

In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141
(the "Act")

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

ALLEN TON-MING FU
(the "Licensee")

ORDER

As Council made an intended decision on July 10, 2018, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated October 10, 2018; and

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

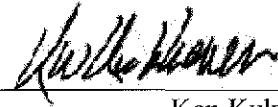
Under authority of sections 231, 236, and 241.1 of the Act, Council orders:

1. The Licensee's general insurance licence is suspended for a period of one year, commencing on **November 6, 2018** and ending at midnight on **November 5, 2019**.
2. A condition is imposed on the Licensee's general insurance licence that, upon completion of the suspension, the Licensee is subject to supervision by an insurance agent approved by Council for a period of one year.
3. A condition is imposed on the Licensee's general insurance licence that requires the Licensee to successfully complete the Ethics for Insurance Brokers course offered through the Insurance Brokers Association of British Columbia on or before **November 5, 2019**.
4. A condition is imposed on the Licensee's general insurance licence that if the Licensee does not successfully complete the above-ordered course as required, the Licensee's licence will remain suspended, without further action from Council, and the Licensee will not be permitted to complete any subsequent annual filings until such time as the course is successfully completed.

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5. The Licensee is assessed Council's investigative costs of \$1,575.00.
6. A condition is imposed on the Licensee's general insurance licence that requires the Licensee to pay the above-ordered investigative costs no later than **February 4, 2019**. If the Licensee does not pay the costs in full by this date, the Licensee will not be permitted to complete his 2019 licence filing until such time as the costs are paid in full.

This order takes effect on the **6th day of November, 2018**.



Ken Kukkonen
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

ALLEN TON-MING FU
(the “Licensee”)

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee acted contrary to his duties to be trustworthy and carry on the business of insurance in good faith, as set out by sections 3 and 4 of Council’s Code of Conduct.

As part of Council’s investigation, on May 7, 2018, a Review Committee met with the Licensee to discuss allegations that the Licensee, contrary to Insurance Corporation of British Columbia requirements, processed his own Autoplan transaction and, while doing so, altered his Claims Rate Scale (“CRS”) on the ICBC system, resulting in the Licensee receiving the maximum CRS discount on his insurance premium.

Prior to the Committee’s meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee was provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Committee prepared a report for Council.

The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its July 10, 2018 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 the Licensee of the action it intends to take under sections 231, 236 and 241.1 of the Act before taking any such action. The Licensee may then accept Council’s decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Licensee.

FACTS

The Licensee was first licensed as a general insurance licensee in British Columbia in November 2007 and has held a Level 2 general insurance agent licence since June 2010. He represented his now former agency from 2008 until July 2017 when his contract was terminated.

In May 2017, the Licensee purchased a new vehicle. While processing his own ICBC Autoplan transaction online, a message denoting the Licensee's ICBC claim history appeared on the screen. There were five previous claims that affected the CRS for the insurance on Licensee's vehicle. The Licensee stated when he selected a claim to view, he was provided a number of choices to explain the claim. The ICBC screen displayed the claim number, a date, and a "Reason to Exclude."

The Licensee used the "Reason to Exclude" functionality in the ICBC system to denote three of the claims as "repaid" and the remaining two claims as "affecting other vehicle". The Licensee stated the system accepted his changes and he observed his CRS change with each entry. The fifth entry resulted in the Licensee receiving the maximum discount. The Licensee then had a colleague sign the insurance documents as the agent but did not disclose to the colleague that he had altered his CRS in ICBC's system.

When questioned about the changes made to the CRS, the Licensee stated it seemed reasonable to him, as three of his past claims were total losses that occurred more than three years ago, so he thought those old total loss claims were "repaid". With respect to the other two claims where he entered "affecting other vehicle," the Licensee stated he had gifted that vehicle to a family member and it was his understanding they would be affected by previous claims of the vehicle on their personal CRS. According to the Licensee, he was not aware he was required to call ICBC to access and confirm the status of his claims history.

In further explaining his actions, the Licensee advised that he had not dealt with total loss situations for insurance clients since the implementation of ICBC's new system in September 2016. The Licensee also stated he completed the requisite ICBC training and thought he could do his own Autoplan transaction if a colleague signed off as the agent, as had been his practice in the past. With regard to servicing customers when there appeared to be a CRS issue, the Licensee said it was his practice to call ICBC.

As agents are not permitted to make alterations to the claims history affecting the CRS unless they obtain permission from ICBC and it is ICBC's decision to determine if a claim should be excluded while conducting an Autoplan transaction, ICBC undertook a review of the transaction. ICBC subsequently charged the Licensee the amount he underpaid for his policy and prohibited him from conducting Autoplan business for a one year period.

The Licensee stated he now understands that processing his own transaction in this manner was inappropriate and that, in his opinion, no further action against him is necessary given the ICBC prohibition.

The ICBC Autoplan manual specifically states that agents or duly licensed employees shall not access their own information on the ICBC system for any reason including, but not limited to, investigating CRS level, quoting premiums and processing their own insurance transaction.

ANALYSIS

Council held that the Licensee's adjustment of his own CRS without obtaining approval from ICBC was at odds with his stated practice of contacting ICBC when CRS issues arose with customers. Council also found that someone with approximately ten years of experience as a general insurance licensee, such as the Licensee, would have known that a claim is not considered repaid simply due to the lapse of time from date of loss. For these reasons, Council did not accept the Licensee's explanations for his conduct and concluded that he improperly used his position as an insurance licensee for personal gain, that being to lower his insurance premium. To Council, the Licensee's actions eschewed the underlying principles of trustworthiness and good faith as set out in the Code of Conduct and thereby warrants significant disciplinary action.

In determining a disposition in this matter, the Committee considered two previous cases.

In the first case, dated April 18, 2016, Council found that a licensee's actions brought into question her competency, trustworthiness, and ability to act in good faith and in accordance with the usual practice of the business of insurance. The licensee had improperly conducted two transactions contrary to ICBC procedures and had attempted to mislead her employer and Council in the matter. The licensee was suspended for one year and a condition was imposed on her licence that she be supervised for a two-year period. She was also required to complete a number of courses, fined \$500.00, and assessed Council's investigative and hearing costs. The suspension arose from the licensee's lack of forthrightness.

In the second case, dated July 12, 2016, the Financial Services Tribunal ("FST") ordered a Level 2 licensee and agency owner suspended for two months (which was a reduction from a one year suspension that had been ordered by Council), prohibited from conducting ICBC Autoplan business for one year, and subject to supervision for one year. The licensee had failed to act in good faith and in a trustworthy manner when he backdated insurance documents to enhance his chances of obtaining coverage for a motor vehicle accident. The FST reduced the suspension from one year to two months on grounds that the Licensee had already suffered serious sanctions from ICBC.

In the present matter, Council also gave consideration to the fact that the Licensee was penalized by ICBC through its action of banning him from conducting Autoplan transactions for a period of one year. However, Council concluded it is necessary to admonish the Licensee's conduct and emphasize to the industry that Council will not tolerate conduct that is self-serving and undertaken for personal gain. Council determined that a one-year suspension would accomplish this and appropriately balance the factors in this matter.

As for any risk the Licensee may pose to the public upon completion of his suspension, Council determined this can be addressed by requiring the Licensee to be supervised by an insurance

agent approved by Council for a one-year period. Council also concluded that the Licensee would benefit from further education to address his self-serving behavior in this matter.

INTENDED DECISION

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

1. Suspend the Licensee's general insurance licence for a period of one year;
2. Impose a condition on the Licensee's general insurance licence that, upon completion of the suspension, the Licensee be subject to supervision by an insurance agent approved by Council for a period of one year;
3. Impose a condition on the Licensee's general insurance licence that requires him to successfully complete the Ethics for Insurance Brokers course offered through the Insurance Brokers Association of British Columbia prior to the completion of the suspension; and
4. Assess the Licensee Council's investigative costs of \$1,575.00.

The Licensee is advised that should the intended decision become final, the investigative costs will be due and payable within 90 days of the date of the order. The Licensee is also advised that failure to pay the investigative costs within the 90 days will result in the Licensee not being permitted to complete his 2019 licence filing until such time as the investigative costs are paid. Further, should the Licensee fail to complete the ordered course as stipulated, the suspension of his licence will continue and he will not be permitted to complete any annual licence filing until the course is successfully completed.

Subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention **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 Licensee does not request a hearing **within fourteen (14) days of receiving this intended decision**, the intended decision of Council will take effect.

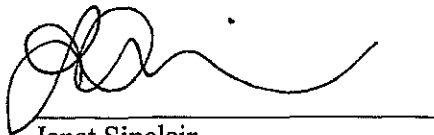
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Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at 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 10th day of October, 2018.

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director
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