

In the Matter of

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

and

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

and

ASHISH KULKARNI
(the “Former Licensee”)

ORDER

As Council made an intended decision on October 21, 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 Former Licensee with written reasons and notice of the intended decision dated November 17, 2014; and

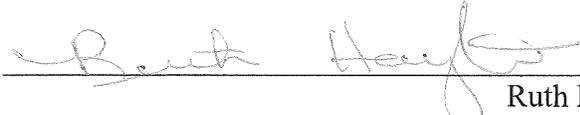
As the Former Licensee has not requested a hearing of Council’s intended decision within the time period provided by the Act;

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

1. The Former Licensee is prohibited from holding an insurance licence for a minimum period of five years, commencing **April 17, 2014**.
2. The Former Licensee is assessed Council’s investigative costs of \$2,375.00.
3. As a condition of this order, the Former Licensee is required to pay the above-ordered investigative costs no later than **March 9, 2015**. If the Former Licensee does not pay the ordered investigative costs in full by this date, the Former Licensee will not be permitted to apply for an insurance licence until such time as the investigative costs are paid in full.

Order
Ashish Kulkarni
177763-I1603
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This order takes effect on the **9th day of December, 2014.**



Ruth Hoyte
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA ("Council")

respecting

ASHISH KULKARNI
(the "Former Licensee")

INTRODUCTION

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

As part of Council's investigation, on September 15, 2014, a Review Committee (the "Committee") met with the Former Licensee and his lawyer Matthew J. Jackson ("Jackson") to discuss allegations that over the course of a two-year period, the Former Licensee accessed the Insurance Corporation of British Columbia ("ICBC") database in an unauthorized manner on 31 occasions to obtain information about 30 individuals without their consent or knowledge.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee's meeting with the Former Licensee, an investigation report was distributed to the Committee and the Former Licensee for review. A discussion of this report took place at the meeting and the Former 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 Former 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 October 21, 2014 meeting, resulting in a determination that 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 Former Licensee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Former 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 Licensee.

FACTS

The Former Licensee was a Level 1 general insurance salesperson (“Salesperson”) with approximately five years of experience as a Salesperson at an agency which he had authority to represent (the “Agency”) until his licence was terminated for non-filing on July 31, 2014.

The Agency terminated the Former Licensee’s employment on August 10, 2014.

Prior Investigation and Discipline

On January 24, 2012, the Former Licensee accessed the ICBC database, without authorization or consent, for the purpose of determining the type of motor vehicle driven by the ICBC President (the “2012 Access”). In accessing the ICBC database, the Former Licensee had access to the telephone number and home address of the ICBC President.

Shortly after the Former Licensee improperly accessed the database, ICBC became aware of the access and commenced an investigation. At that time, the Former Licensee provided a statement by email to ICBC in which he stated that he was at the Agency office around 5:45 p.m. on the day in question, but he did not admit to accessing the ICBC database.

The following day the Former Licensee was requested to provide additional information. In response to this request, the Former Licensee provided a further statement, but again did not admit to accessing the ICBC records of the ICBC President.

Around the same time, the Agency commenced its own internal investigation to determine who could have accessed the ICBC database as alleged. During this investigation, it was determined that a power outage at the Agency office had occurred at the time of the access, meaning it could not have happened at the Agency office. Once this was determined, the Agency spoke with the Former Licensee again, reminding him of the power outage and that it was not possible for anyone to have accessed the ICBC database from the Agency location at the time in question. Again, the Former Licensee did not admit to accessing the ICBC President’s information.

Shortly after this discussion, the Former Licensee’s father called the Agency to advise that the Former Licensee acknowledged that he did access the ICBC President’s data. The Former Licensee then acknowledged, in writing, that he had looked up the personal information of the ICBC President.

After the Former Licensee admitted to the 2012 Access, the Agency required that he remain under direct supervision for a period of 90 days and complete the ICBC Privacy Please – Protecting Customers’ Information Course (“Privacy Please”). The Former Licensee completed the Privacy Please course on October 27, 2012. The Former Licensee stated that it took him eight months to complete the Privacy Please course because he was working full-time and was in college.

On March 28, 2013, Council made an intended decision, pursuant to sections 231, 236, and 241.1 of the Act, regarding allegations that on January 24, 2012, the Former Licensee accessed and obtained information about a third party from the ICBC database in an unauthorized manner, and failed to be forthright afterwards when asked about the improper access.

The Former Licensee requested a hearing pursuant to section 237 of the Act. At no time during the investigation by ICBC, the Agency, or Council, or throughout the entire hearing process, did the Former Licensee disclose that he had accessed the ICBC database in an unauthorized manner at any other time. A Hearing Committee heard the matter on October 17, 2013 and presented its written report to Council at its January 14, 2014 meeting.

The hearing proceeded on the basis of an Agreed Statement of Facts, and the Hearing Committee accepted that the Former Licensee only improperly accessed the ICBC database once. The Hearing Committee recommended that the Former Licensee receive an 18-month licence suspension, rather than a 12-month suspension, a \$1,000.00 fine, and be assessed Council's investigative costs of \$612.50.

On January 22, 2014, the Former Licensee filed an appeal with the Financial Services Tribunal ("FST"). The Former Licensee argued that while the facts of the transgressions were not in dispute, the discipline imposed was inappropriate, and submitted that any licence suspension should be removed and the penalty should be varied. On May 29, 2014, the FST varied the penalty to a \$500.00 fine, full investigative costs, and a six-month suspension to commence July 1, 2014. Judicial review of the FST decision is pending.

Further Undisclosed Accesses and Investigation

In March 2014, Council received information that indicated the Former Licensee, through the use of his ICBC database user identification code, accessed the ICBC database in an unauthorized manner on at least 31 occasions to obtain information on individuals for purposes other than a motor vehicle and/or insurance transaction.

At its meeting on April 15, 2014, after considering the ICBC information indicating that the Former Licensee had engaged in additional unauthorized accesses, Council suspended the Former Licensee's general insurance licence immediately, pursuant to sections 231 and 238 of the Act, until such time as the investigation was completed and had been considered by Council.

ICBC provided information that the Former Licensee accessed the ICBC database on numerous occasions between October 2011 and December 2013 to obtain the personal information of various individuals without the individuals' consent, and without conducting an ICBC Autoplan transaction.

In response to these allegations, the Former Licensee acknowledged that between the period of October 2011 and December 2013, he accessed the ICBC database in an unauthorized manner 31 times to obtain information about 30 individuals, without the knowledge or consent of the individuals, and without conducting a subsequent ICBC Autoplan transaction. The categories of persons accessed by the Former Licensee included local professional athletes, well known businessmen, dentists, a teacher and students from a high school he attended, as well as acquaintances, family, friends, and personal business associates.

Many of the additional accesses were performed prior to the 2012 Access. On January 24, 2012, the Former Licensee accessed the information of several prominent businessmen, in addition to that of the ICBC President. The Former Licensee also continued to access the ICBC database without the knowledge or consent of the individuals whose information was accessed after his initial admission to his employer in February 2012 regarding the 2012 Access, and on at least one occasion after the completion of Council's hearing and the Privacy Please course in October 2013.

Former Licensee's Submission

According to the Former Licensee, he looked up vehicles of famous and wealthy people because he was curious about what type of vehicles they drove. When asked why he did not advise anyone about the additional accesses throughout the investigation of the 2012 Access and Council's hearing on the matter, the Former Licensee stated that he was never specifically asked if he had accessed anyone else's information, and thought he only had to answer what he was asked. He suggested that it was his impression that ICBC and Council were only interested in the 2012 Access because of the subject's position at ICBC. The Former Licensee's evidence on this point was inconsistent with that of his former employer, who stated that he asked the Former Licensee specifically if the 2012 Access was the only time the Former Licensee had accessed the ICBC database inappropriately, and was told that it was.

The Former Licensee stated that although he read Council's Report of the Hearing Committee which states "*the Hearing Committee accepts that the [Former] Licensee only improperly accessed the ICBC database once*", he "*didn't catch*" that particular statement.

The Former Licensee submitted that following his initial confession regarding the 2012 Access, and the related hearing process, he still did not understand that it was inappropriate to use the ICBC database to access information about individuals in order to solicit their Autoplan business. This thinking was relevant because the Former Licensee explained that when accessing information regarding his past teacher, past classmates, friends, dentists, and individuals he had personal business dealings with, he was looking to see what kind of car they drove and what their claim-rated scale was in order to assess if it was "*worth his while*" to get their Autoplan business. The Former Licensee confirmed, however, that he did not follow-up regarding doing Autoplan business for any of the individuals he looked up.

In one of the instances, on November 8, 2013, the Former Licensee stated he looked up a childhood friend in order to obtain his phone number to call him. The Former Licensee was unable to explain why, in this particular case, he also looked up the friend's vehicle information in the BQS screen and the Payment Plan Status screen, where personal banking information was displayed. Further, the Former Licensee indicated he did not end up calling this friend.

ICBC records do not support that the BQS screen, where vehicle information is displayed, was accessed in all cases. In fact, it was only accessed in 10 of the 31 instances of unauthorized access.

The Former Licensee also acknowledged he viewed the Autoplan Data Capture screen for the phone number of other classmates in order to contact them. The Former Licensee described his actions as prospecting for clients. He also stated that he knew these classmates on Facebook, but could not explain why he did not contact them through Facebook, rather than using the ICBC database. When asked if he kept a record of the information he obtained for the purposes of prospecting, he stated he did not.

Former Licensee's Submissions on Penalty

Jackson provided additional submissions to Council for its consideration.

Jackson submitted that the Former Licensee "*has co-operated fully with the present investigation*" and answered all questions truthfully and to the best of his ability and recollection. He admitted to approximately 40 incidents of unauthorized access, which was higher than what the ICBC investigation found. He gave details as to his relationship with the people whose records he accessed, the reasons why he accessed their records, and how he accessed their records. He admitted to accessing records for curiosity in the case of celebrities or other important persons, and to accessing records of friends and acquaintances for the purpose of potentially soliciting business.

Jackson submitted that the Former Licensee's motivation in being co-operative and forthright is his sincere intention to atone for his prior misconduct, including his prior failure to disclose his misconduct, and to take full responsibility for his actions. Jackson requested that Council give credit to the Former Licensee for his forthrightness in determining any penalty.

ANALYSIS

Council considered the actions of the Former Licensee and the Former Licensee's submissions.

It is undisputed that the Former Licensee accessed the ICBC database in an unauthorized manner 31 times to obtain information about 30 individuals between the period of October 2011 and December 2013, without the knowledge or consent of the individuals, and without conducting a subsequent ICBC Autoplan transaction. Most of these accesses occurred on or prior to the 2012 Access. At no time did the Former Licensee advise Council or ICBC that the 2012 Access was not an isolated incident.

The Former Licensee's position as to why he did not reveal the extent of the ICBC database accesses to Council or ICBC was that he did not believe that the additional unauthorized accesses would be of interest, and he was never directly asked. Council determined that the Former Licensee's evidence in this regard was not credible. In coming to this conclusion, Council considered the evidence of the Former Licensee's employer that the Former Licensee denied any further accesses after the 2012 Access came to light. As well, the Former Licensee, as part of the Agreed Statement of Facts that was submitted at his October 2013 hearing, stated he only improperly accessed the ICBC database once; and received and read the Report of the Hearing Committee, which stated that Council proceeded on the basis that the Former Licensee had only improperly accessed the ICBC database once.

Council concluded that the Former Licensee deliberately misled Council and ICBC to believe that the 2012 Access was an isolated incident. Council rejected the Former Licensee's submissions that he should be given credit for his forthrightness in Council's second investigation, as it determined that he admitted to his misconduct only when confronted with a substantial amount of evidence showing the extent of his unauthorized activity. The Former Licensee had ample opportunity, including testifying on his own behalf at his October 2013 hearing, to admit to his past conduct, but never did so.

Council was troubled that the Former Licensee continued to misuse the ICBC database after the investigation into his conduct by ICBC and Council had commenced in response to the 2012 Access, and, even more so, after his completion of the Privacy Please course. Council determined that the Former Licensee demonstrated a complete disregard for the privacy of the many individuals whose information he accessed.

Council did not find the Former Licensee's evidence that he accessed the information of acquaintances for the purpose of prospecting to be credible, particularly in light of his admission that he did not contact a single individual to solicit insurance business after he had accessed their information. Council noted that even if the Former Licensee had accessed the ICBC database for that purpose, the Former Licensee's failure to recognize this as misconduct, after his initial discipline and privacy training, raised serious questions about his competence.

Council concluded that the circumstances of this matter demonstrated the Former Licensee is not trustworthy, and is not able to carry on the business of insurance in good faith and in accordance with the usual practice.

In determining an appropriate penalty, Council was conscious of the fact that the Former Licensee is already subject to discipline for the 2012 Access. Council determined that the additional accesses and, in particular, the Former Licensee's failure to act in good faith and in a trustworthy manner with Council or his employer, are distinct issues that warrant a significant penalty.

Council has repeatedly held, including in the findings of the Hearing Committee regarding the Former Licensee, that a strong message needs to be sent that breaches of confidentiality are unacceptable and attempts to cover up, mislead, or lie about one's actions will not be tolerated. In this case, the extent of the Former Licensee's deception, as well as the volume of personal information he accessed, has led Council to believe that he poses a significant risk to the public and is unsuitable to hold an insurance license for a minimum period of five years.

INTENDED DECISION

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

1. Prohibit the Former Licensee from holding an insurance licence for a minimum period of five years, commencing April 17, 2014.
2. Assess the Former Licensee Council's investigative costs of \$2,375.00.

The Former Licensee is advised that should the intended decision become final, the costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the costs will result in the Former Licensee not being permitted to apply for an insurance licence until such time as the costs are paid in full.

The Former Licensee is also advised that should he wish to reinstate his licence, he will be required to re-qualify for a licence and must demonstrate to Council his suitability to hold the licence by meeting with a Committee of Council.

The intended decision will take effect on **December 9, 2014**, subject to the Former Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Former Licensee wishes to dispute Council's findings or its intended decision, the Former 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 Former Licensee must give notice to Council by delivering to its office written notice of this intention by **December 8, 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 Former Licensee does not request a hearing by **December 8, 2014**, the intended decision of Council will take effect.

Even if this decision is accepted by the Former 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 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 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 17th day of November, 2014.

For the Insurance Council of British Columbia



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