

In the Matter of

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

and

**The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
 (“Council”)**

and

**CHRISTINE LUCINDA POTTER
(the “Licensee”)**

ORDER

**(AMENDING COUNCIL’S ORDER
DATED MAY 27, 2014)**

As Council made an intended decision on April 15, 2014, 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 May 6, 2014; and

As the Licensee has not requested a hearing of Council’s intended decision within the time period provided by the Act;

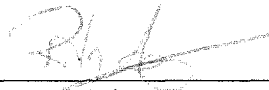
Under authority of sections 231, 236, and 241.1 of the Act, Council orders:

1. The Licensee’s general insurance licence is suspended for a period of six months, commencing September 2, 2013.
2. A condition is imposed on the Licensee’s general insurance licence that requires her to remain under direct supervision until such time as she has accumulated an additional 24 months of active licensing.
3. A condition is imposed on the Licensee’s general insurance licence that requires her to complete the Insurance Corporation of British Columbia’s Privacy Please – Protecting Customers’ Information course and the Insurance Brokers Association of British Columbia’s Privacy Compliance for Insurance Brokers course before her licence can be reactivated.
4. The Licensee is fined \$2,000.00.

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5. The Licensee is assessed Council's investigative costs of \$1,175.00.
6. A condition is imposed on the Licensee's general insurance licence that requires her to pay the above-ordered fine and investigative costs no later than **September 2, 2014**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's general insurance licence is suspended as of **September 3, 2014**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

This order takes effect on the **2nd day of June, 2014**.



Rita Ager, CFP, CLU, CHS, CPCA, FEA
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

CHRISTINE LUCINDA POTTER
(the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee acted in compliance with the requirements of the Act.

As part of Council’s investigation, on March 10, 2014, a Review Committee (the “Committee”) met with the Licensee via teleconference to discuss allegations the Licensee accessed the Insurance Corporation of British Columbia (“ICBC”) database to obtain Autoplan renewal information for customers who were clients of a previous employer, and then initiated the Autoplan renewal process for those customers without their knowledge or consent. The Committee also considered allegations the Licensee failed to meet Council’s continuing education (“CE”) requirements and made misstatements on her 2012 and 2013 annual filings.

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 April 15, 2014 meeting. At the conclusion of its meeting, Council 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 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.

FACTS

The Licensee has been licensed as a Level 1 general insurance salesperson ("Salesperson") since August 11, 2011. She had an authority to represent an agency ("Agency A") from licence inception until March 20, 2012. From April 5, 2012 to March 1, 2013, she had an authority to represent a different agency ("Agency B"), where she primarily worked as a mobile road services ("MRS") salesperson. She subsequently obtained an authority to represent a third agency ("Agency C") effective April 5, 2013, until it ended on August 30, 2013, when her licence became inactive.

Privacy Concerns

In April 2013, while the Licensee was working at Agency C, the nominee of Agency B contacted the ICBC broker relations regional manager in Kelowna, claiming the Licensee was contacting Agency B's clients; generating ICBC policies without the customers' consent; and, showing up at customers' places of business or homes, without having any previous contact with that customer.

Agency B reported receiving calls from four of its customers who were concerned their personal information was accessed in an unsolicited manner. ICBC conducted a review of the matter and identified that the Licensee's actions may be in breach of several rules outlined in the ICBC Autoplan manual and the *Freedom of Information and Protection of Privacy Act* by:

- generating an ICBC policy without customer consent;
- taking customer information from a former employer; and
- unauthorized access to the ICBC database.

As part of its review, ICBC conducted a systems search which identified accesses by the Licensee of Autoplan insurance data for the four ICBC customers who submitted a complaint either directly to ICBC, or to Agency B. Subsequently, a fifth customer was identified on a transaction processed by the Licensee on July 16, 2013. Of the five renewal policies generated by the Licensee, as summarized below, four were subsequently voided by the Licensee. One renewal remains active.

Customer 1

Customer 1 advised that the Licensee attended her workplace, unannounced, with her car insurance renewal and a decal. ICBC records indicate the Licensee processed the car insurance renewal on April 10, 2013, for a policy with an effective date of May 11, 2013. The broker of record for the current policy term was Agency B. The Licensee accessed various screens on the ICBC system, which included banking information belonging to Customer 1, as well as full contact information.

When the Licensee arrived at Customer 1's place of work, Customer 1 advised that she did not want to renew her car insurance because she was going away and intended to purchase storage insurance. ICBC records indicate that on April 15, 2013, the Licensee voided the renewal she processed on April 10, 2013.

On April 17, 2013, the Licensee processed a storage policy effective May 11, 2013. She attended the customer's place of work with the storage policy, but the customer was busy. According to Customer 1, the Licensee told her to text the Licensee with credit card information for payment of the storage policy. Customer 1 told the Licensee that she did not feel comfortable texting her credit card information and asked to come to the agency and pay, which she assumed was Agency B as that was the agency she had last renewed her vehicle insurance with. When Customer 1 learned the Licensee was not an employee of Agency B, she contacted Agency B. The storage policy transaction was subsequently voided by the Licensee on April 26, 2013.

Customer 2

On April 25, 2013, the Licensee processed an Autoplan renewal with an effective date of May 23, 2013. On April 29, 2013, Customer 2 contacted ICBC customer service, advising that the Licensee came to her home on April 25, 2013, with an insurance decal and Autoplan insurance documents for Customer 2's renewal. Customer 2 had not contacted the Licensee about her renewal. Customer 2 stated she had not renewed with Agency C in the previous term, so she wanted to know how the Licensee got her information. The broker of record for the current policy term was Agency B.

Customer 3

On April 24, 2013, the Licensee processed an Autoplan insurance renewal for Customer 3, with a policy effective date of May 10, 2013. The Licensee attended Customer 3's home with the insurance documents without contacting her first. Customer 3 was concerned as to how the Licensee obtained her personal information as she had not dealt with Agency C in two years. Customer 3 did not accept the renewal documents. The broker of record for the current policy term was an agency where the Licensee had never been employed.

In processing the transaction, the Licensee accessed various screens on the ICBC system which included banking information belonging to Customer 3, as well as full contact information. The transaction was subsequently voided by the Licensee.

Customer 4

On May 14, 2013, the Licensee processed an Autoplan renewal for Customer 4 for a policy with an effective date of May 17, 2013. Customer 4 advised that his office received a call from the Licensee on May 14, 2013, asking when would be a good time to drop off the insurance renewal documents for his vehicle. According to Customer 4, the Licensee did not identify which agency she represented. Customer 4 assumed the Licensee was a representative of Agency B, so he attended Agency B later that day to renew his insurance. The broker of record for the current policy term was Agency B.

Agency B was unable to process the renewal transaction because a policy was active at Agency C. Agency B then contacted ICBC's broker enquiry unit, at the customer's request, to void the renewal transaction so it could be completed by Agency B.

Customer 5

On July 16, 2013, the Licensee processed an Autoplan renewal for Customer 5 for a policy with an effective date of August 21, 2013. The Licensee attended Customer 5's place of work on July 17, 2013 with Autoplan renewal documents for her vehicle, requesting a signature. Customer 5 questioned how the Licensee knew who she was, where she worked, and how the Licensee knew that her car insurance was coming up for renewal. Customer 5 asked the Licensee to discard the renewal documents. ICBC records indicate that the renewal was subsequently voided at Agency C.

ICBC Policy

ICBC's policy is that the ICBC Broker Query System (the "BQS") should only be accessed when conducting Autoplan insurance business under the direction of a customer. An insurance agent or salesperson should not access the ICBC BQS for prospecting. Only the broker of record is permitted to access the ICBC BQS when reviewing renewal terms for a customer in advance of their renewal date.

Agency Response

The nominee of Agency C (the "Nominee") received notifications of the customer complaints outlined above from ICBC. Following each incident, the Licensee was reprimanded. After the third complaint, the Licensee was sent home without pay from the beginning of May 2013 to May 13, 2013. According to ICBC records, the Licensee contacted Customer 4 on May 14, 2013.

In June 2013, the Nominee had the Licensee work with an experienced Level 2 general insurance agent, for a 3 month probationary period. The Nominee advised the Licensee that any further conduct of contacting customers from her previous employment with other agencies, or any misrepresentation, would result in immediate termination. On August 29, 2013, after contacting Customer 5, the Licensee's employment was terminated.

The Nominee stated that Agency C did not identify any issues with the Licensee's behavior beyond the privacy concerns associated with the client complaints. In particular, the Nominee did not reprimand the Licensee for breaching her Salesperson licence restriction, which prohibited her from conducting insurance business outside of the office, except in prescribed circumstances.

The Licensee's Submission

The Licensee acknowledged that she did not contact the five customers prior to accessing the ICBC BQS and processing their Autoplan insurance renewal documents. The Licensee stated she had their basic information in her phone, which to her meant that at one time she had received verbal approval to renew their policy.

The Licensee submitted that when she was disciplined by Agency C for contacting the clients of Agency B, she did not understand precisely what was improper about this conduct and did not appreciate that it was contrary to ICBC policy and privacy legislation. With respect to conducting business outside of the agency, the Licensee stated that she was unaware of this restriction.

The Licensee's overall submission was that she "*went in blind*" to the insurance industry, and did not receive adequate training. She expressed remorse for her lack of knowledge regarding Council Rules, and for her misunderstanding of her obligation to respect customer confidentiality.

CE Compliance

On September 3, 2013, the Licensee called Council to enquire about CE credits. The Licensee stated that she understood that she did not need to complete CE credits when she was first licensed based on a conversation with one of her previous employers. She stated that after her first year of licensing, she did not turn her mind again to CE requirements.

The Licensee was required to obtain eight credits to meet the CE requirement for her June 1, 2012 annual filing, and eight credits to meet the CE requirement for her June 1, 2013 annual filing.

The Licensee stated that she now understands Council Rules with respect to CE, and began rectifying the situation as soon as she understood her error. She has now demonstrated that she has completed the required credits. She has since completed her Canadian Accredited Insurance Broker (“CAIB”) 2 and CAIB 3 courses.

ANALYSIS

Council considered the evidence and the Licensee’s submissions.

Insurance Business Outside of the Office

Council was troubled by the Licensee’s lack of understanding of her basic Salesperson licence restrictions. It determined that she breached her licence restriction by conducting insurance business outside of the office by attending clients’ homes and workplaces, for the purpose of completing ICBC transactions.

ICBC Database Access

Council determined that the Licensee repeatedly breached client confidentiality and ICBC’s privacy policy when she accessed the personal information of previous agency clients on the ICBC database without permission from the clients.

Council was also concerned that the Licensee had attempted to place coverage without conducting an up-to-date analysis of the clients’ needs, and that she did not recognize the problem with this conduct at the time.

CE Compliance

Council determined that the Licensee failed to meet and understand the requirements of the CE program outlined in Council Rules, and misstated her compliance on two annual filings.

Council discussed, generally, how much of the Licensee’s conduct was reflective of a lack of proper training and supervision, as opposed to a failure to understand and comply with her own responsibilities as a Salesperson. While Council accepted that the Licensee may not have received adequate training and supervision, it felt that understanding and complying with CE requirements and licence restrictions were personal obligations that the Licensee had a responsibility to perform.

Council determined the Licensee’s repeated database access without customer authorization was contrary to the usual practice of the business of insurance. Council noted that while the accesses were related to insurance, in that the Licensee’s intention was to place coverage for the clients and increase her business, the Licensee was not acting at the request of the clients, or even with their knowledge.

Council considered a range of decisions regarding privacy breaches, from those where improper ICBC database access was intentionally conducted in a situation that was clearly unrelated to an insurance transaction, to an access where the licensee improperly assumed that she was assisting a client with a claim.

In *J. Cheema*, the licensee accessed ICBC's database to obtain information on a vehicle, with the intention of sharing the information with an acquaintance known to be involved in criminal activity. Ultimately, the licensee did not disclose the information. Council imposed an order cancelling the licensee's licence, with reinstatement not to be considered for a minimum period of two years from the date of cancellation.

In *M. Phendler*, the licensee accessed the ICBC database to obtain information on a vehicle after exchanging words with the vehicle owner because the vehicle owner had come in contact with the licensee's vehicle. The vehicle contact had not resulted in any damage to either vehicle. Council determined the licensee had acted in haste, and without regard for the consequences of her actions. While the licensee was insistent she did not intend to use the information and had no interest in learning who the woman was, Council found the licensee had instinctively opted to call the agency and abuse her ability to access confidential information in order to intimidate the vehicle owner and assert control over the situation. Council imposed an order cancelling the licensee's licence, with reinstatement not to be considered for a minimum period of two years from the date of cancellation.

In *A. Kulkarni*, Council suspended the licensee's licence for 18 months, after finding that he improperly looked up an industry executive in the ICBC database to see what sort of car he drove. Following a hearing, Council determined that the licensee improperly accessed the database, and failed to be forthright with Council when asked about the improper access. The access was unrelated to any insurance transaction and was apparently prompted by the licensee's curiosity. In addition, the licensee was fined \$1,000.00 and assessed investigative costs.

In *J. Gill*, the licensee accessed the ICBC database to obtain address information relating to a specific license plate number for a third party, for the purpose of placing a lien on the vehicle. The licensee explained he did not think he was doing anything wrong, and did not benefit from his actions. The licensee received a one-year licence suspension and had conditions placed on his licence.

In *T. Li*, the licensee improperly accessed the ICBC database and provided a policyholder's phone number to an agency client who wanted to contact the policyholder to resolve a claim. Council concluded the licensee unintentionally acted contrary to the requirements surrounding confidentiality in a misguided attempt to assist an agency client in a claim matter. In particular, the licensee had no personal relationship with the client and, as it was apparent to her that the client and the policyholder had voluntarily exchanged some personal information, she assumed that accessing the policyholder's telephone number in ICBC's database and sharing this information with the client was acceptable. She failed to realize, despite her previous training on privacy, that it is never acceptable to access ICBC's database without the required authorization.

In *T. Li*, Council determined that a fine of \$1,000.00 and the assessment of investigative costs was appropriate to address the unintentional privacy breach, and distinguished this penalty from other privacy breach cases resulting in lengthy suspensions on the basis that the cases involving lengthy suspensions involved database accesses that were clearly intentional, and not in the context of an insurance transaction. Council further determined that a 12 month period of supervision and the requirement to complete ICBC's Privacy Please tutorial were appropriate penalties in the circumstances.

In Council's view, the Licensee's conduct was more egregious than in *T. Li*, but less serious than in the cases involving access entirely unrelated to insurance business. Council considered that a six month suspension would be appropriate in the circumstances. In determining the suspension period, Council noted that the Licensee has been out of the industry since August 31, 2013, and determined that this time should be taken into consideration.

In order to address the concerns with the Licensee's failure to identify her behavior as problematic, and her apparent lack of training, Council determined that she should be required to complete ICBC's Privacy Please tutorial and the Insurance Brokers Association of British Columbia's ("IBABC") Privacy Compliance for Insurance Brokers course, before her licence can be reactivated. In addition, Council determined that the Licensee should be required to remain under direct supervision until she has completed an additional 24 months of active licensing.

Council determined that a fine of \$2,000.00 and the assessment of investigative costs was appropriate to address the Licensee's failure to comply with Council's CE requirements and her Salesperson licence restrictions.

INTENDED DECISION

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

1. Suspend the Licensee's general insurance licence for a period of six months, commencing September 2, 2013.
2. Impose a condition on the Licensee's general insurance licence requiring that she remain under direct supervision until such time as she has accumulated an additional 24 months of active licensing.
3. Impose a condition on the Licensee's general insurance licence that requires her to successfully complete ICBC's Privacy Please tutorial and IBABC's Privacy Compliance for Insurance Brokers course, before her licence can be reactivated.
4. Fine the Licensee \$2,000.00.
5. Assess the Licensee Council's investigative costs of \$1,175.00.

The Licensee is advised that should the intended decision become final, the fine and costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the fine and costs within the 90 days will result in the suspension of the Licensee's general insurance licence and the Licensee will not be permitted to complete any annual filing until such time as the fine and costs are paid in full.

The intended decision will take effect on **May 27, 2014**, 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 **May 26, 2014**. 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 **May 26, 2014**, the intended decision of Council will take effect.

Intended Decision
Christine Lucinda Potter
184824-11413
May 6, 2014
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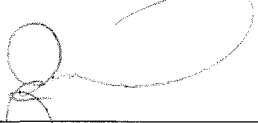
Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, 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 **6th day of May, 2014.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/tp