

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the

*Employment Standards Act*, R.S.B.C. 1996, c. 113

-by-

Connie R. Farris

(“Farris”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

<b>ADJUDICATOR:</b>	Kenneth Wm. Thornicroft
<b>FILE No.:</b>	99/96
<b>DATE OF HEARING:</b>	May 17th, 1999
<b>DATE OF DECISION:</b>	June 22nd, 1999



*Does the Act apply to Farris?*

Section 31(g) of the *Regulation* provides as follows:

**Professions and occupations excluded from the Act**

31. The Act does not apply to an employee who is...

(g) a person licenced as an insurance agent or adjuster under the *Financial Institutions Act*,...

so long as that person is carrying on the occupation governed by the Acts referred to in paragraphs (a) to (p).

It should be noted that prior to October 23rd, 1998 the above-mentioned subsection referred to the *Insurance Act* rather than the *Financial Institutions Act* and that this latter provision was in effect throughout virtually all of Farris' employment with Global (her employment ending on October 27th, 1998). However, since the *Insurance Act* simply defines a licensee as someone holding a licence under the *Financial Institutions Act*, I find that nothing turns on this particular point.

Farris concedes that throughout her employment with Global she held a "Life Agent 2" licence under the *Financial Institutions Act* but correctly notes that the mere holding of a particular status, membership, registration or licence in one of the categories listed in section 31 does not, of itself, take one outside the ambit of the *Act*. The *Act* does not apply to an individual licensee under the *Financial Institutions Act*, for example, only if that person is "carrying on the occupation governed by" that legislation (see also *Mark Annable*, B.C.E.S.T. Decision No. 342/98).

What, then, does "carrying on the occupation" of a licensee under the *Financial Institutions Act* mean? In section 168 of this latter enactment, an "insurance agent" is defined as follows:

"insurance agent" means a person, other than an insurance company or an extraprovincial insurance corporation, who solicits, obtains or takes an application for insurance, or negotiates for or procures insurance, or signs or delivers a policy, or collects or receives a premium.

Section 171(2) of the *Financial Institutions Act* states that "a person must not act...as an insurance agent...unless the person is licensed as an insurance agent". However, this broad licensing requirement is considerably narrowed by section 171(3) which states that certain individuals are not required to be licensed including "an employee of an insurer or insurance agent if the employee does not solicit insurance, is paid a salary by the insurer or insurance agent and does mainly clerical work" [section 171(3)(f)]. Farris argues, in essence, that since she was not *required* to be licenced, by reason of section 171(3)(f) of the *Financial Institutions Act*, she was not carrying on the occupation of an insurance agent and thus she is not excluded from the *Act*.

On the other hand, the evidence before me shows that Farris was licenced prior to her employment with Global and that her “Life Agent 2” licence was transferred from her former sponsor to her new sponsor (*i.e.*, Global) when she joined Global as its “brokerage manager” in December 1997. Farris’ licence was subject to the restriction: “effective only while in the employ of [Global]”. Section 173(1)(c)(iv) of the *Financial Institutions Act* provides that an applicant who seeks to have their agent’s licence transferred must satisfy the Insurance Council of British Columbia that he or she “intends to publicly carry on business as an insurance agent...in good faith and in accordance with the usual practice of the business of insurance”. Thus, by seeking the transfer of her licence, Farris, at the very least, represented to the Insurance Council of B.C. that she would be continuing to act as an insurance agent while employed by Global.

Farris testified that the bulk of her duties were administrative or clerical in nature. She assisted agents who would call in for quotes regarding the cost of certain types of coverages; she assisted with the processing of insurance applications (for example, following up to obtain missing information on an application form); she forwarded completed insurance applications and accompanying payments to the insurer’s office and arranged for issued policies to be delivered to the agent in question; she acted as the facilitator/coordinator for seminars that were sponsored by Global for independent insurance agents; she solicited independent agents with a view to having those individuals route their business through Global. Farris also testified that “I felt it was necessary to have my licence” and that “the Insurance Council feels that anyone who talks about insurance products to agents and is giving advice should be licenced”.

Farris characterized her role as that of “supporting” the agents but did acknowledge that on occasion she dealt directly with insureds (*i.e.*, the agents’ clients), especially in the area of disability insurance--“I was a resource person to explain the policy; I would explain the terms of the contract”. She also occasionally met with applicants or insureds but always in the presence of the agent (although Tracey Cambridge-Peters’ subsequent testimony, not challenged by Farris in reply, was that on at least one occasion Farris alone met with a client in order to complete an application for insurance). Farris testified that the daily contact with the agents was “a big part of my job”. At the outset of her employment, Farris was provided with a job description that described her position as “marketing products to the brokerage community” and that it involved “constant communication with our brokerage clientele with the objective to increase the brokerage business (*it does not exclude personal production*)” [*italics in original*].

Although Farris was not hired as a sales representative and was paid a base salary rather than commissions, she was entitled to an annual “bonus” based on the sales volume of the brokerage division she managed.

While it is apparent that Farris was not hired to be, nor was she licensed as, an “insurance salesperson” as defined in section 168 of the *Financial Institutions Act*, I do conclude that her duties with Global brought her within the ambit of an “insurance agent” as defined in that same section.

The evidence to which I have summarized above suggests that Farris played an active role in terms of insurance applications and in procuring insurance for the clients of the independent agents who

transacted their insurance business through Global. While Farris might not have been in the “front-line” of that process, she was nevertheless intimately involved in the process nonetheless--advising agents about coverage, costs, assisting them with processing applications and payments and ultimately receiving and, in turn, delivering issued policies.

In my opinion, Farris was clearly “carrying on the business” of an insurance agent while employed by Global and that is why Global required that she be licensed and why her existing licence was transferred upon the commencement of her employment. Since Farris’ employment with Global was not governed by the *Act*, I find that the delegate quite properly dismissed her complaint--see section 76(2)(b) of the *Act*.

**ORDER**

The appeal is dismissed. Pursuant to section 115 of the *Act*, I order that Determination be confirmed as to the finding that Ms. Farris' employment with Global was not governed by the *Act*.

**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**