In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

CHUNPREET SINGH HAYRE
(the "Former Licensee")

ORDER

As Council made an intended decision on January 11, 2011, pursuant to Council Rule 3(2) and 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 February 25, 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 section 231, 236 and 241.1 of the Act, Council orders:

1. that the Former Licensee is not eligible to hold an insurance licence for a minimum period of two years from the date on which this Order takes effect;

2. the Former Licensee is assessed Council's investigative costs of $562.00; and

3. as a condition of this Order, the Former Licensee is required to pay the investigative costs no later than **June 23, 2011.**

This Order takes effect on the **23rd day of March, 2011.**

Barbara MacKinnon, CAIB
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

CHUNPREET SINGH HAYRE
(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, the investigation related to allegations that the Former Licensee, unbeknownst to a co-worker, took several cheque books belonging to the co-worker, forged the co-worker's signature on some of the cheques, made the cheques payable to himself, and then cashed the cheques for his own financial gain.

An investigation report was presented to Council at its January 11, 2011 meeting. At the conclusion of its meeting, Council 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 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:

1. the Former Licensee was first licensed with Council on April 13, 2007, as a life and accident and sickness insurance agent;

.../2

2. the Former Licensee's licence became inactive effective April 22, 2010, after he ceased to have authority to represent his former employer Desjardins Financial Security Independent Network in Victoria (the "Agency");

3. the Agency terminated the Former Licensee for cause based on its finding that the Former Licensee had taken a co-worker's cheque book without the co-worker's knowledge or consent, forged the co-worker's signature on some of the cheques, made the cheques payable to himself, and then cashed the cheques for his own financial gain;

4. when confronted about the matter, the Former Licensee did not deny the allegations and provided his admission in writing;

5. the co-worker had not detected the misuse of his personal cheques for a period of time because he used the chequing account in question for rental deposits and not day to day banking;

6. the total value of the cheques written by the Former Licensee for his own benefit was $5,040.00;

7. the Former Licensee provided the co-worker with a post-dated cheque for $5,000.00, after he had been confronted by his employer. The cheque has since cleared;

8. the Former Licensee also returned all of the stolen cheques to the co-worker;

9. the Agency opted not to file a police report because the Former Licensee provided restitution and returned the three cheque books he had taken from the co-worker;

10. the Former Licensee viewed this as a personal matter that did not involve insurance clients; and

11. the Former Licensee's licence was terminated on July 31, 2010, as he did not complete his annual licence filing.

LEGISLATION

Rule 3(2) of the Council Rules
Licence Applications

Applicants to Satisfy Council

(2) If an applicant satisfies Council that the applicant:
  (a) has met all of the requirements set out in the Act and Council Rules;
  (b) is trustworthy, competent and financially reliable;

(c) intends to publicly carry on business as an insurance agent, salesperson or adjuster in good faith and in accordance with the usual practice of the business of insurance;

(d) has not in any jurisdiction:

(i) been refused, or had suspended or cancelled, an insurance licence or registration;

(ii) been convicted of an offence; or

(iii) been refused or had suspended or cancelled a licence or registration in any other financial services sector or professional field

for a reason that reveals the applicant unfit to be an insurance agent, salesperson or adjuster;

and

(e) does not hold other business interests or activities which would be in conflict to the duties and responsibilities of a licensee, or give rise to the reasonable possibility of undue influence.

then the Council may consent to issuing a licence.

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 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.

(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 that, contrary to section 231(1)(a) of the Act, the Former Licensee does not meet the licensing requirements of trustworthiness and having an intention to carry on the business of insurance in good faith. In particular, Council found that the Former Licensee stole cheques belonging to a co-worker, forged the co-worker's signature on a number of the stolen cheques, and made these cheques payable to himself in a total amount of $5,040.00, which he then cashed for his own financial benefit. The Former Licensee admitted to this conduct.

As set out in Council's Code of Conduct (the "Code"), trustworthiness means conducting all professional activities with integrity, reliability and honesty. The principle of trustworthiness extends beyond insurance activities. Good faith, as defined in the Code, means honesty and decency of purpose and a sincere intention on a licensee's part to act in a manner which is consistent with a client's or principal's best interests, remaining faithful to the duties and obligations as an insurance licensee.

Misappropriation of funds and forgery, related to any party, will always be relevant to the evaluation of a person's suitability to hold an insurance licence and, therefore, it is Council's position that this is not a personal matter. This was a case of theft of cheques, forgery, and misappropriation of a co-worker's funds, which are acts that in Council's mind clearly do not demonstrate trustworthiness and reflect on the Former Licensee's ability to carry on the business

of insurance in good faith. Accordingly, Council found the Former Licensee is not suitable to hold an insurance licence.

In determining an appropriate disposition, Council considered previous cases involving misappropriation of funds, including the *Kristy Lea Wagenaar* decision. In the *Wagenaar* decision, the former licensee misappropriated funds belonging to the insurance agency she was authorized to represent at the material time, for her own personal benefit in the amount of $28,340.00. The agency opted to pursue a restorative justice initiative rather than proceeding with criminal charges against the former licensee. To that end, the former licensee agreed to pay the agency financial restitution for the full amount, provide an apology letter and complete 100 community service hours. Council found that the former licensee was not suitable to hold an insurance licence for a minimum period of two years from the date on which she completed all of the conditions of the restorative justice agreement, and ordered her to pay the costs of Council's investigation.

Council also considered that the Former Licensee's misconduct was tantamount to an indictable offence and, therefore, it could apply its policy regarding applicants who have been convicted of an indictable offence; namely that Council will not consider an application from a person in this situation until at least two years from the date of completion of any sentence, parole or probation.

Although there was no sentencing in this case because it did not proceed criminally, consideration was given to the fact that the Former Licensee has not been actively licensed since April 2010 as a result of his misconduct. Council likened this time away from the insurance business as a form of sentencing and determined that the Former Licensee is not suitable to hold an insurance licence for a minimum period of two years commencing on the date of Council's decision respecting this matter. Council also determined the Former Licensee should be responsible for the investigative costs.

INTENDED DECISION

Pursuant to Council Rule 3(2) and sections 231, 236 and 241.1 of the Act, Council made an intended decision:

1. that the Former Licensee is not eligible to hold an insurance licence for a minimum period of two years from the date on which the order takes effect; and

2. to assess Council's investigative costs of $562.00.

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

The intended decision will take effect on **March 23, 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 **March 22, 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 **March 22, 2011**, 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

Dated in Vancouver, British Columbia, on the **25th day of February, 2011.**

For the Insurance Council of British Columbia

Gerald D. Matier
Executive Director

GM/ig