

**IN THE MATTER OF THE FINANCIAL INSTITUTIONS ACT
R.S.B.C. 1996, C. 141, AS AMENDED**

- AND -

**IN THE MATTER OF BUX CASH CARD INC.,
DBA FIRST CASH CARD, PHILIP THOMAS KUEBER AND
NORTH YORK COMMUNITY CREDIT UNION LTD.**

ORDER UNDER SECTIONS 244(2) AND 238, AND

**NOTICE OF RIGHT OF HEARING OR APPEAL
UNDER SECTIONS 238(2) AND 242**

WHEREAS it appears to the Superintendent of Financial Institutions (the "Superintendent") that:

1. BUX Cash Card Inc. ("BCCI") is a British Columbia corporation registered on September 1, 2004, under incorporation #BC0710043. BCCI has one director, Philip Thomas Kueber ("Kueber").
2. The registered and records office of BCCI is #200 – 270 – Highway 33, Kelowna, British Columbia, V1X 1X7.
3. BCCI, doing business as First Cash Card, ("FCC") operates from 2419 Highway 97 N., Kelowna, British Columbia, V1X 4J2.
4. On October 19, 2005, Corporal Cara McMillan ("McMillan") of the Royal Canadian Mounted Police ("RCMP") Kelowna Commercial Crime Section contacted the Financial Institutions Commission ("FICOM") concerning a complaint the RCMP had received from the Beverly Hills, California, Police Department. The complaint alleged that:
 - (a) An elderly individual had received a telephone call advising that she had won \$1.2 million.
 - (b) In order to receive this money, she was required to remit \$12,200.

- (c) She had written two cheques, one in the amount of \$5,000 and one in the amount of \$7,200, to an individual in Beverly Hills.
 - (d) These cheques were subsequently endorsed by the payee and deposited into the FCC account at the Bank of Montreal in Kelowna, British Columbia.
- 5. McMillan's investigation had determined that FCC was in the business of accepting third party cheques or cash and issuing debit cards in return for those cheques or cash, to individuals who stated they could not qualify for or did not wish to have, a personal bank account. The debit cards would then be loaded with the amount of the cheque or cash received by FCC, less applicable fees.
- 6. McMillan further advised that the RCMP inquiries had determined that FCC operates from the previously identified location of 2419 Highway 97 N., Kelowna, British Columbia, as well as offices located in Penticton and Vernon, British Columbia.
- 7. On October 21, 2005, a FICOM Investigator attended the FCC office in Kelowna and spoke with Kueber, who advised:
 - (a) BCCI does business as FCC.
 - (b) FCC provided services to persons unable to get a personal bank account.
 - (c) An individual would come to FCC, which operates offices in Vernon, Kelowna, and Penticton, and open an account for a fee of \$5.
 - (d) The amount of their cheque or cash would be loaded on a debit card for an additional fee of \$5.
 - (e) The individual would then be given a PIN number associated to the card, and would have access to their funds through Automatic Teller Machines ("ATM") or point-of-sale Interac.
 - (f) Whenever an individual possessing the card accessed an ATM, a fee of \$2 is charged by FCC.
 - (g) A fee of \$1.50 is charged for every point of sale transaction.
 - (h) FCC contracts with companies who direct deposit funds into BCCI's account and provide a payroll list for their employees, all of whom had been issued with an FCC debit card. FCC would then load the amount due that employee onto their debit card.

- (i) FCC conducts its banking business through the Bank of Montreal, and its debit cards were provided through the CU Connect system.
 - (j) FCC has between 700 and 1,000 debit cards outstanding as at this date. Kueber is unsure of the total dollar value of these debit cards.
 - (k) FCC is in the process of being sold to Relay Capital Corp. of West Hollywood, California.
8. Kueber then provided the FICOM Investigator with a sample debit card, PIN number, and FCC advertising flyer.
 9. An examination of the FCC debit card noted it bears the name of North York Community Credit Union ("North York").
 10. The money on deposit is repayable on demand via ATM, Point of Sale purchase or cashback transaction, or upon notice to FCC pursuant to the client contract with FCC as the authorized client of Ioxphere.
 11. When Kueber was questioned with regard to FCC's relationship with North York, he advised that all debit cards issued in Canada require a backing financial institution. In the case of FCC's debit cards, North York was the backing financial institution.
 12. A search of FCC's web site, www.firstcashcard.com, determined that FCC operates four locations, the previously identified Kelowna address, and three branch offices located at #109 – 251 Green Avenue W., Penticton, British Columbia, V2A 1S9, 520 Main Street, Penticton, British Columbia, V2A 5C7, and #37 – 2901 – 27 Street, Vernon, British Columbia, V1T 4W3.
 13. The website states that use of Interac by FCC is licensed to North York.
 14. A search of the FICOM records determined that neither BCCI nor FCC have a business authorization to conduct deposit business in British Columbia.
 15. A search of the Companies Branch records determined that North York is not a registered company in British Columbia.
 16. A search of the FICOM records determined that North York is not an authorized credit union in British Columbia, nor does it have a business authorization to conduct deposit business in British Columbia.
 17. Interac has provided a licence to North York to use its name, trademark and services with regard to account holders of North York. FCC debit card holders are not formally signed up as North York account holders.

18. North York has confirmed that they conduct business with FCC.
19. Neither FCC nor North York conduct any due diligence with respect to FCC debit card holders.
20. The above conduct is ongoing and the website is active as at this date.
21. The Financial Services Commission of Ontario confirmed that North York Community Credit Union Ltd. is an authorized credit union in Ontario, has one branch located at #204 - 5799 Yonge Street, North York, Ontario.
22. Section 1 of the Act defines "deposit business" as follows:

"means the business of receiving on deposit or soliciting for deposit money that is repayable,

 - (a) On demand,
 - (b) After notice,
 - (c) On expiry of a specific term, or
 - (d) At specified intervals for a specified term."
23. Section 81(1) of the Act states:

"A person must not carry on deposit business in British Columbia unless the person is:

 - (a) an extraprovincial trust corporation that has a business authorization to carry on deposit business,
 - (b) a credit union or extraprovincial credit union that has a business authorization to carry on deposit business,
 - (c) a bank, or
 - (d) a corporation that is a subsidiary of a bank and is a loan company to which the *Trust and Loan Companies Act (Canada)* applies."

AND WHEREAS the Superintendent finds that:

1. Neither BCCI, FCC, Kueber nor North York have been issued with a business authorization or are otherwise permitted to carry on deposit business in the Province of British Columbia pursuant to Section 81(1) of the Financial Institutions Act (the "Act").
2. The Superintendent is of the opinion that by the above acts or conduct, pursuant to Section 244(2) of the act, BUX Cash Card Inc., dba First Cash Card and Kueber for themselves and/or as agents for North York, are conducting unauthorized deposit business by receiving and or soliciting money that is repayable on demand or after notice, which does not comply with the Act.
3. The Superintendent considers, pursuant to Section 238(1)(b) of the Act that the length of time that would be required to hold a hearing would be detrimental to the due administration of the Act.


AND WHEREAS the Financial Institutions Commission has delegated to the Superintendent the powers and duties under section 244 of the Act in the Instrument of Delegation executed June 2, 2005.

NOW THEREFORE the Superintendent orders pursuant to Sections 244(2) and 238 of the Act that BUX Cash Card Inc., dba First Cash Card, and/or North York Community Credit Union:

1. Cease from either directly or indirectly carrying on unauthorized deposit business in British Columbia.

TAKE NOTICE THAT BUX Cash Card Inc., dba First Cash Card, and/or North York Community Credit Union, may request a hearing before the Superintendent under section 238(2)(a) of the Act or appeal to the Financial Services Tribunal under section 238(2)(b) of the Act.

Dated at the
City of Surrey,
Province of British Columbia
this 21st day of October, 2005.



W. Alan Clark
Superintendent of Financial Institutions
Province of British Columbia

TO: BUX Cash Card Inc.
#200 – 270 Highway 33
Kelowna, British Columbia

First Cash Card
2419 Highway 97 N.
Kelowna, British Columbia

First Cash Card
#109 – 251 Green Avenue W.
Penticton, British Columbia

First Cash Card
520 Main Street
Penticton, British Columbia

First Cash Card
#37 – 2901 – 27 Street
Vernon, British Columbia

North York Community Credit Union Ltd.
#204 - 5799 Yonge Street
North York, Ontario

Nick Burbridge
Office of the Superintendent of the
Financial Institutions
121 King Street West
Toronto, Ontario

Grant Swanson
Financial Services Commission of Ontario
5160 Young Street
Box 85, 4th Floor
Toronto, Ontario