

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

and the

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

and

**WEST CANADA INSURANCE SERVICES INC.  
 (the “Former Agency”)**

and

**SUJIN TIM CHOE  
 (the “Former Nominee”)**

**ORDER**

As Council made an intended decision on August 27, 2019, pursuant to sections 231 and 236 of the Act to impose discipline against the Former Nominee; and

As Council, in accordance with section 237 of the Act, provided the Former Nominee with written reasons and notice of the intended decision dated November 28, 2019; and

As the Former Nominee did not request a hearing of Council’s intended decision;

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

1. The Former Nominee is reprimanded;
2. A condition is imposed on the Former Nominee’s general insurance licence requiring him to complete the Council Rules Course;
3. A condition is imposed on the Former Nominee’s general insurance licence that, before he is eligible to be appointed as nominee of any insurance agency in the future, he is required to successfully retake the seminar entitled *Duties and Responsibilities for Level 3 Agents and Nominees in British Columbia*; and
4. A condition is imposed on the Former Nominee’s general insurance licence that failure to

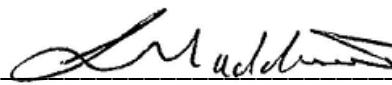
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complete the Council Rules Course by March 19, 2020 will result in the automatic suspension of the Former Nominee's general insurance licence and the Former Nominee will not be permitted to complete annual filing until such time as the course is successfully completed.

No order is issued against the Former Agency.

This order takes effect on the **20<sup>th</sup> day of December, 2019**.



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Lesley Maddison, Chairperson  
Insurance Council of British Columbia

**INTENDED DECISION**

of the

**INSURANCE COUNCIL OF BRITISH COLUMBIA**  
("Council")

respecting

**WEST CANADA INSURANCE SERVICES INC.**  
("West Canada")

and

**SUJIN TIM CHOE**  
(the "Former Nominee")

Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Former Nominee and West Canada (collectively, the "Licensees") acted in compliance Council's Rules and Code of Conduct, particularly with regard to whether the Licensees facilitated improper insurance transactions, failed to ensure adequate disclosure, and failed to adequately supervise general insurance salespersons and agents.

On March 12, 2018 as part of Council's investigation, a Review Committee (the "Committee") comprised of Council members met with the Former Nominee, and the nominee of the agency that acquired West Canada in March 2017. A copy of the investigation report prepared by Council staff had been forwarded to the Former Nominee in advance of the meeting. A discussion of the report took place at the meeting and the Former Nominee was provided an opportunity to make further submissions. Following the meeting, the Review Committee prepared a report to Council.

The Review Committee's report, along with the aforementioned investigation report, were reviewed by Council at its August 27, 2019 meeting, where it was 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 a licensee of any disciplinary action it intends to take under sections 231 and 236 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 Former Nominee. No action is being taken against West Canada.

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**FACTS**

***Licence History***

West Canada is a former agency and is no longer licenced with Council. At the material time, it was located in Surrey and had attained a corporate general insurance licence with Council in May 2005 and a corporate life and accident and sickness insurance licence in August 2005. West Canada was acquired by another agency in March 2017, after which both West Canada licences were terminated. West Canada had an Autoplan Agency Agreement with the Insurance Corporation of British Columbia (“ICBC”) which enabled it to sell Autoplan at the office and a Mobile Road Service (“MRS”) agreement which permitted it to sell Autoplan at motor vehicle dealerships (“MVDs”). West Canada also conducted general insurance business including personal and commercial lines.

The Former Nominee was first licenced with Council in May 1992 as a level 1 general insurance salesperson (“Level 1 Salesperson”) and a life and accident and sickness insurance agent. He first became a general insurance nominee of an agency in July 2001 and a life nominee of an agency in November 2002. He was the nominee of West Canada from October 26, 2015 to January 23, 2017. Currently, the Former Nominee is authorized to represent an agency as a level 2 general insurance agent (“Level 2 Agent”), effective March 4, 2019.

***The Arrangement***

Council identified concerns regarding a business arrangement between West Canada and Maxxam Insurance Services (Burnaby) Ltd. (“Maxxam”) during an investigation into the conduct of a Level 1 Salesperson transacting insurance business at MVDs.

Effective January 1, 2017, ICBC replaced its MRS agreement with a new contract entitled the Autoplan Service at Dealerships (“ASD”) agreement. Maxxam had previously held an MRS agreement; however, ICBC elected not to issue an ASD to Maxxam and so, as a result, it was no longer permitted to sell ICBC Autoplan insurance at MVDs.

In response to this situation, in December 2016, Maxxam contacted West Canada to discuss the possibility of Maxxam’s road services agents (“Road Agents”), consisting of twelve Level 1 Salespersons and thirteen Level 2 Agents, becoming authorized to represent West Canada, which did have an ASD agreement with ICBC. As a result, arrangements were made for the Road Agents to sell Autoplan, vehicle replacement insurance (“VRI”), and non-ICBC optional automobile insurance on behalf of West Canada at Maxxam’s MVD customers, commencing in January 2017 (the “Arrangement”). This enabled the Road Agents to continue servicing MVDs previously serviced by Maxxam.

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Prior to the Arrangement, Maxxam's Road Agents were selling a VRI product (the "Motomaxx VRI Product") that was offered through a contract between Motomaxx Ent. and a particular insurer. West Canada did not have a contract to sell the Motomaxx VRI Product; rather, it was authorized to sell an entirely different provider's VRI product.

In early January 2017, Maxxam's Road Agents began working out of West Canada's office and attending Maxxam's MVD customers. By mid-January, West Canada became concerned that the Road Agents, which included Level 1 Salespersons and Level 2 Agents, were actually selling the Motomaxx VRI Product at the MVDs on behalf of Maxxam. West Canada instructed the Road Agents to desist from this practice and to only sell insurance policies through West Canada.

In order to comply with Level 1 Salesperson restrictions that allow mobile road service agents to service MVDs only on behalf of an agency with a valid ASD contract, the Level 1 Salespersons should have sold all automobile insurance policies through West Canada. However, it has been identified that approximately 100 Motomaxx VRI Product policies were sold by Level 1 Salespersons at the MVDs on behalf of Maxxam with all policy documents identifying Maxxam, not West Canada, as the broker of record.

***Disclosure***

The Road Agents presented MVD clients with a disclosure document which stated they were representing West Canada. As West Canada held the ASD agreement with ICBC, this disclosure was correctly provided to clients in association with the ICBC policies sold by the Road Agents on behalf of West Canada.

There was no separate disclosure provided, however, for the Motomaxx VRI Product policies that were sold by the Road Agents to identify that Maxxam, not West Canada, was actually the broker of record. Therefore, consumers would not have been aware that although the Road Agents presented as representing West Canada, they were in fact selling the Motomaxx VRI Product for Maxxam. The Level 1 Salespersons sold approximately 100 Motomaxx VRI Product policies under these improper disclosure conditions and the Level 2 Agents sold approximately 107.

***The Former Nominee's Submissions***

The Former Nominee told Council staff he was responsible for facilitating the Arrangement on behalf of West Canada. He stated that at no time did he agree or discuss with any representative of Maxxam that the Road Agents would transact the Motomaxx VRI Product policies on behalf of West Canada, or that West Canada would receive the commissions from the associated transactions. However, there is contradictory information suggesting he knew

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the Road Agents were selling the Motomaxx VRI Product on behalf of Maxxam. Regardless, the Former Nominee acknowledged that it was his duty to supervise and train the Road Agents, and particularly to ensure that Level 1 Salespersons were not conducting insurance business contrary to their licence restrictions. As such, as the nominee, he ought to have known what the Road Agents were doing.

Council staff contacted West Canada's management to discuss their understanding of the Arrangement. All stated that they were not aware that the Road Agents were continuing to sell non-ICBC policies on behalf of Maxxam and that this was never part of their agreement with Maxxam.

## **LEGAL FRAMEWORK**

Council Notice ICN 16-002, dated March 3, 2016, states:

*Permitted Activity Outside an Insurance Agency Office*

*...a Level 1 Salesperson who has a minimum of three consecutive months of automobile insurance experience may conduct insurance activity outside an insurance agency office, if the insurance agency has a mobile road service agreement with the Insurance Corporation of British Columbia ("ICBC"). In such cases, a Level 1 Salesperson is restricted to conducting automobile insurance at only four locations: a retail automobile dealer, a wholesale automobile dealer, an automobile auction, and a car rental business.*

[emphasis added]

Council Notice ICN 16-006, dated November 17, 2016 provided notice of an amendment to Council Rule 6(1), effective January 1, 2017, which was intended to coincide with ICBC's new ASD agreement:

*Effective January 1, 2017, a Level 1 Salesperson may only conduct automobile insurance business outside the office of an insurance agency, and on the premises of automobile wholesaler, dealer or auction, or car rental business, if the Salesperson has:*

1. completed the Council Rules Course;
2. held an active general insurance licence for 6 of the preceding 9 months; and
3. met Council's guidelines on the minimum training and experience necessary to engage in automobile insurance.

*Transitional Provision: Level 1 Salespersons who have commenced mobile road service prior to*

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*January 1, 2017, and who are able to do so because they have 3 consecutive months of automobile insurance experience, must complete the Council Rules Course before January 1, 2017 if they wish to continue engaging in mobile road service after January 1, 2017. These Level 1 Salespersons will not, however, be required to have the additional training and experience set out above under items 2 and 3.*

## Council Rule 6 – Licence Restrictions

### *Level 1 General Insurance Salespersons*

- (1) *The following restrictions are imposed on every general insurance salesperson licence:*
- ...
- (b) *the licensee must not carry on general insurance business in any place other than on the premises of the insurance agency the licensee is authorized to represent, except where the licensee has completed the Council Rules Course and held an active general insurance salesperson licence for 6 of the preceding 9 months and has met Council's guidelines on the minimum training and experience necessary to engage in automobile insurance, at which time the licensee may conduct automobile insurance on the premises of an automobile wholesaler, dealer or auction, or a car rental business;*
- (c) *the licensee must only conduct general insurance business under the direct supervision of a general insurance agent...*

## Council Rule 7 – Licence Conditions

### *Applicable to All Classes of Licences*

- ...
- (6) *A licensee that is a nominee of...an insurance agency...is responsible to Council for all activities of the insurance agency....*
- ...
- (8) *A licensee must comply with the Council's Code of Conduct, as amended from time to time.*
- ...
- (14) *Every general insurance nominee and general insurance agency must ensure that all insurance activities are actively supervised by a licensed level 3 general insurance agent...*

## Code of Conduct

### **5. COMPETENCE**

...

#### 5.2 Requirement

You must conduct all insurance activities in a competent manner. Competent conduct is characterized by the application of knowledge and skill in a manner consistent with the usual practice of the business of insurance in the circumstances...

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5.3 Guidelines

...

5.3.3 Nominees are responsible to Council for all activities of the insurance agency or adjusting firm and must ensure the agency or firm and its employees are properly supervised and operate in accordance with the conditions and restrictions on their licences.

...

**7. Usual Practice: Dealing with Clients**

...

7.2 Requirement

*When dealing with clients you must:*

- *protect client's interests and privacy;*
- *evaluate clients' needs;*
- *disclose all material information; and*
- *act with integrity, competence and upmost good faith...*

**10. Usual Practice: Dealing with the Public**

...

10.2 Requirement

*You must honestly represent yourself and the services and products you provide so as not to mislead the public.*

...

**ANALYSIS**

Council held that the Former Nominee ought to have known the Road Agents were wrongly issuing Motomaxx VRI Product policies through Maxxam at MVDs and not providing proper disclosure. As such, Council determined that the Former Nominee:

- failed to ensure that the Level 1 Salespersons acted pursuant to their licence restrictions in accordance with Council Rule 6;
- failed to supervise and train the Road Agents in accordance with Council Rule 7 and section 5 of the Code of Conduct;
- failed to ensure that appropriate disclosure was provided to clients in accordance with section 7 of the Code of Conduct;
- failed to ensure that the Road Agents accurately represented themselves in accordance with section 10 of the Code of Conduct; and

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- failed to demonstrate competence pursuant to sections 5 and 7 of the Code of Conduct as per ICN 16-002 which states, “...any *improper conduct by a Level 1 Salesperson will be deemed to reflect on the competence of the Level 1 Salesperson’s employer (the insurance agency and its nominee)*...”.

Council acknowledged, however, that because the Motomaxx VRI Product policies were completed by Road Agents using Maxxam’s portal code at the MVDs, the improper sale of the Motomaxx VRI Product through Maxxam may have been difficult for the Former Nominee to detect. Council considered this a mitigating factor and, therefore, determined that a reprimand and remedial education for the Former Nominee are appropriate to address his failure to adequately supervise and train the Road Agents. Council determined that the Council Rules Course and the seminar entitled *Duties and Responsibilities for Level 3 Agents and Nominees in British Columbia* are appropriate in this regard.

Council acknowledged as soon as other West Canada management became aware of the improper transactions, it directed the Road Agents to stop the Motomaxx VRI Product sales. For that reason, Council issues no sanction against West Canada.

**INTENDED DECISION**

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

1. Reprimand the Former Nominee;
2. Impose a condition on the Former Nominee’s general insurance licence requiring him to complete the Council Rules Course within 90 days of Council’s order;
3. Impose a condition on the Former Nominee’s general insurance licence that, before he is eligible to be appointed as nominee of any insurance agency in the future, he is required to successfully retake the seminar entitled *Duties and Responsibilities for Level 3 Agents and Nominees in British Columbia*; and
4. Impose a condition on the Former Nominee’s general insurance licence that failure to complete the Council Rules Course within the stipulated time frame will result in the automatic suspension of his licence and he will not be permitted to complete any annual filing until such time as the course is successfully completed

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**RIGHT TO A HEARING**

If the Former Nominee wishes to dispute Council's findings or its intended decision, the Former Nominee 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 Former Nominee must give notice to Council by delivering to its office written notice of this intention within fourteen (14) days of receiving this intended decision. 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 Former Nominee does not request a hearing within fourteen (14) days of receiving this intended decision, the intended decision of Council will take effect.

Even if this decision is accepted by the Former Nominee, 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 British Columbia Financial Services Authority 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 [fst.gov.bc.ca](http://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](mailto:financialservicestribunal@gov.bc.ca)

Dated in Vancouver, British Columbia, on the **28<sup>th</sup> day of November, 2019**.

For the Insurance Council of British Columbia



Janet Sinclair  
Executive Director