

In the Matter of
The *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the “Act”)

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

MAXXAM INSURANCE SERVICES (BURNABY) LTD.
(the “Agency”)

and

ALLAN WILFRED TOLSMA
(the “Nominee”)

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Agency and the Nominee to dispute an intended decision, dated November 12, 2014, pursuant to sections 231, 236, and 241.1 of the Act.

The subject of the hearing was set out in a Notice of Hearing dated March 21, 2015.

A Hearing Committee heard the matter on April 13, 2015, and presented a Report of the Hearing Committee to Council at its June 15, 2015 meeting.

Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236, and 241.1 of the Act:

1. A condition is imposed on the Agency’s general insurance licence that it must, on or before **October 15, 2015**, have a Level 3 general insurance agent acceptable to Council, who works from and is in regular attendance at the Agency. Failure to comply with this licence condition will result in the automatic suspension of the Agency’s general insurance licence, without any further action by Council.

Order

Maxxam Insurance Services (Burnaby) Ltd. and Allan Wilfred Tolsma

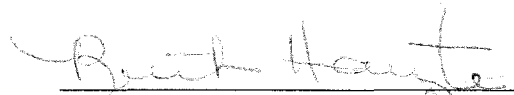
174676-I1603 and 31337-I1603

June 15, 2015

Page 2 of 2

2. A condition is imposed on the Nominee's general insurance licence that requires the Nominee to successfully complete Council's Level 3 seminar, available through the Insurance Brokers Association of British Columbia ("IBABC"), on or before **July 15, 2015**; otherwise, the Nominee's general insurance licence is amended to a Level 2 general insurance agent licence, without further action from Council until such time as the ordered seminar is successfully completed.
3. The Agency is fined \$20,000.00.
4. The Nominee is fined \$10,000.00.
5. The Agency is assessed Council's investigative costs of \$1,750.00.
6. A condition is imposed on the Agency's general insurance licence that requires it to pay the above-ordered fine and investigative costs no later than **September 15, 2015**. If the Agency does not pay the ordered fine and investigative costs in full by this date, the Agency's general insurance licence is suspended as of **September 16, 2015**, without further action from Council and the Agency will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.
7. A condition is imposed on the Nominee's general insurance licence that requires him to pay the above-ordered fine no later than **September 15, 2015**. If the Nominee does not pay the ordered fine in full by this date, the Nominee's general insurance licence is suspended as of **September 16, 2015**, without further action from Council and the Nominee will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

This order takes effect on the **15th day of June, 2015**.



Ruth Hoyte
Chairperson, Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

REPORT OF THE HEARING COMMITTEE

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(the “Act”)
(S.B.C. 1996, c. 141)

AND

MAXXAM INSURANCE SERVICES (BURNABY) LTD.
(the “Agency”)

AND

ALLAN WILFRED TOLSMA
(the “Nominee”)

Date: April 13, 2015
9:30 a.m.

Before: Susan Newham Chair
Heather Prizeman Member
Frank Macklestone Member

Location: Suite 1650, 885 West Georgia Street
Vancouver, British Columbia V6C 3E8

Present: David McKnight Counsel for Council
Allan Wilfred Tolsma Nominee

The matter before the Hearing Committee relates to a November 2014 intended decision by Council regarding allegations that the Agency and the Nominee failed to act in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance. More specifically, the Agency and the Nominee are alleged to have: failed to have adequate training and supervisory procedures in place regarding the sale of Insurance Corporation of British Columbia (“ICBC”) Autoplan products and ICBC database system access; failed to enforce procedures regarding ICBC Autoplan transactions and ICBC database system accesses; failed to properly supervise a licensee; failed to report a privacy breach to Council once the breach was reported to the Agency by a former licensee; and allowed the use of ICBC’s Autoplan Data Capture (“ADC”) system for an improper purpose.

The purpose of the hearing was to determine if the Agency and/or the Nominee are able to carry on business in a trustworthy, competent, and financially reliable manner, in good faith, and in accordance with the usual practice of the business of insurance. The Hearing Committee was constituted pursuant to section 232 of the Act.

This is a Report of the Hearing Committee as required pursuant to section 223(4) of the Act.

EVIDENCE

The evidence reviewed by the Hearing Committee in consideration of this matter included:

- Exhibit 1 Agreed Statement of Facts
- Exhibit 2 Council's Book of Documents
- Exhibit 3 ICBC Letter to the Agency
- Exhibit 4 Letter from Agency employee Jagroop Singh Nahal

BACKGROUND AND ISSUES

The Agency has a general insurance licence, which it has held since November 2008.

The Nominee has been an insurance agent since 1983, and for the majority of those years has held a Level 3 general insurance agent ("Level 3 agent") licence. The Nominee has been the nominee of the Agency since March 2010, and is also a nominee for Maxxam Insurance Services Incorporated ("Maxxam Victoria"). The Agency is 45% owned by the Nominee and his two brothers.

The principal owner of the Agency is Bill Rai ("Rai"), who is also a director of the Agency, but does not hold an insurance licence.

As the Nominee is located in Victoria, the Agency office, located in Burnaby, is managed, day-to-day, by Janet Pauline Carr ("Carr"). Carr holds a Level 2 general insurance agent ("Level 2 agent") licence and has been with the Agency for approximately six years. Carr is responsible for organizing and coordinating office operations and procedures in order to ensure organizational effectiveness and efficiency.

Carr reports to the Nominee, as well as Rai, who, while not a licensee, is located in the Agency's office in Burnaby. Other than the Nominee, the Agency does not have any other Level 3 agents. The Agency has approximately 60 licensees. Twenty-two of these licensees hold a Level 2 agent licence and 38 hold a Level 1 general insurance salesperson ("Salesperson") licence.

The Agency services approximately 40 auto dealers, providing mobile road insurance services at these dealerships. In addition, the Agency has a number of contracts with other insurers, primarily related to personal lines business.

All new staff receive 90 days of training, which is done primarily by partnering a new licensee with an existing one. During this training period, the new licensee will sit and work with the experienced licensee. The Agency meets with all staff every five to six weeks to discuss ongoing matters relating to policies and procedures.

The Agency discovered that two licensees improperly accessed the ICBC database. In February 2013, ICBC advised the Agency that an employee at the Agency had accessed the ICBC database for reasons other than an insurance transaction. It was ultimately determined that a licensee named Ashish Kulkarni ("Kulkarni") had accessed the database for reasons other than an insurance transaction. When first confronted, Kulkarni denied making such an access, multiple times, before finally admitting, when pressed, that he had improperly accessed an individual's insurance information.

In response to his admission, it was determined that Kulkarni would be required to complete ICBC's Privacy Please course, and would be put under direct supervision for a minimum of 90 days. Kulkarni subsequently completed the Privacy Please course, but not until eight months after being directed to do so. In relation to the 90-day period of direct supervision, Kulkarni was only kept in the office for one day before he was permitted to return to his duties as a mobile road service agent.

After his first admission to improperly accessing the ICBC database, there was no additional supervision with regards to Kulkarni's insurance activities. Subsequent investigations of Kulkarni found that he continued to improperly access the ICBC database after the first occurrence was discovered.

Prior to the breach by Kulkarni, the Agency became aware of another licensee, Karamvir Justin Singh Sohi ("Sohi"), who accessed the ICBC database to look up the personal information of a number of professional athletes. In Sohi's case, he voluntarily disclosed the information to Carr after he became aware that such access was not permitted. Carr subsequently made this information available to Council, a number of years later. At the time, Carr instructed Sohi that he should not conduct such activities in the future, but no further action was taken either with regards to supervision or reporting the matter to Council or ICBC. Carr also did not share this information with either the Nominee or Rai.

The Agency acknowledged that, as part of its normal business practice, it regularly accessed the ICBC database, specifically to obtain customer phone numbers for the purposes of contacting customers about the renewal of their Autoplan policies. Information from both Rai and Sohi confirmed that it was common practice for licensed staff to use the ADC system within the ICBC database to obtain client phone numbers. This practice is contrary to ICBC's privacy rules and business rules, which do not permit the use of its database system to obtain telephone numbers or other information about clients. The ICBC database may only be accessed during the course of an Autoplan insurance transaction.

SUBMISSIONS OF THE NOMINEE

While the Nominee is the sole Level 3 agent and nominee of the Agency, he confirmed that he lives in the Victoria area and primarily works at Maxxam Victoria. The Nominee stated that he attends the Agency three to four times a year, but is in regular communication with Carr regarding the day-to-day operations at the Agency.

In light of what happened with regard to Sohi and Kulkarni, the Nominee advised that staff are now being required to take the ICBC Information Security and Privacy Course (formerly Privacy Please) on an annual basis. When asked what procedures had been put in place, the Nominee stated that he is now more involved in the hiring of staff. He explained that when staff are hired, the training consists of employee shadowing, in which a new licensee is paired with an experienced licensee until such time as the new licensee can demonstrate his/her understanding of the requirements.

Other than the use of shadowing, the Nominee advised that he was not aware of any specific procedures put in place following the breaches by Sohi and Kulkarni, but believed that Carr was taking steps to follow up with Agency staff to ensure they understood the appropriate procedures. The Nominee advised that Carr has been the primary person responsible at the Agency, and has over 25 years of experience, either as a licensee or with ICBC.

The Nominee admitted that most of the day-to-day responsibilities are left to Carr, but the Nominee was not in a position to provide specific details as to how Carr fulfilled these responsibilities. The Nominee stated he trusted Carr to do her job and did not feel it was his responsibility to know if there were training plans or new hire checklists in place. The Nominee stated that Carr was unable to attend the hearing as she was attending to personal matters. The Nominee offered to have Carr appear before the Hearing Committee at a later date if the Hearing Committee wanted, but the Hearing Committee determined it was not necessary in this case.

CONSIDERATIONS BY THE HEARING COMMITTEE

The Hearing Committee found that the activities which formed the basis of the investigation were not in dispute. The Hearing Committee found that the confidentiality breaches by Sohi and Kulkarni brought into question the procedures in place to supervise the activities of the Agency's Salespersons.

Evidence showed that the ICBC database was being accessed on a regular basis for reasons other than to conduct insurance transactions. The improper accesses of the ICBC database varied from "snooping" by Sohi and Kulkarni, to use by Agency staff to obtain contact information about Agency clients. From discussions with the Nominee, the Hearing Committee found that the Agency failed to take the appropriate steps to ensure compliance with ICBC's requirements, and the requirements of Council.

The Hearing Committee noted that, in 2009, Council specifically cautioned nominees about privacy and improper accesses of the ICBC database, but it saw no evidence to suggest that this issue was taken seriously by the Agency.

The Hearing Committee found that the Agency ignored a number of warning signs which should have caused it to implement greater supervision within the Agency. The first occurred when Sohi admitted to improperly accessing the ICBC database to look up professional athletes. While Sohi was told to stop such activity going forward, no further action was taken against him, nor were any steps taken generally, to ensure there was no greater problem at the Agency.

Then, when the original breach by Kulkarni was discovered, no action was taken by the Agency or the Nominee to ensure there was no bigger problem within the Agency. When Kulkarni admitted to his initial breach, the Agency determined that Kulkarni should take additional training and be put under direct supervision for 90 days, which included not permitting him to conduct insurance activities outside of the office. In reality, the additional supervision for Kulkarni lasted for one day, after which Kulkarni returned to his insurance activities as a mobile road service agent, without any additional or specific supervision. As for the additional training, the Agency had directed Kulkarni to complete the ICBC Privacy Please course, but even though the course was available online, it was not taken until eight months after Kulkarni was originally directed to do so.

The Hearing Committee gave specific consideration to the Agency's response to Kulkarni's initial acknowledgement of improperly accessing the ICBC database because subsequent investigation into Kulkarni found that he continued to improperly access the ICBC database after the initial breach. The Hearing Committee questioned whether the subsequent breaches of confidentiality would have occurred if Kulkarni had been more actively supervised after the initial occurrence.

The Hearing Committee found that the Agency and the Nominee appeared not to take seriously the privacy breaches that had occurred. Even when the Agency learned that Kulkarni had continued to improperly access the ICBC database after first admitting to doing so, it did not take any action until Council suspended Kulkarni's licence. Shortly after the suspension of Kulkarni's licence, the Agency terminated Kulkarni's authority to represent the Agency.

The Hearing Committee was concerned with the lack of supervision being provided by the Nominee. The Nominee stated that he relied on Carr to take care of the day-to-day supervision of the Agency, but was unable to provide specific details about how Carr accomplished this. While the Hearing Committee acknowledges that nominees can delegate supervision and other responsibilities that come with being a nominee to other licensees, the ultimate responsibility for proper supervision and good governance of an agency rests with the nominee.

In this case, the Nominee was unable to provide any specific information as to what has occurred to improve supervision and training at the Agency since the Kulkarni matter first occurred. While the Nominee offered to adjourn the hearing so that Carr could appear and give evidence to the Hearing Committee as to what steps had been taken to ensure proper supervision at the Agency, the Hearing Committee declined. The Hearing Committee concluded that the issue in this case was not whether Carr had taken any steps to improve supervision and training, but the fact that the Nominee was not aware of what, if any, steps had been taken to improve the supervision and training at the Agency.

The Hearing Committee found the Nominee's lack of knowledge regarding what steps had been taken to ensure proper supervision at the Agency very concerning and questioned whether the Nominee was properly fulfilling his duties as a nominee.

Based on the information before it, the Hearing Committee determined that the Agency and the Nominee had failed to act in accordance with the usual practice of the business of insurance by failing to ensure that proper supervision and training was in place for its new licensees.

The Hearing Committee was also concerned by the Nominee's admission that he believed accessing the ICBC database to obtain client contact information was acceptable. The Nominee explained it was the Agency's practice to have clients sign a disclosure form at the time of an insurance transaction, providing the Agency with the authority to use their information to contact them for ICBC renewals.

The Hearing Committee found that, while it may be appropriate to have clients provide the authority to access their information, it does not allow the Agency to ignore ICBC's requirements. ICBC specifically prohibits the use of its database except for the sole purpose of performing an insurance transaction. Considering the experience of the Nominee, Carr, and Rai, the Hearing Committee was concerned that the Agency believed their practice to be appropriate. The fact that the Nominee appeared to suggest in his testimony that their practice was still appropriate, created even greater concern for the Hearing Committee.

The Hearing Committee concluded that both the Agency and the Nominee had failed to fulfill their responsibility to ensure that all insurance transactions conducted by its licensed staff were done in accordance with the Act and ICBC policies. The Hearing Committee found that both the Agency and the Nominee had failed to ensure there was proper supervision of its Salespersons at the Agency. The Hearing Committee concluded this failure by the Agency and the Nominee brought into question their ability to act in a competent manner and in accordance with the usual practice of the business of insurance.

In reaching its conclusion, the Hearing Committee was not convinced the Nominee could adequately fulfill his responsibilities as a nominee for the Agency. The Nominee was found to rely completely on Carr to manage the Agency, and had failed to take the appropriate steps to ensure he was aware of and understood what Carr was doing at the Agency. The Hearing Committee concluded that the Nominee demonstrated he was not capable of performing his duties as a nominee for Maxxam Victoria, as well as for the Agency.

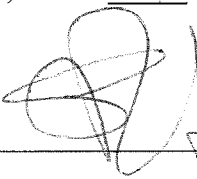
RECOMMENDATIONS OF THE HEARING COMMITTEE

Based on its findings, the Hearing Committee recommends the following penalty be considered by Council:

1. The Agency be fined \$20,000.00.
2. The Nominee be fined \$10,000.00.
3. The Nominee be required to complete Council's Level 3 seminar.
4. The Agency be required to hire a Level 3 agent who is currently not affiliated with the Agency for a minimum of three years.
5. The Agency be required, going forward, to always have a Level 3 agent who works at the Agency on a regular basis.
6. The Agency be assessed the investigation costs.

The Hearing Committee considered the issue of hearing costs and, after some discussion, by a vote of two to one, it was agreed not to recommend that hearing costs be assessed.

Dated in Vancouver, British Columbia, on the 27 day of May, 2015.



Susan Newham, CAIB, CIP
Chair of Hearing Committee