

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

SUZANNE CLAIRE FORSBERG
(the “Licensee”)

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee to dispute an intended decision of Council dated July 14, 2017.

The subject of the hearing was set out in an amended Notice of Hearing dated July 9, 2019.

A Hearing Committee heard the matter on July 18, 2019 and presented a Report of the Hearing Committee to Council at its November 5, 2019 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. The Licensee’s general insurance licence is suspended for a period of ten months, commencing November 7, 2019 and ending at midnight on September 6, 2020;
2. The Licensee is fined \$5,000;
3. A condition is imposed on the Licensee’s general insurance licence that requires her to successfully complete the “Ethics for Insurance Brokers” course through the Insurance Brokers Association of British Columbia, or an equivalent course as acceptable to Council;
4. The Licensee is assessed one-half of the hearing costs in the amount of \$5,308.10 for a total of \$2,654.05;
5. A condition is imposed on the Licensee’s general insurance licence that failure to complete the above-noted course and pay the fine and hearing costs by no later than

Order
Suzanne Claire Forsberg
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September 6, 2020 will result in the continued suspension of her licence and she will not be permitted to complete her 2021 annual filing until such time as she has successfully completed the course and fully paid the fine and hearing costs.

This order takes effect on the **7th day of November, 2019.**



Lesley Maddison
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*
(R.S.B.C. 1996, c. 141)
(the "Act")

and

SUZANNE CLAIRE FORSBERG
(the "Licensee")

Date: July 18, 2019
9:30 a.m.

Before: Linda Lee Chair
Bob Scott Member
Howard Sale Member

Location: Suite 300 - 1040 West Georgia Street
Vancouver, British Columbia V6E 4H1

Present: David McKnight Counsel for Council
Zack Myers Counsel for Suzanne Claire Forsberg
Suzanne Claire Forsberg The Licensee
Elizabeth Allan Counsel for the Hearing Committee

BACKGROUND AND ISSUES

As set out in the Amended Notice of Hearing, dated July 9, 2019, the purpose of the Hearing was to determine whether the Licensee:

1. Breached the requirements of the Act, Council's Rules and Code of Conduct and acted improperly in the renewal of Autoplan insurance by providing false toll bridge receipt numbers for customers and her personal toll bridge debt;
2. Failed to follow ICBC procedure in order to avoid paying toll bridge debt obligations for herself and for her customers;

3. Is able to carry on the business of insurance in good faith, in a trustworthy and competent manner, and in accordance with the usual practice, as required under Council Rule 7(8) and pursuant to section 231(1)(a) of the Act;
4. Should be subject to any disciplinary or other action in the circumstances; and, if so, whether Council should do one or more of the following in accordance with sections 231, 236 or 241.1 of the Act:
 - a) Reprimand, suspend or cancel the Licensee's Level 2 general insurance license;
 - b) Impose conditions on the Licensee's Level 2 general insurance license;
 - c) Fine the Licensee an amount of not more than \$10,000;
 - d) Require the Licensee to pay the costs of Council's investigation and/or this hearing; and/or
 - e) Take any other measure that Council deems appropriate.

Council had conducted an investigation to determine whether the Licensee entered false information relating to Insurance Corporation of British Columbia ("ICBC") Autoplan transactions in an effort to override outstanding toll bridge debts owed by her customers and/or herself or her family members between January 1, 2014 and June 15, 2015 while employed at her agency. These toll bridge overrides were allegedly performed for tolls owing for both the Golden Ears toll bridge ("GETB") and Port Mann toll bridge ("PMTB").

On April 11, 2017, Council considered an investigation report on these issues.

On June 29, 2017, Council issued written reasons and provided a notice of an intended decision to the Licensee, pursuant to section 237(2) of the Act.

On July 13, 2017, the Licensee requested a hearing to dispute Council's intended decision, as was her right under sub-section 237(3) of the Act.

On June 11, 2019, a Notice of Hearing was issued.

On July 9, 2019, the Amended Notice of Hearing was issued.

This is the written report of the Hearing Committee prepared in accordance with section 223(4) of the Act.

EVIDENCE

Exhibits

The following exhibits were entered by agreement:

- Exhibit 1** Agreed Statement of Facts
- Exhibit 2** Council's Book of Documents
- Exhibit 3** CD of Audio of Suzanne Forsberg Interviews with ICBC
- Exhibit 4** Licensee's Written Submissions and Book of Documents
- Exhibit 5** Email to Z. Myers, with attachment, undated.

Council provided a written argument and referred to a book of authorities that it had prepared as well as two other decisions, *Re Babcock* and *Re Johal*, which had recently been released by Council. The Licensee also provided a written argument, which was contained within Exhibit 4. Each party's written argument and the authorities referred to are considered further below.

Witnesses

Council did not call any witnesses.

The Licensee was sworn in and gave evidence on her own behalf. She was subject to cross-examination by Council and to questions from the Hearing Committee. Her evidence is outlined in detail below.

Facts

The facts of this matter are set out in Exhibit 1 and in the evidence given by the Licensee.¹ The background facts (and in turn, this report) are similar to those as set out in relation to the hearing of the Licensee's husband, Harry Forsberg, over which this Hearing Committee also

¹ Although each party entered a Book of Documents as an exhibit by consent, not all documents within those exhibits were referred to by counsel. The Hearing Committee has reviewed all documents but in producing this report and making its recommendations has only relied upon those documents which were incorporated into Exhibit 1 or identified and explained by counsel or the Licensee.

presided. Mr. McKnight and Mr. Myers agreed to a substantially similar Agreed Statement of Facts for Mr. Forsberg and this Licensee and, as in Mr. Forsberg's hearing, Council did not call any witnesses. Thus, the only differences between the two matters were in the Licensee's evidence and the application of those facts to the law. Having said that, the Hearing Committee has been careful to separate out the evidence which was entered in each proceeding and consider each case on its own merits.

The ICBC Autoplan Manual at Volume 1, section 12.5 sets out a toll bridge restriction requirement that "customers who have unpaid toll bridge fees are subject to a refuse to issue (RTI) by ICBC on their driver licenses, vehicle licenses and insurance policies". The two toll bridge administrators were Quickpass for the GETB and TReO for the PMTB. ICBC applied a RTI restriction if more than \$25 was owed and the toll debt was over 90 days past due for the PMTB or if more than \$25 was owed and the toll debt was over 150 days past due for the GETB.

There are only two types of transactions which can be processed by a licensee for customers who have a RTI restriction applied by ICBC: non-licensed transactions and temporary operation permits which can last for a period of one to 15 days. No other transactions are permitted unless the customer has resolved his or her toll bridge debt directly with the toll bridge administrator. The licensee was required to confirm payment of the toll bridge debt prior to processing ICBC Autoplan transactions. Once confirmed, the RTI restriction could be removed by entering the receipt number provided by the toll bridge administrator to the customer.

The Licensee has been licensed as a Level 2 general insurance agent with Council since 2005.

In June 2015, ICBC commenced an investigation pertaining to insurance agents overriding GETB and PMTB debts by entering false receipt numbers. There was an apparent glitch in the ICBC system that would allow a toll bridge debt, reflected as an RTI restriction, to be bypassed by entering a combination of any two letters followed by any five numbers (the equivalent of a false receipt number rather than a valid receipt number).

During the investigation, ICBC determined that the Licensee had processed 30 Autoplan transactions using false receipt numbers resulting in the removal of the RTI without the toll bridge debt being collected. ICBC also determined that the Licensee had facilitated the processing of two Autoplan transactions for her own vehicles with an RTI restriction by knowingly providing false authorization numbers to another staff member of the agency to remove the RTI restriction.

On October 13, 2015, an investigator from the ICBC Special Investigations Unit interviewed the Licensee for the first time. ICBC interviewed the Licensee a second time on January 18, 2016, and a third time on January 22, 2016.

Exhibit 1, the Agreed Statement of Facts, incorporated documents located at tabs 1 – 6 of Council's Book of Documents (entered as Exhibit 2). The transcript of the Licensee's first interview with ICBC was included at Tab 4 of Exhibit 2. Relevant portions of the first interview are as follows:

- Q: *Okay. And are you familiar with the procedures in the AutoPlan manual?*
A: *Most of them, yes.*
Q: *Okay, alright. And you follow those procedures?*
A: *Yes I do.*
Q: *Okay. Has there ever been a time when you chose not to follow the procedures?*
A: *No.*
...
Q: *Okay, what about a receipt though?*
A: *Usually they will have a receipt and then we will see it when I actually see. There are some people that are not, you know they don't know how to use their phone to send a picture or whatever and then they will show me their receipt so but I don't want to put in a common citing [sighting] when I haven't cited [sighted] it until I get there.*
Q: *So if you not cite [sight] it, then what?*
A: *So then if I don't cite [sight] it, sometimes I don't even give them the insurance. I say no like I have to see the receipt and now I have to void the document. Like I'm not going to you know going to do it without seeing something and then what I actually usually don't put comments in because I don't want to say that I saw it and didn't.*
...
Q: *Okay, so have you ever entered an authorization number knowing that it was false?*
A: *Hmmm no. If the client gives me that number I trust that what they are giving me is something is legitimate, right. I don't you know just go oh give me whatever you want, you know like I ask them for an authorization what they got from Golden Ears or from Treo for me to put in.*
Q: *Right, but again if the number they gave you was ZZ00000, you would put that in you wouldn't question that was obtained?*
A: *I would ask, like if I don't recognize the first two numbers or whatever, but I don't know, I mean maybe you know I'm wrong. You know I mean I don't override it or whatever, like if that's what they gave me. I'm trusting that that's the number is what was given to them.*
Q: *Right, okay. But even if it was a bit outlandish?*
A: *Well yeah. I mean if that's what you say it is. I'm not going to call you a liar and say, well I think you are lying...because of the business that I do, you know I print the document in the office I don't see the client until after. I have to trust that just like they are trusting that I'm coming to bring their insurance to them, I have to trust that what they are giving me is 100% coming from Treo or Golden Ears.*
Q: *Alright, have you ever bypassed debt for your own vehicle transactions?*
A: *I haven't. No.*
Q: *Has someone else done it for you?*

- A: *I don't know. I don't think so?*
- Q: *Well to your knowledge?*
- A: *Not to my knowledge. We are not allowed to do our own insurance. So it's always a manager so.*
- ...
- Q: *No I can see that. Alright so have you ever bypassed bridge debt for a friend or family member?*
- A: *Oh, no. They're all to me those are the worst people to deal with. Friends and family, so you don't, so I don't do any favours for anyone.*
- Q: *Alright, do you know of anybody in the agency that is putting in false authorization numbers to bypass the bridge debt?*
- A: *I, no...I do my own thing I don't know what everybody else is doing, you know, like.*

The transcript of the Licensee's second interview with ICBC was included at Tab 5 of Exhibit 2. Relevant portions of the second interview are as follows:

- Q: *Okay. Alright. Uh you're familiar with the procedures in the Autoplan manual?*
- A: *Yes.*
- Q: *Okay. Alright. Has there ever been a time when you chose not to follow those procedures?*
- A: *Mm, no.*
- ...
- Q: *Well exactly. But I mean, you know, just because somebody else is going to do something wrong doesn't mean that it's okay for everybody else right.*
- A: *Yeah, I know.*
- ...
- Q: *Okay. Well are you telling me that the client gave you a bypass number that included your agency number?*
- A: *No. If they said that they had, that this is their number of whatever with the letter or whatever and if it didn't go through or whatever and then I call in and they'll say well oh no put this override in or your AA number or whatever and it doesn't work...*
- Q: *Well I can tell you that the bridge would not have told you to bypass his because the debt wasn't paid.*
- A: *Well if they, if BEU is the one that I called into, cause I don't remember. I mean I saw the list and there's only one person that I remember and then they were told because it was a long weekend that it wouldn't go through until the Tuesday. Something like that. Like it was like in May and that's the only one that I was like Uhh.*
- ...
- Q: *Okay. And in this case the bypass that was used was [REDACTED].*
- A: *So she gave that to me or whatever...*
- Q: *You wouldn't question that. Even though it's the agency number.*
- A: *I just put it in.*
- ...
- Q: *Alright. So, um, have you ever had your own transactions processed at either of the [the agency's] office?*
- A: *Mm hmm.*
- Q: *Okay. Do you remember that happening?*
- A: *Uh yeah. Cause they do it for you. Like you know they'll say oh yeah, I'll tell them my insurance or they'll tell you your insurance is coming due right.*

Q: Okay, sure. Alright. So did you choose to go and see [the manager], or did you just go and see who was there and that's who was there, so.

A: Yeah. Yeah. And then they just do up the insurance for you.

Q: So sorry yeah to which? You chose [the manager] or you [inaudible].

A: Well if [the manager]'s the one that's there. Right, so then it's oh yeah [the manager] the insurance is due so [the manager] was like oh okay.

Q: Okay. Alright. So in those cases um, where would the authorization number to bypass have come from.

A: I guess [the manager] gets it. Like I'm not me. [The manager] has to do the whole policy up. We're not allowed to do our own.

Q: Right. Okay. So does [the manager] do a lot of Autoplan?

A: Uh, I don't know if [the manager] really does. Yeah. [The manager] does it more than our last manager. Right, like [the manager]'s in the front and stuff like that [the manager] does do like renewals and things like that.

Q: Okay. So when [the manager] processed this transaction, or these transactions for you was there any discussion about the fact that you had Refuse to Issue debt?

A: Mmm, no.

Q: No? That was never mentioned? Did you know that you had Refuse to Issue debt when you went in to do those transactions?

A: No.

Q: No?

A: No. My husband is the one that does - like everything is attached to his account. So he takes care of that.

...

Q: So did you have any discussion with your husband about RTI? For your own personal vehicle?

A: Uh, no. No.

Q: Okay. Um, so what you're telling me then is you had [the manager] process transactions for your own vehicle and RTI was never mentioned.

A: Mm, [the manager] didn't say anything to me.

Q: Okay. So if RTI was bypassed to do those transactions for you, where would the authorization numbers come from?

A: [The manager] would have had to have called in or whatever. But I [the manager] spoke to Harry I think, but I - cause I told [the manager] I said, you know, if there's anything owed what the debts are or if there's any tickets or anything owed you have to talk to Harry about it.

Q: But I think you'll agree with me, as a broker I think you would know that if you call the bridge they won't talk to you, they want to talk to the customer because it's a privacy issue right...

A: I don't know cause [the manager] didn't say anything to me.

...

A: I don't know where they came from.

Q: Well did you give them to [the manager]?

A: I didn't give any number to [the manager].

Q: Okay, so that's a no. Okay, alright. So you're also saying that [the manager] didn't have any discussion with you about the fact that you had RTI.

A: Mmm, no.

Q: Okay. So where do we think those numbers came from then? Are you saying that [the manager] made them up?

A: Possibly.

Q: *Okay. Because I think we can agree that [the manager] wouldn't have gotten them from the bridge...If you didn't talk to the bridge...*

A: *No.*

Q: *...then [the manager] wouldn't have gotten them from the bridge. Correct?*

A: *Correct.*

Q: *So if they didn't come from you and they didn't come from the bridge, but [the manager] processed the transactions, then what are you telling me?*

A: *If I didn't give [the manager] anything then I didn't give [the manager] anything.*

Q: *Okay. But [the manager] wouldn't have gotten them from the bridge.*

A: *I don't know where [the manager] got them from.*

Q: *Okay, so you're telling me that [the manager] created them and put them into the system to bypass your debt.*

A: *Possibly.*

Q: *Okay. You say that your husband deals with all the sort of toll bridge stuff for you and your household. So was there any discussion with him about this at the time?*

A: *Mm, no.*

Q: *Okay. Was he there at the time the transactions were done?*

A: *Uh, no he wasn't. He left the office and then came back later.*

Q: *Okay. So he wouldn't have given those numbers to [the manager]?*

A: *He might have.*

...

Q: *Okay. Alright. Have you and he had discussions about bypassing Refuse to Issue debt? Not necessarily for yourself but for doing business.*

A: *No, everything – well he actually works out of a different office than I do, right...But whatever I do is on my own accord, whatever he does is his own thing. I don't tell him, you know discuss stuff. I just don't. I don't bring my work home and go oh you know guess what, this is what happened. No.*

Q: *Okay, so even though the whole RTI for bridge tolls is you know a pain for everybody and it's causing a lot of grief for everybody and you were interviewed last time by me, you never had this discussion with him?*

...

A: *But, um, so in the last three years [REDACTED], you know, I don't want to bring my work home to you know [REDACTED] things up you know worse then what we're having to deal with, right.*

Q: *Okay. So there's been no discussion between yourself and your husband about how toll bridge debt can be bypassed?*

A: *Well, no, no. I told him when I had the interview...*

...

Q: *Okay. So are you aware of anybody at the agency who is creating false authorization numbers?*

A: *Mmm, you know I do my own thing. I am on my own. I don't, you know, ask anybody for oh what do you do if you do this, dadada.*

...

Q: *Alright. So what do you think should happen to a broker who's entering created or false numbers to bypass debt?*

A: *Mm, they should like training. Right. Cause we have not had real training like from ICBC or from the toll bridge people, you know on what their procedures are.*

...

- Q: *Sure. But you know that may explain one or two or three or even four transactions that you completed. But it doesn't explain...A big stack of transactions done by you...is there anything you wanted to add that you thought might be important?*
- A: *Mmm, that the system is still the same. You know like they've said oh yeah no it's live and all this stuff. And it's not. You know, and you know for you to spend so much time trying to do someone's renewal and get them to stand there in front of you and it still doesn't go through and it's kind of a bologna system. Like there's something wrong with how their computer is or I don't know if it needs updating. I don't know. Cause if they're telling you that it's supposed to go through right away and then it doesn't well, you know what do you want me to say. Like client stands there in the office waiting and they're like they have proof, they've spoken to them, they're even saying they know it's paid and it still won't go through. Like that's a problem.*
- Q: *...But again, I don't think that is what explains all of the transactions that you and I have spoken about. Would you agree?*
- A: *Mmm, yeah.*
- Q: *Yeah. Okay. Alright, anything else?*
- A: *No, that's it.*

The transcript of the Licensee's third interview with ICBC was included at Tab 6 of Exhibit 2. Relevant portions of the third interview are as follows:

- Q: *...Yesterday I received a call from you saying that you had further information or that you wanted to come and speak with us. So let me know why we're here.*
- A: *So, a couple of things. There was a supervisor that was working for us and... doesn't work for us anymore. Say, I don't know if it was any use of bringing in [the supervisor's] name or whatever, but [the supervisor] actually told us in the office that if you had a problem...*
- Q: *K.*
- A: *If you had a problem with the Golden Ears or TreO toll...*
- Q: *Right.*
- A: *...to, you know, just tell your client that, you know, they have to pay the toll and if they can get you a receipt number or some kind of authorization that would be good but [the supervisor] goes most of the times it doesn't work. So then put two letters in front of the receipt number and it will go through.*
- ...
- Q: *Okay.*
- A: *You know, I was telling [the investigator] before, I said you know like I have to kind of take their word for it as well, but I understand the ramifications not. I really didn't think it was this serious...*
- ...
- Q: *Okay. So you admit that you were creating false numbers.*
- A: *Mm well yes and no. Because what I'll do is if I had a receipt number for from a client, cause I asked them, I said you know like it's like a seven digit...*
- Q: *Just so you know Suzanne, you were the highest offender in the offices that have people that have never paid their debt. They're still not cleared to this day. Okay, so there's no way you could have sighted a receipt, because the debt has not been paid.*
- A: *No. I never said I sighted the receipt.*
- Q: *Right.*

- A: *I would ask them for a receipt number.*
- ...
- Q: *Okay. So not just to you. So [the supervisor] would have said this to other staff members?*
- A: *Yeah. For sure.*
- Q: *Okay. Is there a reason you didn't remember this the last couple times that I'd interviewed you?*
- A: *I just didn't want to like, [the supervisor] doesn't work at the company anymore. You know, like I know [the supervisor] works as an insurance, as an agent at a different company but you know it's like I don't know.*
- ...
- Q: *Okay. So you wanted to know how much your insurance was going to be. Okay. So you clearly knew that you had Refuse to Issue debt on your own policy. Okay so tell me what happened on the 28th then.*
- A: *Well I, my husband actually handles all of those bills so I said to him I go, yeah you know, [the manager] is supposed to be doing my insurance and it has to be clear. Well we don't have credit cards. So he goes to the TReO and pays. He always does. He never – there's nothing for us to give over the phone you know frankly, you know, I don't want to give a pre-authorized debt thing for them to just withdraw from my account. Just in case, like supposedly I don't have any funds in there.*
- Q: *Okay.*
- A: *So then what. And then it's like oh you've got a bounced payment or whatever right. So he usually goes in and pays. And then he told me, he goes well there's – I can give you, let me give you a receipt number and then you tell, you know an authorization number and just give it to [the manager].*
- Q: *Okay.*
- A: *So then that's what I did.*
- Q: *Okay. So you provided [the manager] with what, a sticky or did you tell [the manager] what it was or?*
- A: *No I just wrote whatever Harry told me to write down and then I just gave it to [the manager].*
- Q: *Okay. Because in the interview that you had with [the investigator], [the investigator] asked you...*
- A: *Yeah. I know. [The investigator] asked and...*
- Q: *And you said perhaps [the manager] created the number.*
- A: *Um, I didn't say that. But I said it's possible. Right.*
- Q: *Okay. So you said it was possible that [the manager] did. So you basically said that your manager could have fraudulently bypassed your transaction.*
- A: *Yeah.*
- Q: *Okay. Okay. So um, even though you knew that was not true.*
- A: *Yes.*
- ...
- Q: *...so you're saying that you were told to do this by [the supervisor]. Did you tell Harry how to do this?*
- A: *No.*
- ...
- Q: *So how would he have known how to do it?*
- A: *You know what, I don't know how the other agents caught on. I have no idea. I mean except for [the supervisor] saying that. I don't know about the other agents. But...*
- ...

- Q: *Okay. So you're saying that you and Harry, cause honestly that's very difficult to believe, that you and Harry would never go home in the evening and say oh this toll bridge stuff it sucks, it's so frustrating you know, how do you get around it?*
- A: *Yeah. But you know, I might say that, but I don't say how do you get around it. I don't tell him anything.*
- ...
- Q: *Hang on. You both independently then were bypassing transactions and you had no idea he was doing it until he did you, he bypassed your transaction.*
- A: *No. I said to him you know, like I need an authorization, like it's coming up on the thing or whatever and then he just, he gave that to me. So...*
- ...
- Q: *Okay. But that's actually all irrelevant right now. You accessed your own information, you knew that you had Refuse to Issue debt and you, whether it came from Harry, you knew the number was false when you provided it to [the manager].*
- A: *Well, I guess so. Yes.*
- ...
- Q: *...That this is actually um, you created a fraudulent number in order to gain a benefit on your own policy. Do you understand that?*
- A: *I get it now. But I actually wasn't thinking it was really – I didn't really think it was fraudulent. I didn't.*
- ...
- Q: *So you're saying you did this for targets, not for the commission.*
- A: *It is for targets...*
- ...
- Q: *So you were scared on the consequences so that's why you lied.*
- A: *Yeah. You know like what am I going to say to you. Like oh yea you know dadadada. No...*

Further facts in this matter became apparent from the *viva voce* evidence of the Licensee, which are set out directly below.

EVIDENCE OF THE LICENSEE

The Licensee testified that following her second interview with ICBC, she met with one of her managers at the agency and, upon the Licensee confessing that she had been interviewed by ICBC and withheld her involvement in entering false receipt numbers to remove the RTI restriction on certain transactions, the manager told the Licensee that she had to go back to ICBC and tell the truth. Following that conversation with the Licensee, the agency imposed a modified employment contract upon her commencing on January 28, 2016. The following terms and conditions applied:

1. the agency required her to be supervised, which placed her under the same terms of supervision of insurance transactions as a Level 1 agent;

2. She was required to read Council's Code of Conduct and pass a test of knowledge regarding the Code and acceptable forms of conduct;
3. She was required to read and follow the ICBC Autoplan Manual for compliance and to comply with the Manual at all times;
4. She was ineligible to earn commission income and her assigned commission clients were reassigned by the agency;
5. She was eligible to work office shifts and as a back-up on the road of one agency office on a full time basis. Her hourly pay was adjusted to \$ [REDACTED] per hour and all transactions that were eligible for incentive sales bonus were to be audited for compliance before any incentive could be earned; and
6. Except where modified as described above, the terms of her employment with the agency remained in effect.

The Licensee agreed to those terms which were in place until late-August 2017. The Licensee directed the Hearing Committee to a certificate included in [Exhibit 4](#) which demonstrated that the Licensee had completed Council's Rules course on August 12, 2016.

In terms of the financial impact of this modified employment contract, the Licensee gave evidence that her loss of income was more significant than that of her husband and her losses were in the range of \$ [REDACTED] between 2015 – 2017 due to her loss of commission work. Exhibit 5 was an email from the agency's vice president of finance, which set out a detailed breakdown of these lost commissions, and correspondingly, increased payroll, but demonstrated the ultimate overall loss of income. It appeared that as of 2018 the Licensee's income actually exceeded her pre-suspension level of earning but that her gross commissions had not yet rebounded entirely.

The Licensee presented several letters of support and character references [REDACTED] [REDACTED] to the Hearing Committee. These were all included in [Exhibit 4](#). Selected portions of those letters are as follows:

I became fully aware of their situation during ICBC's investigation and certainly felt that their conduct was very unusual and out of character. It was very much, an isolated incident.

I have always trusted Harry and Suzanne and have personally witnessed them to be honest and of a high moral standing.

[REDACTED]

Since this incident there has been no concern as to her work product at [the agency] and she has maintained a strong work ethic and renewed understanding of her obligations to insurers.

In my interaction with Ms. Forsberg I have found her to be a genuinely responsible individual. This incident is very concerning and based on my interactions, out of character for her, but I believe that she has learned very much from it. Since the incident, she has worked very hard to rebuild our trust. She has mentored staff in a very professional manner. She is a hardworking individual and very dedicated to her family.

[REDACTED]

I have known Suzanne for 2 ½ years and work with Suzanne daily. I am aware of the incident. I do believe that this was out of character for Suzanne. Suzanne is a kind, and thoughtful person. Suzanne spends much of her days training our new hires, and ensuring that all agents are compliant to the Insurance Council, ICBC rules and regulations. Suzanne is very involved with her family,

[REDACTED]

[REDACTED]

I'm disappointed that Suzanne Forsberg made this decision, and brought this court case upon herself. She is ready to accept responsibility for her actions and has communicated that to me several times...Suzanne has expressed a deep sense of remorse in making such a serious mistake repeatedly and knowingly...

Suzanne Forsberg has a compassionate and understanding personality... No matter what mood you are in you can share your story and feelings with Suzanne. She will share in your emotion, whether it's extreme sorrow or joy. She will always make time for you, and your story.

Despite the current case, Suzanne Forsberg is an honourable individual, and a valuable member of our team.

[REDACTED]

In an undated letter that the Licensee stated that she prepared in either May or June 2019, the Licensee apologized to Council for her actions and stated that she had made a huge mistake, it would not happen ever again and that she will live with the disgrace of what she had done for the rest of her life.

In cross-examination by Council, the Licensee readily agreed that she was not truthful with ICBC in its investigation and that she discredited and defamed a fellow licensee (her manager) in being untruthful. She maintained that she did not discuss the substance of her first interview with ICBC with her husband and that she did not know that he was engaging in the same scheme that she was to override toll bridge debt using false receipts. She also maintained that she did not know that her husband was also blaming their manager for using false receipts to override their personal toll bridge debt. It was only “after the fact” (whether it was after the second interview or the third interview was unclear) that she found out that her husband had suggested that perhaps their manager was to blame for the use of false receipts for their personal vehicle transactions as well.

In response to questions from the Hearing Committee, the Licensee conceded that after providing her manager with the false receipt for her own vehicle transactions that she did not clear her toll bridge debt (which was in the range of \$[REDACTED]) for 73 days even though at the time she was earning nearly \$[REDACTED] per year.

The Licensee could not answer the Hearing Committee’s question about any suspension from ICBC as against her brokerage but confirmed that she was not personally suspended by ICBC. She had modified employment terms and conditions imposed at the agency for a period of approximately 18 months. The Licensee’s counsel assisted the Hearing Committee by clarifying that the Licensee is currently still employed at the agency and despite that which was indicated in the agency’s letter of January 2016 imposing the modified terms and conditions, if Council suspended the Licensee there was no indication from the agency that her employment there would be terminated.

The Hearing Committee had questions for the Licensee about her motivation for overriding the debt for those 30 individuals discovered in ICBC’s investigation. The Licensee stated that they were not people that she knew but were just customers that she wanted to help out or sometimes she was in a hurry and it was convenient. [REDACTED]

The Hearing Committee pressed the Licensee about her conversations with her husband about this toll bridge override scheme in and around the time that she was being interviewed by ICBC for the first time. She once again stated, as she did in her interview with ICBC, that she did not tell her husband how to override the debt but admitted that she did tell him that a supervisor had said that it could be overridden by using the agency code. She stated that she never specifically told him to use the combination of any two letters followed by some numbers (the agency code or otherwise). She reaffirmed, as she said in her interview with ICBC, that she did not discuss the details of her October 2015 interview with her husband

beyond that the interview had taken place and it was about the toll bridges. She stated that she did not give him those details because she did not think her conduct was that bad, she was still processing what had happened and she knew that she had lied and so she could not bring herself to talk about it.

The Licensee concluded her responses to questions from the Hearing Committee by stating that she had no disciplinary history at the brokerage or with Council, that she will never repeat her misconduct and she continues to experience significant personal and professional shame as a result of her misconduct. She has taken some steps to address the stressors in her personal life which were present at the time of her misconduct. [REDACTED]

SUBMISSIONS OF COUNCIL

As stated above, Council provided a written submission. Council's position was that any penalty imposed on the Licensee ought to be in accordance with directions from the Financial Services Tribunal ("FST") in its decision 2017-FIA-002(a), 003(a), 004(a) 005(a), 006(a), 007(a) and 008(a) issued July 31, 2018 with respect to several licensees with similar toll bridge debt misconduct. In particular, in this case, Council highlighted paragraphs 101 and 102 which addressed the importance of trustworthiness in the industry:

*[101] It is my view clear beyond debate that repeated licensee conduct that causes the regulator and the public to question that licensee's trustworthiness strikes at the heart of the licence itself. **The importance of trustworthiness cannot be understated.** Nor should we forget what this term actually means.*

*[102] The work of insurance agents is regulated for a reason. Insurance agents find themselves in a position of trust in relation to important financial transactions that have implications for their clients, for insurers and for the public. The insurance licence is a solemn obligation granted on the trust that the agent will work in accordance with the rules and standards created for licensees. **Trustworthiness means honouring that trust by doing the right thing even when it is inconvenient, even when no one is looking, even when an agent might not agree with the rules, even when an agent is under pressure to do the convenient thing and even when other agents are engaging in the same conduct.** Anyone with the means to do so can do the easy thing or the expedient thing. **The regulatory system would be meaningless if its participants, the***

public and the regulator could not have confidence in a licensee to act in a trustworthy fashion.

(emphasis by Council)

With respect to penalty, Council submitted that the Hearing Committee should be guided by the FST's direction that subject only to mitigating factors, a suspension of six months and the requirement to take an ethics course acceptable to Council represents the minimum or baseline reasonable penalty that the Licensee's conduct must attract. Council also spent a portion of its submission identifying the relevant portion of the applicable Code of Conduct and Policy & Guidelines, January 2014, Section 4, which it said that the Licensee breached.

On the subject of possible aggravating factors which may increase the FST's suggested six month suspension and requirement to take an ethics course Council emphasized the number of false transactions by the Licensee (30), facilitating false transactions for her personal policies and the repeated lies and misdirection of the Licensee during both her first *and* second interview with ICBC and "pointing the finger" so to speak at her manager. The Licensee, a Level 2 agent of 10 years at the relevant time, should have known that her conduct was dishonest and wrong. With respect to possible mitigating factors, Council acknowledged that she has now admitted that she was at fault and that the reason that she took those actions was to assist her clients.

Council set out the sentencing principles and precedent decisions which guide the Hearing Committee. The fundamental purpose of sentencing for misconduct is to ensure the public is protected from further acts of misconduct by a licensee, as well as to prevent against similar acts or actions by other licensees in the future. The case of *Financial Services Commission v. The Insurance Council of British Columbia and Maria Pavicic*, November 22, 2005 states that some of the factors to be considered in sentencing include: the need to promote specific and general deterrence and thereby protect the public; rehabilitation, punishment and isolation of the offender; the need to maintain the public's confidence and the integrity of the profession's ability to properly supervise the conduct of its members; and the range of sentencing in other similar cases.

Council took the Hearing Committee to seven precedent decisions which dealt with similar misconduct and which were decided after the FST's directions on penalty. It is somewhat an art and not a science in considering the applicability of these decisions as they all turn on their own facts. Each decision is unique to some degree and Council noted that the Hearing Committee is not bound by them. Despite this, Council summarized these precedent cases and identified similar factors which appear in these prior cases and to some extent dictate

where the misconduct is placed on a spectrum. In summary, the precedent decisions can be described as follows:

Case Name	Licence Level	# False Transactions	Aggravating Factors	Mitigating Factors	Discipline
Nguyen	1	116	Licensed since 2004; stood to benefit financially	Level 1; admitted misconduct; 12 week ICBC suspension; apology; ethics course on own initiative	5 month suspension
Lee	1	36	Licensed since 2001; stood to benefit financially; told customers she was clearing their debt with a fake number	Level 1; admitted misconduct; wanted to help her customers	6 month suspension and ethics course
Babcock	1	50	High number of false transactions; stood to benefit financially; continues to dispute misconduct	Level 1; paid fine to brokerage; unflattering media coverage; no discipline history; support of agency	7 month suspension and ethics course
Johnson	2	53	Level 3 licensee and agency nominee at one point; stood to benefit financially; started misconduct 6 months after tolls established	Admitted misconduct; tried to make things easier for customers; 12 week ICBC suspension; apology; ethics course on own initiative	7 month suspension
George	1	34	Licensed since 2003; stood to benefit financially; failure to accept responsibility	Level 1; processed transactions outside of business hours when manager not available	8 month suspension and ethics course
Johal	1	1+ (20+ at agency)	Licensed since 2006; managerial position; knowledge of misconduct of other agents	Level 1; admitted misconduct; 2 month agency suspension plus additional 3 month ICBC suspension	8 month suspension and ethics course
Das	3	32	Level 3; stood to benefit financially; transactions during regular business hours (customers could have paid)	Admitted misconduct; trying to help customers who did not have credit cards or whose insurance expired at midnight	9 month suspension and ethics course

Council attempted to distinguish these various decisions from the facts at hand. Council suggested that while many of the precedent decisions involved licensees who had a higher

number of false transactions, the Licensee's misconduct was more egregious because none of the other licensees had processed transactions for their personal benefit. Council noted that there is also the distinction that the other licensees admitted their misconduct immediately while the Licensee waited several months to do so and suggested that she only came forward when it was clear to her that she had no way out. Further, Council noted that none of those other licensees attempted to blame someone else for their misconduct. Council acknowledged that Mr. Nguyen and Ms. Johnson were each suspended by ICBC, which was a mitigating factor, and that the Licensee was demoted for a period of time, but she was still employed during that entire period. Council submitted that all of the precedent misconduct was less than the misconduct which was before the Hearing Committee and as such warranted a suspension of greater than nine months. Council also acknowledged that there was the issue of the Licensee accessing her own policy information on the ICBC database, which was also a breach of her expected conduct. It confirmed that it did not have any specific authority to look to with respect to the Licensee's misconduct in imposing a penalty as to that aspect of her misconduct.

Council submitted that the Licensee, in all of the circumstances, should be subject to a 12 month license suspension, subject to a \$5,000 fine and mandatory completion of an ethics course.

Council's final submissions were on costs. Council sought a recommendation that the Licensee be required to pay Council's costs in accordance with the Hearing Costs Assessment Schedule in an amount to be determined. Council acknowledged that the issue of costs awards as against licensees was somewhat of a controversy with Council but submitted that a recommendation for an order for costs is consistent with the "user-pay" model of Council. As a self-funding body, Council looks to licensees who have engaged in misconduct and disciplinary system to bear those costs, at least in part, so that they are not borne by other licensees.

SUBMISSIONS OF THE LICENSEE

In her closing submissions, the Licensee started by stating that while she should receive a suspension, the suspension should be for a period of one month. The Licensee's justification for this was that the Licensee's misconduct was most similar to that of Ms. Johnson's, who had more experience than the Licensee, and received a suspension of seven months. In assessing a penalty for Ms. Johnson the Hearing Committee took into account an ICBC suspension of 12 weeks with a one month reduction on Council's suspension. The Licensee's position was that applying this same ratio using the Licensee's 18 month modified employment contract this justified a 6 month reduction in any suspension by Council. The Licensee also submitted that hers was an exceptional case given the amount of her business

which was renewal transactions (and the very small percentage of false transactions which were caught in this) and the incredible financial hardship and the impact that such a lengthy suspension would have on her family.

The Licensee submitted that the principles of specific and general deterrence in sentencing had already been met. The Licensee stated that she expressed a great deal of remorse before the Hearing Committee and offered a sincere apology to Council. She has experienced shame and embarrassment, significant impact on her personal relationships and suffered through years of the disciplinary process all of which have accomplished the goal of specific deterrence. With respect to general deterrence, the Licensee stated that others in her agency were aware of her situation and this has deterred others of a like mind or in a similarly situation position.

The two mitigating factors that the Licensee focused on with respect to any penalty imposed were the lengthy modified employment contract that she participated in at the agency and that she came forward to ICBC to confess. She noted that she did so while the investigation was still underway and while interviews were still taking place. She felt that Council's characterization of her only coming forward when she knew that she was going to be caught was unfair.

The Licensee was willing to take the ethics course as sought by Council or any other course or training over and above what she has completed to date. The Licensee also encouraged the Hearing Committee to closely review the transcripts of her interviews with ICBC as she stated that the suggestion that it could have been the Licensee's manager who entered the false receipt numbers was put to her in a leading fashion. She encouraged the Hearing Committee to pay careful attention to that as Council's narrative on this point was not entirely supported.

The Licensee's closing point was that the Hearing Committee should have difficulty coming to the conclusion that she should receive a penalty over and above either Ms. Johnson, for the reasons described above, or Ms. Babcock, a licensee who offered no atonement for her actions and whose credibility was questioned by that Hearing Committee.

In response to the Hearing Committee's question as to any submissions on costs, the Licensee pointed to the decision in *Re Babcock* where the Hearing Committee recommended an order of costs and Council ultimately decided not to accept this recommendation. The Licensee submitted that if the Hearing Committee was going to make a recommendation for penalty in accordance with the *Re Babcock* decision, it should consider that Ms. Babcock's case involved a more significant use of resources and that costs were not awarded even when the licensee's credibility was questioned. As such, it was the Licensee's submission that a

recommendation from the Hearing Committee that costs be awarded to Council was not appropriate in this case.

FINDINGS OF THE HEARING COMMITTEE

The Licensee admitted the breaches as set out in points one and two of the Notice of Hearing and the Hearing Committee finds that the Licensee has breached the Act, Rules and Code of Conduct by committing those actions.

The Hearing Committee notes that the Licensee admitted that she accessed her own policy information in breach of the expected standards and Council seemed to suggest that this was a separate act of misconduct and as such was worthy of an increased sanction; however, this act of misconduct was not specifically charged in the Notice of Hearing. The Hearing Committee therefore considered this misconduct within the Licensee's overall misconduct and was not prepared to assess an increased suspension or fine on this act alone.

With respect to the remainder of the allegations in the Notice of Hearing, the Hearing Committee considered whether the Licensee is able to carry on the business of insurance in good faith, in a trustworthy and competent manner, and in accordance with the usual practices of the business, as required under Council Rule 7(8) and pursuant to section 231(1)(a) of the Act and what, if any, discipline ought to be imposed because of the Licensee's breaches.

The Hearing Committee is not prepared to make a finding that the Licensee is generally unable to carry on the business of insurance in good faith, in a trustworthy and competent manner, and in accordance with the usual practices of the business. The Hearing Committee does have very serious concerns with respect to the Licensee's misconduct and finds that in the past she has not carried on the business of insurance in an appropriate manner. The Hearing Committee is of the view that the Licensee has learned her lesson and can be rehabilitated, but that a significant penalty must be imposed with conditions on her license in order to achieve an appropriate and fair result and fulfil the objectives of Council and the professional discipline process.

The Hearing Committee is of the view that the Licensee's repeated and deliberate lies to ICBC on October 13, 2015, and then again, three months later, on January 18, 2016, are a gross breach of Council's expected standards of licensees and are worthy of admonition. The magnitude of the Licensee's lies to ICBC are compounded by the fact that she did so in two separate interviews three months apart. Her lies to ICBC were numerous, but the central issues were her statements that she was not involved in bypassing the RTI restrictions on her own insurance transactions, that it was other licensees, either her husband or her manager,

who were involved in that, and that she did not know about the glitch in the system and the bypass scheme or anyone participating in it.

The Hearing Committee was not persuaded by the Licensee's argument that the suggestion that her manager may have entered the false receipt numbers on [REDACTED] own accord was put to her in a leading fashion and not something which can be held against her. The relevant portion of the transcripts, and the progression of this discussion, is as follows:

Q: *Okay. Alright. So in those cases um, where would the authorization number to bypass have come from.*

A: *I guess [the manager] gets it. Like I'm not me. [The manager] has to do the whole policy up. We're not allowed to do our own.*

...

Q: *Okay. So if RTI was bypassed to do those transactions for you, where would the authorization numbers come from?*

A: *[The manager] would have had to have called in or whatever. But I [the manager] spoke to Harry I think, but I - cause I told [the manager] I said, you know, if there's anything owed what the debts are or if there's any tickets or anything owed you have to talk to Harry about it.*

...

Q: *Okay. So where do we think those numbers came from then? Are you saying that [the manager] made them up?*

A: *Possibly.*

...

Q: *Okay, so you're telling me that [the manager] created them and put them into the system to bypass your debt.*

A: *Possibly.*

...

Q: *Okay. So he [Mr. Forsberg] wouldn't have given those numbers to [the manager]?*

A: *He might have.*

...

Q: *Okay. Because in the interview that you had with [the investigator], [the investigator] asked you...*

A: *Yeah. I know. [the manager] asked and...*

Q: *And you said perhaps [the manager] created the number.*

A: *Um, I didn't say that. But I said it's possible. Right.*

Q: *Okay. So you said it was possible that [the manager] did. So you basically said that your manager could have fraudulently bypassed your transaction.*

A: *Yeah.*

The Licensee was obviously careful in her answers to ICBC in the first and second interviews but in fact she was the first to suggest that the manager "gets it [the number]" and "would have had to have called in or whatever". In the third interview her defence is that she did not say that the manager created the false receipt numbers, but only said that it was "possible". She also previously suggested that her husband may have created them. In any event, the

Hearing Committee does not find anything in the distinction whether the Licensee said it was possible or agreed to a suggestion that it was possible. She did not tell the truth, which is that her husband gave her receipt numbers which she knew were false to give to the manager and at various times suggested that either her husband or her manager were to blame and she was not, which was not the case.

While the Licensee came forward eventually with the truth it was much later into the investigation process. Her motivations for coming forward are not particularly relevant. The important thing is that she did so, but she also must be sanctioned for repeatedly lying to ICBC and doing so for an extended period of time. There needs to be a message to the industry and the public that cooperation with ICBC and Council in its investigations is absolutely necessary. Without this cooperation, it is impossible for Council to fulfil its mandate and protect the public. It is for this reason that the Hearing Committee believes that it is necessary and appropriate to depart from precedent decisions which only impose a suspension and an ethics course and recommend additional sanction in the form of a fine. The Licensee's misconduct in repeatedly and deliberately lying to and misleading ICBC strikes at the very heart of the statements of the FST: trustworthiness means doing the right thing even when it is inconvenient, when no one is looking and when others may be engaging in the same conduct.

Additionally, the Hearing Committee found the Licensee's evidence on certain points, both in direct and in cross-examination, not credible. It found her to be, at various times, suggestible and on other occasions defensive in responding to questions. The Hearing Committee does not accept her evidence that she never told her husband of the content of her October 2015 interview with ICBC. It is improbable that a married couple, working in the same industry for the same company would not discuss an interview like that in at least some detail. The Hearing Committee did not form a view on what, if anything, the Licensee and her husband had discussed beyond the content of that interview.

The Hearing Committee took issue with the Licensee's characterization of her conduct at times. For example, in her third interview with ICBC she maintained that she had not told her husband about how to bypass an RTI restriction, only that she had told him what the supervisor had said about how to do it. Before the Hearing Committee, in response to its question about whether she had told her husband about the ability to bypass, she maintained this position. The Licensee has failed to appreciate that this is effectively the same thing. The Hearing Committee felt that in this response, and others, she was attempting to parse words to her advantage. Her evidence on this point was also in direct contradiction to her evidence that she did not talk about work at home because life was so busy and she was not getting home until late at night.

The Hearing Committee recognized a number of mitigating factors which apply to the Licensee's circumstances: although the Licensee initially lied to ICBC, she eventually retracted this; she has been disciplined by her agency for a significant period of time with the resulting income loss; she has the support of her agency; she made an apology to Council prior to the hearing; and she has no disciplinary history with Council. The Hearing Committee is not prepared to recommend a "discount" on any suspension close to what was sought by the Licensee but did take all of the mitigating factors into account in forming its recommendations. The Hearing Committee heard extensive detail about the personal stress that the Licensee was facing at the relevant time. Those circumstances were obviously very difficult but they in no way justify the Licensee's misconduct or are mitigating as to any penalty imposed. It may explain her misconduct to a certain extent, but at the same time many licensees face incredible personal stress and do not "cheat the system" and then lie about it for months at a time. The Hearing Committee applauds the Licensee for taking steps to address the stressors in her life and encourages her to continue to do so.

RECOMMENDATIONS OF THE HEARING COMMITTEE

The Hearing Committee recommends that Council consider the following penalty:

1. the Licensee's Level 2 general insurance license be suspended for a period of ten months;
2. the Licensee be fined \$5,000;
3. as a term and condition of the Level 2 general insurance license, the Licensee successfully complete an "Ethics for Insurance Brokers" course through the Insurance Brokers Association of British Columbia, or an equivalent course as acceptable to Council, prior to completion of the Licensee's license suspension; and
4. one half of hearing costs as assessed.

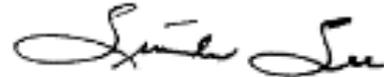
The Hearing Committee heard submissions about the difficult financial situation that her family would be in with both the Licensee and her husband receiving license suspensions. The Hearing Committee did not accept her counsel's submission that this ought to be a mitigating factor as to penalty. This is not a proper or recognized mitigating factor and, in any event, no decision on Mr. Forsberg's misconduct had occurred at the time of this hearing. Further still, making this a mitigating factor would not be fair to those licensees who are not married to another licensee who has also committed misconduct and who do not have this argument available to them. Given the somewhat unusual nature of the parallel proceedings of the Licensee and her husband, this Hearing Committee does recommend that, if Mr.

Forsberg also faces a suspension, Council give the Licensee the opportunity to serve her suspension either before or after any suspension imposed on her husband rather than her suspension being served concurrently. The Hearing Committee has considered all of the principles of sentencing put before it and is confident that this structure would adequately protect the public and meet Council's obligations while at the same time considering overall fairness to the Licensee and her husband.

With respect to costs, the Hearing Committee acknowledges the principles of a costs award as elucidated by Council. The Hearing Committee is also aware that any costs award is a discretionary award, costs awards should not be a barrier to Licensees seeking a hearing and such an award must be fair in all the circumstances. The Hearing Committee was not prepared to make a recommendation of an award of costs to be assessed but recommends that Council should be awarded half its costs of this hearing, as assessed.

The Hearing Committee also recommends that the Licensee be permitted to pay the fine or costs at any point up until her suspension is concluded. If she does not pay the fine or costs prior to the conclusion of any suspension, her suspension should continue until she does so.

Dated in Vancouver, British Columbia, on the **7th day of October, 2019.**



Linda Lee, Chair of Hearing Committee
Insurance Council of British Columbia