In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

ANJALINE LATA KUHN
(the "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 Licensee with written reasons and notice of the intended decision dated June 7, 2012; and

As the 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 Licensee is reprimanded.

2. The Licensee is assessed Council's investigative costs of $750.00.

3. As a condition of this order, the Licensee is required to pay the above-ordered investigative costs no later than **September 26, 2012**. If the Licensee does not pay the ordered investigative costs in full by this date, the Licensee's general insurance licence is suspended as of **September 27, 2012**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered investigative costs are paid in full.

This order takes effect on the **26th day of June, 2012**.

C. David Porter, LL.B., FCIP, CRM
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

ANJALINE LATA KUHN
(the "Licensee")

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Licensee, a Level 1 general insurance salesperson, acted in compliance with the requirements of the Act.

As part of Council's investigation, on April 16, 2012, an Investigative Review Committee (the "Committee") met with the Licensee to discuss allegations that she failed to properly execute Insurance Corporation of British Columbia ("ICBC") insurance transactions.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee's meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the 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 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, were reviewed by Council at its May 15, 2012 meeting. At the conclusion of its meeting, Council accepted the Committee's recommended disposition and determined the matter should be disposed of in the manner set out below.

PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the 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 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 Licensee.

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FACTS

In August 2009, the Licensee processed an ICBC Autoplan transaction on a Porsche for a client (the "Client"). The premium for the transaction was financed through ICBC. The Porsche experienced mechanical problems shortly after its purchase and required servicing. The motor vehicle dealership that had sold the Porsche to the Client chose to lease a Honda to the Client while the Porsche was being serviced. The Licensee was asked to insure the Honda naming the Client as the lessor and the dealership as the lessee.

In September 2009, the Licensee attended the dealership with the intention of meeting the Client and obtaining his signature on the required ICBC transactional documents for the Honda. She spoke with the Client several times by telephone while waiting for him at the dealership. The Client indicated he would attend the dealership momentarily. However, the Licensee had another client waiting to buy insurance at another location, and she felt she could not continue to wait for the Client. As a result, the Licensee left the ICBC transactional documents for the Honda in the office of the dealership's business manager, and left to attend to the other client. When the Licensee returned to the dealership later the same day, she collected the ICBC documents, assumed they had been signed, and returned to the Agency where she remitted the documents for batching.

A review of the aforementioned ICBC transactions indicated the Licensee did not obtain original void cheques from the Client when facilitating the insurance financing on the Porsche and the Honda. She had also improperly used existing bank account information from the Porsche insurance transaction to facilitate the financing of insurance for the Honda insurance transaction.

The review also confirmed the ICBC transactional documents pertaining to the Honda were left at the dealership for the Client to sign, and the Licensee had remitted the documents to the Agency without having witnessed the Client sign the documents. Further, some of the transactional documents had not been signed by the Client as required.

ANALYSIS

Council found this case involved a very experienced licensee exercising poor judgment in an isolated instance by allowing ICBC transactional documents to be improperly executed. There did not appear to be any intent by the Licensee to cause harm. Rather, the Licensee, who had never acted similarly in her 17 year insurance career, felt pressured to service clients in a timely manner which caused her to deviate from her normal practices. Nonetheless, Council determined the Licensee acted contrary to the usual practice of the business of insurance, as required under the Code of Conduct, and she potentially put the public at risk.

In this regard, Council considered recent precedent (*K. Tam, C. Bustillo, G. Yeung*) where licensees had acted negligently without any intent to cause harm and for no personal benefit. In these cases, the licensees were fined upwards of $2,000.00 and directed to take errors and omissions education.

Council distinguished this situation from the above precedent as the Licensee did not deliberately create a false document or act negligently with respect to personal client information, which Council has maintained constitutes a serious breach of a licensee's obligations. Instead, the Licensee appeared to be careless and disregarded proper procedures in an isolated instance.

Given her forthrightness throughout Council's review, her genuine remorse, and the fact that she otherwise has an unblemished insurance career, Council did not believe she posed a risk to the public. It did however feel she ought to have known better than to allow ICBC transactions to be improperly executed and, as such, determined her misconduct should be formally admonished.

In its review of the matter, Council also considered what responsibility, if any, the Licensee's employer ought to have in this matter. Since this was an isolated situation involving a very experienced licensee and the employer had in fact brought the concerns to Council's attention, it did not believe any further action was warranted.

INTENDED DECISION

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

1. Reprimand the Licensee; and

2. Assess the Licensee Council's investigative costs of $750.00.

The Licensee is 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 **June 26, 2012**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, the 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 Licensee must give notice to Council by delivering to its office written notice of this intention by **June 25, 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 Licensee does not request a hearing by **June 25, 2012**, the intended decision of Council will take effect.

Even if this decision is accepted by the 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 **7th day of June, 2012**.

For the Insurance Council of British Columbia

Gerald D. Matier
Executive Director

GM/cc