

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

NECKER TSZ WING KWOK
(the "Licensee")

ORDER

As Council made an intended decision on May 14, 2013, 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 June 7, 2013; 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 two years.
2. The Licensee is fined \$1,000.00.
3. The Licensee is assessed Council's investigative costs of \$1,750.00.
4. A condition is imposed on the Licensee's general insurance licence that requires him to pay the above-ordered fine and investigative costs no later than **September 26, 2013**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

Although the Licensee voluntarily elected to terminate his general insurance licence effective June 23, 2013, for the purpose of this order the Licensee's suspension will begin on **July 10, 2013**, and end on **July 9, 2015** at midnight.

Order
Necker Tsz Wing Kwok
136288-I1286
June 26, 2013
Page 2 of 2

This order takes effect on the **26th day of June, 2013.**



Rita Ager, CFP, CLU, RHU, CSA
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

("Council")

respecting

NECKER TSZ WING KWOK

(the "Licensee")

INTRODUCTION

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

An investigation report was reviewed by Council at its May 14, 2013 meeting. At the conclusion of its meeting, Council determined the matter should be disposed of in the manner set out below.

PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231, 236, and/or 241.1 of the Act before taking any such action. The Licensee may then accept Council's decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Licensee.

FACTS

The Licensee has held a Level 1 general insurance salesperson licence since 1998. The Licensee has been licensed with his current employer (the "Agency") for approximately eight years and is also authorized to represent a second agency in Burnaby.

The Licensee is also registered with the Real Estate Council of British Columbia, licensed for trading and rental property management.

Originally, Council received a complaint from the Licensee regarding his ex-girlfriend who was also employed at the Agency. In reviewing the complaint with the Licensee on September 13, 2012, the Licensee provided Council staff copies of screen prints from the Agency's internal system, as well as screen prints from the Insurance Corporation of British Columbia's ("ICBC") Broker Query system. The purpose of these documents was to demonstrate instances where the ex-girlfriend was listed as a principal operator on a vehicle when she allegedly should not have been.

When the Licensee was questioned about why he had these screen prints, he claimed he was asked by Council staff to provide the screen prints to facilitate the review of his complaint about the ex-girlfriend. Council staff denied ever requesting this information from the Licensee.

During a concurrent review by ICBC, a statement was obtained from the Licensee wherein he acknowledged he was aware of the privacy requirements, and stated other than obtaining the aforementioned ICBC screen prints for Council staff, he had never before accessed ICBC's systems in an unauthorized manner.

Council staff subsequently obtained records from ICBC showing ten different accesses of the ex-girlfriend's personal information from the ICBC database between November 9, 2011 (the day after the ex-girlfriend ceased to represent the Agency), and July 4, 2012. These accesses occurred with no corresponding ICBC Autoplan transactions. In each instance, the Licensee was able to view the vehicle registration information, the name of the vehicle's registered owner, the principal operator of the vehicle, the principal operator's driver's licence number, the vehicle owner's address, and the effective date of insurance coverage. ICBC records indicate the Licensee searched the ex-girlfriend's information in the ICBC database by entering her driver's licence number, her vehicle's licence plate number, and/or her name.

Although the Licensee originally stated he had only accessed the ex-girlfriend's information on the ICBC database, after being presented with the additional ICBC records showing multiple occurrences the Licensee admitted he accessed the ex-girlfriend's vehicle registration information from the ICBC database on ten occasions.

The Licensee initially explained it was necessary for him to determine the ex-girlfriend's assets as they were involved in litigation resulting from their separation. In a later submission to Council, the Licensee denied that he accessed the ex-girlfriend's records with the intention of determining her assets.

ANALYSIS

Council found the Licensee inappropriately accessed the ex-girlfriend's records in the ICBC database on at least ten occasions. Council further determined the Licensee knew that such access was not permitted, and he acted as a result of an ongoing personal dispute between himself and the ex-girlfriend. Council held that the Licensee failed to act in a trustworthy manner, in good faith, and in accordance with the usual practice of the business of insurance by intentionally failing to adhere to privacy requirements.

Council noted the range of disciplinary measures in such cases has most often included the suspension or cancellation of a licensee's licence for a two-year period, particularly in situations where potential harm existed as a result of improper ICBC database access, or where a licensee acted with the intention of threatening or intimidating a member of the public. In particular, Council considered the following cases: *M. Jalloh*, *D. Henneberry*, *M. Phendler*, *J. Cheema*, and *J. Gill*.

In *M. Jalloh*, Council concluded the licensee improperly accessed the ICBC database to view his ex-girlfriend's personal information for a purpose other than *bona fide* ICBC business on multiple occasions. The licensee did this while he was subject to an RCMP undertaking not to contact her directly or indirectly. Moreover, Council determined the licensee provided inconsistent statements to Council staff, and did not act in a forthright or trustworthy matter throughout the investigation and hearing process. The licensee's licence was suspended for four years and he was assessed hearing and investigative costs.

In *J. Cheema*, the licensee accessed the ICBC database for the purpose of providing confidential information about a vehicle's registered owner to an individual who had an extensive criminal history, including narcotics trafficking, assault, and a weapons offence. Council determined the licensee was aware of the individual's lengthy criminal background and was, or should have been aware, that his disclosure would have put the safety and security of the vehicle's registered owner at risk. Council cancelled the licensee's licence for a minimum period of two years.

In *M. Phendler*, the licensee observed an individual park closely in front of her, and thought the individual had struck her vehicle. The two argued, and the licensee contacted her agency to obtain personal information about the driver and the ownership of the driver's vehicle. The licensee then left a threatening note on the driver's windshield. Council determined that the licensee accessed the driver's personal information in order to intimidate her. Council further found the licensee was not credible in many of her submissions to Council. Council cancelled the licensee's licence for a minimum period of two years.

Similarly, in *D. Henneberry*, the licensee accessed the ICBC database to determine the name of the owner of a vehicle on behalf of a friend who was involved in a road-rage incident. The incident was identified by ICBC as a result of a complaint from the vehicle owner. When originally approached by his employer, the licensee did not admit to having accessed the database. Council noted the licensee had been fully aware that disclosure of the information was contrary to ICBC requirements as well as his employer's procedures, yet he chose to disregard this. Council cancelled the licensee's licence for a minimum period of two years.

In *J. Gill*, the licensee accessed the ICBC database to obtain an ICBC policyholder's address which he provided to a client, despite knowing that the client wanted to place a lien on the policyholder's vehicle. Council determined the licensee was aware that his actions were improper and were therefore intentional, rather than negligent. At the time, the licensee was the co-owner of his agency. Council suspended his licence for one year.

In determining penalty, Council further considered that trustworthiness is a fundamental element of the professional requirements set out in Council's Code of Conduct. In this regard, Council held that a fine of \$1,000.00 was appropriate to address the Licensee's failure to act in a forthright manner when dealing with Council.

After considering the above precedents and all the evidence, Council determined the Licensee's licence should be suspended for a period of two years, in addition to the fine.

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 two years.
2. Fine the Licensee \$1,000.00.
3. Assess the Licensee Council's investigative costs of \$1,750.00.

The Licensee is advised that should the intended decision become final, the fine and investigative costs will be due and payable in full within 90 days of the date of the order. If the ordered fine and investigative costs are still outstanding after the 90 days, the Licensee will not be permitted to complete any annual filing until such time as the fine and investigative costs are paid in full.

The intended decision will take effect on **June 26, 2013**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

The Licensee's suspension will begin on **July 10, 2013**, and end on **July 9, 2015** at midnight.

RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention by **June 25, 2013**. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director.

If the Licensee does not request a hearing by **June 25, 2013**, the intended decision of Council will take effect.

Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at www.fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464
Fax: 250-356-9923
Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the 7th day of June, 2013.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/tp