligible to hold an insurance licence for one year from the date on which the Order takes effect;
2. the Former Licensee is assessed Council's investigative costs of \$843.75; and
3. as a condition of this Order, the Former Licensee is required to pay the above ordered investigative costs no later than **January 11, 2012**.

This Order takes effect on the **11th day of October, 2011**.



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

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

CANDICE SAMANTHA SHARPE-TERREAU
(the “Former 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 Former Licensee with the requirements of the Act. In particular, following a motor vehicle accident (“MVA”) for which the Former Licensee was liable, she attempted to use her position in the industry to her advantage and to the detriment of the other party involved in the MVA and the insurer.

As part of Council’s investigation, on July 11, 2011, an Investigative Review Committee (the “Committee”) met with the Former Licensee to discuss the matter. The Committee was comprised of one voting and three non-voting members of Council, all of whom have significant experience in the insurance business.

Prior to the Committee’s meeting with the Former Licensee, an investigation report was distributed to the Committee and the Former Licensee for review. A discussion of this report took place at the meeting and the Former 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 Former Licensee, the Committee made a recommendation to Council as to the manner in which this matter should be disposed. A report setting out the Committee’s findings and recommended disposition, along with the aforementioned investigation report, was presented to Council at its August 16, 2011 meeting. At the conclusion of its meeting, Council 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 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 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:

Licensing History

1. the Former Licensee was first licensed as a Level 1 general insurance salesperson ("Salesperson") on January 30, 2008;
2. the Former Licensee's Salesperson's licence was inactive at the time of the Committee meeting. Her licence was subsequently terminated on July 31, 2011, for failing to submit an annual licence filing;

MVA and Related Conduct

3. on April 12, 2011, the Former Licensee was backing a van out of a parking spot when she struck the front left bumper of another vehicle;
4. the driver of the parked vehicle ("Party A") was walking towards her vehicle and witnessed the MVA;
5. Party A approached the van and exchanged insurance information and cellular phone numbers with the Former Licensee. Party A was rushed and advised the Former Licensee that they would discuss the matter another time, but expressed her intention was to make a claim for vehicle damage with the Insurance Corporation of British Columbia ("ICBC");
6. the Former Licensee initiated the following exchange of text messages with Party A, shortly after the MVA:

Former Licensee: *Hey sorry again for hitting your car...I work for an insurance agency, so if you want to call me on Thursday I will be @ work and I can look up you insurance, and whatever your comprehensive deductible is I'll pay for it. And u can claim hit n run? Then I can just pay 4 the claim the \$300 or \$500 deductible, and it won't affect either one of our insurance discounts.*

Party A: *I am sorry I don't feel comfortable with that. I am busy with some events this evening. I will get back to you tomorrow.*

Former Licensee: *How are you not comfortable with claiming it? That makes no sense. As an insurance broker I know the easiest ways to claim and the quickest is if I pay 4 it. Otherwise we can go through icbc and explain to them how when I was backing out, u were pulling out.. We hit eachother, then they have to decide who's fault it is, how much % who's fault. Then they evaluate it. Then decide. It can take weeks. I'm offering if u like to pay, that way neither of us loses our discount. But we can both claim n lose discount if u like.*

Party A: *Because it's dishonest. It wasn't a hit and run.*

Former Licensee: *Ok, well then we can go through icbc, explain how we hit eachother in the parking lot, and then they decide who's @ fault n how much, and we both lose our discount*

Party A: *Well luckily the visitors parking has camera surveillance. I will discuss this with you tomorrow. Thank you!*

Former Licensee: *That's funny my car was keyed last week, they have no surveillance. Just coming down the ramp...But if they put new cameras in this week that's good!*

7. the Former Licensee admitted her wrongdoing when confronted by ICBC, and stated to ICBC investigators that she did not own the van, but had borrowed it to pick up groceries for herself;

Former Licensee's Submissions

8. the Former Licensee explained to Council staff that she made a foolish mistake and that her judgement was clouded because she was motivated to save money, which she needed to help support her family;
9. the Former Licensee also submitted that her actions were the result of a personal health issue, which she has since managed to keep under control with medical assistance; and
10. the Former Licensee provided the Committee with verification from her physician regarding her health issue.

LEGISLATION

Rule 7(8) 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.

INTENDED DECISION

Candice Samantha Sharpe-Terreault

File Number: 171928-II035

September 13, 2011

Page 5 of 9

- (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.

INTENDED DECISION

Candice Samantha Sharpe-Terreault

File Number: 171928-I1035

September 13, 2011

Page 6 of 9

- (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.

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 manner and demonstrated that she did not intend to carry on the business of insurance in good faith. In particular, Council determined the Former Licensee had attempted to use her position in the industry to coerce a member of the public to make a false claim to ICBC, which would be to the Former Licensee's benefit. To Council, this was tantamount to an attempt to commit fraud and especially inexcusable given it involved a threat to a consumer.

The Former Licensee did not dispute her poor conduct. She was forthright with the Committee and provided an explanation of her personal challenges. While Council respected her candid approach and was sympathetic to her circumstances, Council did not find these factors absolved the Former Licensee of her responsibility in this matter. Such a fundamental breach of trust in the context of an insurance claim with an insurer for which the Former Licensee was authorized to represent, cannot be condoned.

In determining an appropriate disposition, Council reviewed precedents involving similar transgressions. Council considered the decisions regarding *J.B. Yang* ("Yang") and *P. Orr* ("Orr"), to be particularly relevant. Both of the licensees in these cases used their knowledge of the industry inappropriately and for personal benefit. The licensees had their Salesperson's licences suspended for six months and they were restricted from upgrading their licences for 12 months. In addition, in both *Yang* and *Orr*, the licensees were required to pay the costs of Council's investigation.

In *Yang*, Council found that the licensee had failed to act in a trustworthy manner and in good faith when he misused an ICBC automobile insurance decal obtained in the course of conducting an insurance transaction. The licensee affixed the decal to his vehicle to conceal the fact that he was driving without insurance for approximately seven months. Council concluded that after a period of rehabilitation and with certain protective measures in place, the licensee could, once again, be suitable to hold an insurance licence. In the circumstances, Council determined that a six month suspension and a condition restricting him from upgrading his licence for 12 months following the suspension, would be appropriate. The licensee was also required to pay a \$1,000.00 fine.

In the *Orr* decision, Council found that the licensee had made a false statement to ICBC which was material to ICBC's review of her insurance claim, and she did not undertake any corrective measures until she was directed to do so by her employer at the time. The licensee's lack of trustworthiness was a fundamental breach that went to the root of her employment as an insurance agent, not only with respect to the initial misrepresentation, but also in her failing to proactively deal with the breach before it became clear that it could affect her employment. Council determined that the licensee's licence should be suspended for six months. Council concluded that this was an appropriate punitive measure and served to protect the public's confidence in the industry. To promote the rehabilitation of the licensee, Council required the licensee to successfully complete the Insurance Brokers Association of British Columbia's ethics course (or a comparable course) within a specified time frame. In addition, because the licensee's transgression reflected on her trustworthiness, Council concluded that if the licensee sought to reactivate her licence at any time after the six month suspension, her licence would be issued as a Salesperson's licence for a period of 12 months from the date of reactivation.

In the present case, Council determined the Former Licensee's actions involved a direct and deliberate threat to the public premised on her position as an insurance agent. As such, Council viewed the conduct as more egregious than the precedents discussed above and warranted a significant penalty.

Based on the foregoing, Council determined that it would be appropriate for the Former Licensee to be suspended for 12 months. Council believes this serves as a deterrent to prevent the Former Licensee and other insurance licensees from engaging in similar conduct in the future. In addition, Council concluded that a restriction which prevented the Former Licensee from upgrading her licence for 12 months should she become licensed in the future, was warranted to address any remaining concerns about the risk she presents to the public.

In making its determination, Council gave consideration to the fact the Former Licensee is relatively inexperienced and that her actions represented a grave lapse in judgement which appeared to be a result of a personal matter. As such, it did not believe that any additional measures, aside from imposing the investigative costs, was required.

INTENDED DECISION

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

1. is not eligible to hold an insurance licence for one year from the date the Order takes effect; and
2. is assessed Council's investigative costs of \$843.75.

Council also determined that should the Former Licensee apply for an insurance licence in the future, she will be restricted to a Salesperson's licence until such time as she has been actively licensed for 12 continuous months.

The Former Licensee is also advised that should the intended decision become final, the costs which will form part of the Order, will be due and payable within 90 days of the date of the Order.

The intended decision will take effect on **October 11, 2011**, 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 **October 10, 2011**. 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 **October 10, 2011**, the intended decision of Council will take effect.

INTENDED DECISION

Candice Samantha Sharpe-Terreault

File Number: 171928-I1035

September 13, 2011

Page 9 of 9

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

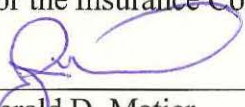
Reception: 250-387-3464

Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the 13th day of September, 2011.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cc