This is Part 2 of a two part document.

To view Part 1, select the document labelled

Jocelyn Fenelon (LIF) 15Feb2008 Part 1 of 2

In the Matter of

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

and

THE INSURANCE COUNCIL OF BRITISH COLUMBIA (the "Council")

and

JOCELYN FENELON (the "Licensee")

INTENDED DECISION AND ORDER UNDER SECTIONS 231 AND 238 OF THE ACT

Upon reviewing an investigation report and supporting documents prepared by Council staff and submissions put forward by the Licensee, Council is of the opinion that:

In General

1. The Licensee is currently licensed as a Life and Accident and Sickness Insurance Agent.

2. Council conducted an investigation pursuant to section 232 of the Act into allegations that:

   (a) the Licensee and/or his wife, Amanda Fenelon (the "Former Licensee"), processed a backdated Autoplan policy in order to circumvent a violation ticket that had been issued to him for driving without insurance;
   (b) the Licensee took ICBC inventory, specifically validation decals, for personal use on his own vehicles; and
   (c) the Licensee and/or the Former Licensee made one or more material misstatements in reply to an inquiry or inquiries from Council.

Chronology of Events

3. At the time of the incident noted below, the Licensee, in addition to being licensed as a life insurance agent, was licensed as a Level 3 General Insurance Nominee with Sussex Insurance Agency (Newton) Inc. ("Sussex Newton").

4. At all material times, the Licensee was also employed at Gold Key Insurance Services Ltd. ("Gold Key") in an unlicensed capacity, working as its information technology (IT) officer. He was responsible for the operation of the computer systems and as such, had access to keys and passwords to Gold Key. At the time, the Former Licensee too had been working at Gold Key as a Level 1 General Insurance Salesperson.

5. On January 13, 2006, at 9:35 p.m., the Licensee was driving his 2001 Pontiac Montana (the "Montana"), when he was stopped by the RCMP. The Montana had British Columbia licence plates GET953, which had expired in 2004.

6. The RCMP issued a violation ticket to the Licensee for driving without insurance. When the Licensee informed the RCMP that he had forgotten his insurance papers at home, he was advised to bring them to the RCMP detachment the following day to have the ticket waived. Ultimately, the Licensee did not bring any papers in to the detachment and the ticket was never waived.

7. The RCMP seized the Montana licence plates and turned them over to the Insurance Corporation of British Columbia ("ICBC"). The Montana licence plate was subsequently matched to a manual APV250 Autoplan policy that had been completed by the Former Licensee (the "Policy").

8. Although the Policy was purportedly effective as of January 12, 2006 at 6:30 p.m., it had not been data-captured, or entered into the ICBC system, until two days later, on January 14, 2006 at 12:11 p.m., through a terminal at Gold Key.

9. There was no evidence to determine who had data-captured the Policy, however, none of the Gold Key agents working on January 14, 2006 recalled doing so. One employee submitted that the Licensee and the Former Licensee attended Gold Key's Vancouver office that day. This employee subsequently batched the Policy documents.

10. ICBC determined that the March 2006 decal, number 22145483, attached to the seized Montana licence plate, had been assigned to Sussex Newton. However, Sussex Newton's inventory system did not show the decal as being issued to an Autoplan policy.

11. Although the Montana licence plate with the attached March 2006 decal had been seized on January 13, 2006 and subsequently returned to ICBC, three days later, on January 16, 2006, the Licensee submitted a declaration to ICBC indicating that the decal had been damaged.

12. At the request of Council investigators, ICBC was able to peel off the March 2006 decal from the seized Montana licence plate and underneath was an October 2005 decal, number 19073812. This October 2005 decal had been reported missing by Sussex Insurance Agency (Chilliwack Mall) Inc. ("Sussex Chilliwack") in October 2005. The Licensee had been the nominee of Sussex Chilliwack from January 2004 to September 2005.

13. On January 14, 2006, at approximately 1:39 p.m., the Licensee attended Beveridge Insurance Brokers Ltd. and replaced the seized Montana licence plates with new plates.

On a declaration form submitted to ICBC, the Licensee indicated that the plates had been lost rather than seized.

14. That same day, during the morning of January 14, 2006, the RCMP attended the Licensee's home with City of Surrey by-law officers. The Montana, along with two other vehicles owned by the Licensee, a 1998 Ford Expedition (the "Expedition") and a 1989 Honda Prelude (the "Prelude"), were parked at or in the vicinity of the Licensee's residence.

15. The RCMP noted that the 349GKS licence plate on the Expedition had attached to it an August 2006 decal, number 2715960, however, this decal was recorded as being attached to a Toyota Paseo. Furthermore, the licence plates on the Prelude, EKF273, were not assigned to the Prelude and its December 2005 validation decal, number 90620445, was inactive and also belonged to a different vehicle.

16. The by-law officers issued 72-hour notices for the Prelude and the Montana, and the RCMP seized the plates from the Prelude and the Expedition and returned them to ICBC.

17. ICBC traced the decals on the seized Prelude and the Expedition licence plates and determined both decals had been issued by Sussex Newton and in reviewing the paperwork, the owner of Sussex Newton was able to confirm that the Licensee had processed both transactions in relation to these decals.

18. The August 2006 decal, number 27156960, which had been on the licence plate of the Expedition, was traced back to licence plate 460GKW, of which cancellation of the associated Autoplan policy was processed at Sussex Newton effective October 3, 2005 by the Licensee. The licence plate and decal were then cancelled by ICBC.

19. The December 2005 decal, number 90620445, taken from the licence plate of the Prelude, was found to attach to licence plate 480CXB. This was a replacement plate transaction processed by the Licensee at Sussex Newton, effecting insurance from November 13, 2005 to the original expiry date of December 28, 2005**.** A second transaction was processed immediately thereafter, renewing the insurance for another year to December 28, 2006. As a result of the early renewal, the December 2005 decal had not been put on the plate. In September 2006, the plate, along with a 2006 decal, was returned to ICBC.

Submissions from the Licensee and the Former Licensee

20. According to the Licensee and the Former Licensee, the Former Licensee insured the Montana on the evening of January 12, 2006, at their home, in anticipation of their son's school field trip the following day on January 13, 2006.

21. At the time, none of the Licensee's three vehicles were insured. In addressing this issue, the Licensee stated that he would borrow a friend's vehicle if he needed to drive. The Licensee, however, admitted to driving the Expedition without any insurance during the week of January 9, 2006.

22. The Licensee and the Former Licensee submitted that they had planned for the Licensee to insure the Montana earlier that week, however, he first had to make repairs to it and then he got busy with another project. The Former Licensee, thinking that the Licensee had forgotten to insure the Montana, manually processed the Policy on an APV250 form but was unable to access the internet from home to enter the Policy into the ICBC system. When the Licensee learned of this, he instructed her to drop off the APV250 at Gold Key the following day, after the field trip.

23. The Licensee and the Former Licensee both stated that the Licensee had brought home validation decals from Sussex Newton in order to check ICBC inventory. These decals were on the Licensee's desk and because it was disorganized, the Former Licensee had mistakenly taken one of these decals, the March 2006 decal, and put it on the Montana plate when she had manually processed the Policy.

24. The Licensee claimed that the March 2006 decal that had been attached to the Montana licence plate, and submitted to ICBC on January 16, 2006 as damaged, was done so in error. The declaration form that had been sent in to ICBC had been left on his desk at Sussex Newton by another employee, and he signed and submitted it to ICBC without reviewing it. He could not explain how a decal that had been seized by the RCMP and in ICBC's possession could have been later returned to ICBC as damaged.

25. The Former Licensee claimed that the purportedly "correct" decal that should have gone on the Montana plate, of which the number had been written on the APV250, had been signed out from Gold Key's inventory. This decal was later returned to Gold Key as part of its inventory.

26. According to the Former Licensee, the following day, on January 13, 2006, she no longer required the Montana for the field trip. Instead, the Licensee drove it and was subsequently pulled over by the RCMP and issued a ticket for driving without insurance.

27. According to the Licensee and the Former Licensee, the Former Licensee telephoned Gold Key the next morning, on January 14, 2006 and had someone, although neither could recall who, entered the Policy into the ICBC system. The Licensee stated that he then dropped off the APV250 at Gold Key later that afternoon.

28. The Licensee initially could not explain to Council investigators why there was an October 2005 decal underneath the March 2006 decal on the seized Montana plates. He suggested that a mistake had been made or the RCMP had put it on the plate. He further

claimed that the owner of Sussex Newton was trying to discredit him by raising the issue of the decals with ICBC. He stated that neither he nor the Former Licensee put the October 2005 decal on the plate.

29. The Licensee later admitted to putting decals on the Prelude and the Montana to avoid getting tickets for by-law infractions and to driving both the Montana and the Expedition without valid insurance. He had put a decal on the Expedition's plate and drove it, knowing that it was not insured. Contrary to previous statements made to Council, he ultimately conceded to placing the October 2005 decal on the Montana plate in December 2004.

30. The Licensee submitted that he had used only lost or damaged decals for his own personal use. He did not know from what inventory or agency the decals had come. It was not until later that he discovered some of the decals he had taken actually formed a part of ICBC's inventory. He stated that he would not have used them had he known they were part of ICBC's inventory.

31. The Licensee nonetheless maintained that when he was pulled over by the RCMP on January 13, 2006, he had valid insurance on the Montana.

Council found the aforementioned facts to constitute a breach of section 231(1)(a) of the Act in that the Licensee failed to act in a trustworthy manner, in good faith and in accordance with the usual practice of the business of insurance. Specifically, Council found that the Licensee, with the help of the Former Licensee, backdated the Policy to January 12, 2006, in an attempt to avoid the violation ticket issued to him on January 13, 2006. As well, Council determined that the Licensee abused his position as an insurance agent for personal gain, by taking ICBC validation decals and attaching them to licence plates on his own uninsured vehicles, to give the appearance that he had valid insurance on them. The Licensee admitted his misconduct with respect to this latter allegation.

Council also found that the Licensee, along with the Former Licensee, made material misstatements in reply to inquiries from Council, contrary to section 231(1)(c). Initially, the Licensee denied knowing anything about the October 2005 decal that was found on the Montana licence plate. The Licensee tried to deflect blame on others, suggesting that the RCMP had put the decal on the plate, and that the owner of Sussex Newton was attempting to harm his reputation by bringing the issue of decals to the attention of ICBC. The Licensee later admitted to Council that he had put the October 2005 decal on the Montana plate in December 2004. He further admitted to having problems with parking his uninsured vehicles on the street and putting other decals on his vehicles in order to avoid being ticketed for by-law infractions.

Council found it egregious that the Licensee, who had been licensed as a Level 3 General Nominee for approximately ten years, took advantage of his position by taking ICBC inventory for his own personal use. As the nominee of Sussex Newton and Sussex Chilliwack, he was in a position of trust and responsible for ensuring that ICBC inventory was securely kept and

accounted for. Instead, to the prejudice of ICBC and his employers, he had taken ICBC inventory, namely validation decals, for his own use by attaching them to the licence plates and putting these plates onto his uninsured vehicles in order to make it look like they were insured.

Council did not accept the Licensee's submissions that he only intended to take decals that had been either damaged or lost and would not have used decals that were part of ICBC's inventory. The Licensee had not been forthright with respect to his use of the decals. Although he ultimately admitted to "misusing" decals, he did not provide Council with any specific information as to how and from where he had taken decals, or on how many occasions. It was not until Council investigators continued to put undisputed evidence before him that he finally disclosed his involvement in taking validation decals.

In addition, there was no evidence to suggest that any of the four decals found on the three licence plates seized from the Licensee's vehicles had been a part of damaged or lost inventory. The March 2006 decal that had been attached to the Montana plate could not be found in Sussex Newton's inventory system. Council did not find the Licensee's explanation, that he had mistakenly returned this decal to ICBC on January 16, 2006, to be logical or reasonable. It was clear from the evidence that the decal was still attached to the Montana licence plate and in ICBC's possession. The October 2005 decal found underneath the March 2006 one had been reported missing by Sussex Chilliwack in October 2005. However, the Licensee had admitted to placing this decal on his Montana plate in December 2004, therefore, it had only gone missing as a result of the Licensee taking it, likely when he was the nominee there. Council determined, on a balance of probabilities, that the other two decals, attached to the Expedition and Prelude plates, had also been taken by the Licensee following legitimate cancellation and renewal transactions. The Licensee had processed these transactions and again, there was no evidence to point to these decals being damaged or lost at the time.

With respect to the backdated Policy, Council did not believe the Licensee's or the Former Licensee's submissions that the Montana had valid insurance when the Licensee was pulled over by the RCMP on January 13, 2006. Their statements were not credible in light of all the other evidence before Council. The Licensee had admitted to driving both the Montana and the Expedition without any valid insurance in the past. In fact, the Licensee had been driving the Expedition without insurance during that very week when he was pulled over by the RCMP. Council found that his explanations were not plausible and that he lacked credibility.

Council noted that that there would seldom be a legitimate occasion when an agent or a salesperson would be required to backdate an Autoplan policy. In these circumstances, although Gold Key's offices may not have been open for business on the evening of January 12, 2006, there were likely several other agencies in the area that the Former Licensee or Licensee could have gone to in order to insure the Montana. Not only would it have been improper for the Former Licensee, as a Level 1 General Insurance Salesperson, to have been conducting Autoplan insurance business at her home, but to avoid any conflicts of interest, it would have been preferable to have had another agent process the insurance for them in any event. Council determined that the Policy had not been manually processed by the Former Licensee on January

12, 2006 but rather, it had been processed on January 14, 2006 and backdated to be in force on January 12, 2006.

It was also not reasonable for the Licensee and the Former Licensee to have waited two days, until January 14, 2006, to have the Policy data-captured into the ICBC system. Both the Licensee and the Former Licensee were quite clear in their evidence that the Former Licensee had telephoned Gold Key that morning to have the Policy entered into the ICBC system. If that was the case, Council questioned why neither of them had telephoned Gold Key any earlier. For example, while Council accepted that the Former Licensee was in attendance at her son's field trip on January 13, 2006, presumably for the entire day, the Licensee could have called Gold Key that morning. Furthermore, this statement did not correspond to the ICBC records indicating that the Policy had been data-captured at 12:11 p.m., rather than in the morning.

Council noted several other discrepancies between the Licensee's and the Former Licensee's submissions in comparison to the documentary evidence and that provided by all other parties. None of Gold Key's agents working on January 14, 2006 remembered entering the Policy into the ICBC system and one employee recalled seeing both the Licensee and the Former Licensee at Gold Key that day. When looking at all the evidence as a whole, the submissions provided by the Licensee and the Former Licensee lacked credibility and were entirely self-serving. On a balance of probabilities, Council did not accept that the Former Licensee had erroneously taken the March 2006 decal to put on the Montana. It was not plausible that the Licensee had a number of decals, all of which was ICBC inventory from Sussex Newton, scattered on his desk and the Former Licensee so happened to take one of those rather than the one she had purportedly brought home from Gold Key for the Montana. Council noted also that the Licensee had made false declarations to ICBC that the Montana plates had been lost and the March 2006 decal had been damaged, and these misrepresentations were damaging to the Licensee's credibility.

The Licensee had intentionally taken ICBC validation decals to put on his vehicles to give the appearance that they were properly insured, and had driven these vehicles without valid insurance on a number of occasions, yet he wanted Council to believe that, in this one instance, when he was pulled over by the RCMP on January 13, 2006, he indeed had valid insurance on the Montana. In light of all the evidence before it, Council could not accept this incredulous proposition.

Council found that the Licensee, as well as the Former Licensee, had made material misstatements in reply to inquiries from Council. The Licensee directly misrepresented to Council that he had not taken any decals for his own use. The Licensee ultimately admitted to using the decals when he was presented with evidence he could not refute. Council determined that the Former Licensee, as the Licensee's wife and also an insurance salesperson, was aware of the Licensee's actions and complicit in his scheme to avoid paying for valid insurance on his vehicles. They had both come up with several misstatements, and in short, an elaborately created story, in order to conceal that the Policy had been backdated to avoid the violation ticket issued by the RCMP.

Based on the above findings, Council determined that the Licensee no longer meets the requirements for licensing under section 231 of the Act and Rule 3 of the *Council Rules*. In particular, he is not trustworthy and cannot be relied upon to publicly conduct insurance business in good faith and in accordance with the usual practice. Given the Licensee's untrustworthy behaviour and lack of good faith in both the improper use of the ICBC decals and his attempt to circumvent the violation ticket by backdating the Policy, Council found him to be an ongoing risk to the public and not suitable to be licensed as an insurance agent. This type of misconduct, and in particular, his purposeful intent to abuse his position as an insurance agent for personal gain, reflected not only on his suitability to hold a general insurance licence but also his life insurance licence.

Council reviewed a number of previous decisions in which licensees acted in an untrustworthy manner by abusing their positions as insurance agents for personal gain, and as a result, were found to be unsuitable to hold an insurance licence. In the case of *Derek David Henneberry*, the former licensee had improperly accessed the ICBC database to provide a third party with personal information about an ICBC client who had then used the information to threaten the client during a road rage incident. He had also improperly rated his own vehicle and vehicles owned by his acquaintances, on at least 17 occasions, in order to circumvent AirCare. The former licensee was found not suitable to hold an insurance licence for a minimum period of two years.

In the *Larry James Clark and Clark Thomas Insurance Services* decision, the licensee, who was at the time under investigation by the British Columbia Securities Commission for possible breaches of provisions in the provincial securities legislation, was found to have acted contrary to the best interests of his insurance clients by soliciting the sale of shares for a company in which he was a director, for personal benefit and to the detriment of these clients. Specifically, he made misrepresentations to his clients in order to compel them to purchase these shares, failed to conduct a needs analysis with each client to determine whether the investments were appropriate for their needs, and allowed one client to surrender two life insurance policies and use the proceeds to purchase shares in the company. Both the licensee's and the agency's licences were cancelled for a minimum period of five years. As well, he and the Agency failed to provide prompt responses to inquiries from Council and were fined a total of $6,000.00 as a result.

Council also considered the decision of *Glenn Frank Bergen*, wherein Bergen had accepted investment monies for an overseas development project from two insurance clients, and had deposited these funds into his personal account for personal use. After numerous requests from the clients and once money was made available to him from a family account, the licensee reimbursed them their investment monies. Council determined that the licensee was not trustworthy or financially reliable, and cancelled his licence for a minimum period of one year. In addition, the licensee was found to have been evasive with Council staff during its investigation by making a material misstatement and failing to reply to inquiries from Council. He was fined $6,000.00 in that regard.

While Council was not convinced that the Licensee's conduct in this case warranted the cancellation of his insurance licences for a period of five years, as was in the case of *Larry James Clark*, Council concluded that the Licensee's conduct in this case was more egregious than that of the licensees in *Henneberry* and *Bergen*, in that this was not an isolated transaction. Rather, this had been an ongoing scheme on the Licensee's part to abuse the ICBC system for his own personal benefit. As well, once the Licensee had been pulled over by the RCMP, he then took great steps to try to conceal his misconduct from the RCMP, ICBC and Council. Accordingly, Council determined that the Licensee is not suitable to hold a general insurance licence for a minimum period of three years and that his life insurance licence should be cancelled for a minimum period of three years, following which time his suitability would be considered should he reapply for a licence or licences in the future.

Council also had grave concerns about any future employment the Licensee could have as an IT officer for a licensed insurance agency. As the IT officer at Gold Key, the Licensee had access to passwords and keys, and consequently, to ICBC inventory as well. Thus, if the Licensee is to be employed at an agency, albeit in an unlicensed capacity, Council determined that he would still pose an ongoing risk to the public. Although Council would no longer have any jurisdiction over the Licensee once he is unlicensed, pursuant to section 231(1) of the Act, the suitability of an agency is based in part on the suitability and/or conduct of its officers, directors, *employees*, controlling shareholders and partners. Therefore, should the Licensee attempt to gain employment at an agency in an unlicensed capacity, Council will review the suitability of the agency that chooses to employ him.

As noted above, Council made findings against the Former Licensee that she had assisted her husband, the Licensee, in backdating the Policy and then attempting to conceal what they had done by making a series of misstatements to Council during its investigation. Notwithstanding that she is presently not licensed with Council, Council was of the view that the Former Licensee would not be suitable to hold an insurance license for a minimum of two years. As well, as the Former Licensee's conduct in this instance was improper and caused the expenditure of Council resources, Council further determined that she, along with the Licensee, ought to be held jointly and severally liable for the costs of Council's investigation. A formal decision will be issued by Council if the Former Licensee applies for licensing in the future.

INTENDED DECISION

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

1. that the Licensee's Life and Accident and Sickness Insurance Agent's licence be cancelled for a minimum period of three years from the date Council's order takes effect;

2. that the Licensee is not suitable to hold any other insurance licence for a minimum period of three years from the date Council's order takes effect;

3. that the Licensee be jointly and severally liable to pay the costs of Council's investigation into this matter, assessed at $10,187.50; and

4. as a condition of this intended decision, the Licensee is required to pay the above-mentioned costs by **June 14, 2008**.

The intended decision will take effect on **March 14, 2008**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

DECISION PURSUANT TO SECTION 238 OF THE ACT

WHEREAS Council has determined on the basis of its investigation that the Licensee's actions demonstrated that he is not trustworthy and cannot publicly carry on the business of insurance in good faith and in accordance with the usual practice and poses a continuing and imminent risk of serious harm to the public;

AND WHEREAS Council considers it to be in the public interest to cancel the Licensee's licence pursuant to section 231 of the Act;

AND WHEREAS Council considers the length of time required to hold a hearing would be detrimental to the due administration of the Act;

NOW THEREFORE Council orders the Licensee's licence is cancelled pursuant to sections 231 and 238, effective the date of this order;

TAKE NOTICE that pursuant to section 238 of the Act, the Licensee has the right to require a hearing on this order before the Council by delivering written notice within 14 days of receipt of this order to the Council at suite 300 – 1040 West Georgia Street, Vancouver, B.C., V6E 4H1; alternatively, the Licensee may appeal this order to the Financial Services Tribunal.

Dated at Vancouver, B.C. on the _____ day of February, 2008.

Rick Parent, CIP, CRM
Chairperson, Insurance Council of B.C.