

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

ROADWAYS INSURANCE AGENCIES INC.
(the "Agency")

ORDER

As Council made an intended decision on March 15, 2011, pursuant to sections 231, 236 and 241.1 of the Act; and

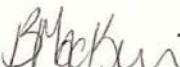
As Council, in accordance with section 237 of the Act, provided the Agency with written reasons and notice of the intended decision dated April 12, 2011; and

As the Agency 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 that:

1. the Agency is fined \$20,000.00;
2. the Agency is assessed Council's investigative costs of \$2,475.00; and
3. a condition is imposed on the Agency's general insurance licence that the Agency pay the above mentioned fine and investigative costs no later than **August 10, 2011**. If the Agency does not pay the ordered fine and investigative costs in full by this date, the Agency's general insurance licence is suspended as of **August 11, 2011**, without further action from Council and the Agency will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

This Order takes effect on the **10th day of May, 2011**.



Barbara MacKinnon, CAIB
Chairperson, Insurance Council of British Columbia

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)
respecting
ROADWAYS INSURANCE AGENCIES INC.
(the “Agency”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether there was compliance by the Agency with the requirements of the Act.

As part of Council’s investigation, on February 14, 2011, an Investigative Review Committee (“IRC”) met with one of the Agency’s owners, the owner’s husband, the Agency’s legal counsel, and the Agency’s nominee, Yik Lun Hui (the “Nominee”), to discuss allegations that the Agency allowed the following misconduct to occur:

- the Insurance Corporation of British Columbia’s (“ICBC”) extranet database was improperly accessed at the Agency on two occasions;
- an illegitimate transfer in ownership of a vehicle was processed at the Agency;
- ICBC premium payments made by clients were mishandled at the Agency; and
- the Agency had insufficient errors and omissions (“E&O”) insurance coverage.

The IRC was comprised of one voting and two non-voting members of Council, all of whom have significant experience in the insurance business. Prior to the IRC’s meeting with the Agency, an investigation report was distributed to the IRC and the Agency for review. A discussion of this report took place at the meeting and the Agency 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 Agency, the IRC made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the IRC's findings and recommended disposition, along with the aforementioned investigation report, was presented to Council at its March 15, 2011 meeting. At this meeting, Council was also presented with additional investigative information which established that the Nominee had conducted improper insurance transactions while the Agency was under investigation.

At the conclusion of its meeting, Council accepted the IRC's recommended disposition and determined that the matter should be disposed of in the manner set out below.

INTENDED DECISION PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Agency of the action it intends to take under sections 231, 236 and/or 241.1 of the Act before taking any such action. The Agency 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 Agency.

FACTS

Based on the information contained in the investigation report, Council made the following findings of fact:

1. In 2009, the Agency was solely owned by a Level 1 general insurance salesperson named Ewen Ruth Fang ("Fang"), who operated the Agency under the business name of Roswell Insurance Agency Inc. It was located in Vancouver, British Columbia.
2. While an owner of the Agency and licensed as a Level 1 general insurance salesperson, Fang accessed ICBC's database for an improper purpose.
3. On November 17, 2009, while the Agency was under Fang's ownership, Council suspended the licence of one of the Agency's employees, Ka Chun Chan ("Chan"). Chan was a Level 1 general insurance salesperson at the time.
4. The suspension of Chan's licence arose after it was determined that while employed at a previous insurance agency, he took ICBC premium payments from six clients and used the money for his own purpose. To conceal his activities, he replaced the premiums he had taken with personal cheques (some of which were counter cheques that do not indicate he is the accountholder), and these cheques later bounced when ICBC attempted to cash them. This resulted in clients receiving premium payment request letters from ICBC, cancellation of certain insurance coverage and, in one situation, a client's licence plate being repossessed by ICBC.

5. On July 6, 2009, during Council's investigation of Chan's conduct, Council staff interviewed the Nominee and inquired if Chan had informed him of the reason for his departure from the previous agency. In response, the Nominee reported that Chan had not. Council advised the Nominee of its concerns with Chan's conduct and that it would be prudent for him to ensure that Chan was at all times adequately supervised.
6. Following this interview, the Nominee spoke with Fang, who owned the Agency at the time. She told him that she had contacted the previous agency that employed Chan and they did not have any concerns or negative comments regarding his conduct.
7. The Nominee reported that Fang was the "boss" and that it was a challenge having an employer who was a Level 1 licensee that he was in charge of supervising.
8. On October 9, 2009, Council staff again spoke with the Nominee and asked what he had been told by Chan about his departure from the previous agency. The Nominee reported that Chan said it had to do with a misunderstanding about premium payments and that it was not a big deal. The Nominee reported that he trusted Chan's response and did not pursue the matter further. Council staff advised the Nominee that he was responsible for the actions of Chan and that he should review Chan's work and question Chan if he submitted a personal cheque or counter cheque as premium payments on behalf of clients.
9. The Nominee reported that he does the batching for the Agency and that he had not noticed any problems with Chan regarding this type of activity since he had been at the Agency. The Nominee reported that he had known Chan for approximately ten years.
10. After Council staff's first discussion with the Nominee about Chan on July 6, 2009, four ICBC transactions occurred where Chan, while acting on behalf of the Agency, arranged ICBC premium financing on his clients' insurance such that monthly premium payments would be withdrawn from his personal account. To facilitate this, Chan supplied personal counter cheques (which do not indicate that he is the accountholder), ostensibly to facilitate his use of client premium payments for his own purposes. Following Council staff's second discussion with the Nominee about Chan on October 9, 2009, two more ICBC transactions of a similar nature occurred which involved Chan.
11. In response to these matters, the Nominee reported that about half of the cheques that Chan turned in for client premium payments were counter cheques. The Nominee was aware of ICBC's policies that agents should not accept counter cheques. However, when Chan provided him with a counter cheque, Chan said that the client was a close personal friend and that he would replace the counter cheque with a regular cheque at a later date.
12. The Nominee reported that he did not know that the counter cheques were from Chan's bank account and believed they were from bank accounts belonging to Chan's clients.

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13. ICBC Autoplan Manual, Section 18.2 Enrolment of a Financed Policy, "Void Cheque/Proof of Account", outlines the process for setting up financing on an ICBC policy and it specifically states that counter cheques are not acceptable.
14. The Nominee stated that he has been the batcher of the Agency since he became the Nominee. In 2009, the Agency performed approximately eight to ten transactions per day and would batch every two to three days.
15. The Nominee stated that Chan brought in approximately ten to fifteen transactions per month to the Agency. Whenever Chan had a transaction to complete, he would stay in the office. He also worked at the office for approximately ten hours per month.
16. On December 1, 2009, Council staff attended the Agency to conduct an audit and obtained a copy of the Agency's E&O insurance policy.
17. The Agency's E&O policy had an aggregate limit of liability of only \$1,000,000.00. This is contrary to Council Rule 7(11) which requires a licensee to maintain a minimum aggregate limit of E&O insurance of at least \$2,000,000.00.
18. The Nominee reported that Fang was the person who obtained the E&O policy and advised him that the Agency had sufficient coverage.
19. The Nominee stated that once Council staff brought this to his attention, he corrected the matter. On April 28, 2010, Council staff attended the Agency and obtained a copy of the E&O policy from the Nominee which illustrated a \$2,000,000.00 aggregate limit.
20. On or around January 29, 2010, the Agency was purchased from Fang in equal shares by two individuals, one of whom was Jaswinder Singh Gill ("Gill"). Under the new ownership, the Agency increased its number of agents, moved its location to Surrey, British Columbia, and changed its business name to Roadways Insurance Agencies Inc.
21. On April 2, 2010, a client of the Agency called Gill on his cell phone and requested the residential address associated with a certain licence plate number. The client advised Gill that he wanted to confirm the address of the person who owned this licence plate and that he wanted to place a lien on the vehicle. Gill did not enquire further about the nature of the lien.
22. Gill accessed the ICBC extranet database for this licence plate, obtained the person's address from the database, and confirmed the address for the client. According to Gill, the only information he looked for on the database was the address.

23. On April 26, 2010, ICBC investigators attended the Agency and met with Gill and the Nominee. At that time, Gill and the Nominee were advised that an individual complained to ICBC that his personal information may have been accessed and released. Gill ultimately admitted to the aforementioned misconduct.
24. The Agency's legal counsel advised that ICBC is investigating Gill's improper ICBC database access and it is likely that Gill will be restricted by ICBC from engaging in any further ICBC business. The Agency further commented that it is considering its options for a new ownership structure.
25. In 2010, while the Agency was part of a Council investigation, the Nominee helped a client avoid paying a debt owed to ICBC by processing a transfer of ownership on the client's vehicle from the client's name into the name of another person ("Person X") without Person X's knowledge or consent, with the client having forged the signature of Person X on the transactional documentation. Further, within an approximate six month period, the Nominee allowed four insurance renewal transactions to be processed on the same vehicle with Person X's signature forged by the client on each transaction.

LEGISLATION

Rule 7(8) of the Council Rules

(8) A licensee must comply with Council's Code of Conduct, as amended from time to time.

Section 231 of the Act

Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Council may suspend, cancel or restrict licences and impose fines

- (1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee
 - (a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,
 - (b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,
 - (c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
 - (d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,
 - (e) has contravened section 79, 94 or 177, or
 - (e.1) has contravened a prescribed provision of the regulations,

then the council by order may do one or more of the following:

- (f) reprimand the licensee or former licensee;
- (g) suspend or cancel the licence of the licensee;
- (h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;

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- (i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
 - (j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;
 - (k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount
 - (i) not more than \$20 000 in the case of a corporation, or
 - (ii) not more than \$10 000 in the case of an individual.
- (2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.
- (3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.
- (3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.
- (4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
 - (a) were employed by that agent or adjuster at the time of the suspension, and
 - (b) remain employees of that agent or adjuster at the time of reinstatement,are also reinstated without the necessity of the council taking any action.

Section 236 of the Act

Part 7 – Administration of the Regulation of Financial Institutions

Division 2 – Insurance Council of British Columbia

Power to impose conditions

- (1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization permit or licence may
 - (a) impose conditions that the person considers necessary or desirable in respect of
 - (i) an order referred to in section 235(1),
 - (ii) a consent referred to in section 235(2),
 - (iii) a business authorization,
 - (iv) a permit issued under section 187(1), or
 - (v) a licence issued under Division 2 of Part 6, and
 - (b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.
- (2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.
- (3) Except
 - (a) on the written application or with the written permission of the holder, or
 - (b) in the circumstances described in section 164, 231 or 249(1),a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of

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- (c) a business authorization is exercisable only on or before its issue date, or
 - (d) a permit under section 187(1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue date
- with effect on and after that date.

Section 241.1 of the Act

Part 7 – Administration of the Regulation of Financial Institutions

Division 2 – Insurance Council of British Columbia

Assessment of Costs

- (1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, or either or both of the following in accordance with the regulations:
 - (a) an investigation;
 - (b) a hearing.
- (2) Costs assessed under subsection (1)
 - (a) must no exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and
 - (b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing.
- (3) If a person fails to pay costs as ordered by the date specified in the order or by the date specified in the order made on appeal, if any, whichever is later, the commission, superintendent or council, as the case may be, may file with the court a certified copy of the order assessing the costs and, on being filed, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the court.

ANALYSIS

In considering the above facts, Council found that the Agency failed to act in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance, as required under section 231(1)(b) of the Act.

There was no dispute that the ICBC extranet database was improperly accessed on two occasions at the Agency; that the Agency failed to maintain the required amount of E&O insurance; and that one of the Agency's employees had manipulated ICBC transactions on several occasions to conceal attempts to misuse client premium payments. The Nominee also admitted to knowingly processing the transfer of ownership of a vehicle to a third party and placing insurance on this vehicle under the third party's name on several occasions without the third party being present, and with the third party's signature being forged on the required transactional documentation.

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While the extent of the Nominee's misconduct continues to be investigated, Council found that the Agency has been mired in a number of problems over the past few years which were allowed to perpetuate through a past owner as well as one of its current owners, and the Nominee contributed to these problems. Ultimately, by not taking certain requirements seriously, the Agency placed the public at risk.

To Council, a culture of impropriety existed at the Agency which reflected on its trustworthiness, competence, and ability to carry on the business of insurance in good faith and in accordance with usual practice, and without any substantial changes being made at the Agency, it would be unsuitable for licensing.

Council did, however, consider and accept that the Agency is in the midst of severing ties with one of the current owners who perpetuated some of the problems, and that the Agency is in the process of finding a different and capable nominee. Council also accepted that the other Agency owner, who intends to remain with the Agency, appears to have a legitimate intent to rectify the past problems and to implement proper procedures to ensure that similar issues do not arise in future. Council found all of this to be positive and was of the position that the Agency should be given the opportunity to make the changes.

Notwithstanding, Council determined that the Agency should not be completely absolved of its responsibility in these matters, and that because the problems were of an egregious nature, they should not be tolerated and the Agency should be penalized significantly.

In determining an appropriate disposition, Council considered the decision of *Apex Insurance Services Ltd. et al* which, over the course of a four year period, the agency and its licensees processed Autoplan transactions on their own vehicles and, in some cases, the vehicles of other family members primarily for the purpose of generating commissions and fees. The agency nominee allowed some of the Autoplan transactions to be processed at the agency's office where she held the position of nominee. Council determined that the nominee failed to meet her supervisory requirements and held that the agency, the nominee, and its licensees failed to act in a trustworthy and competent manner, in good faith and in accordance with the usual practice of the business of insurance. As a result, among other things, the nominee's licence was downgraded for a minimum period of two years to a Level 2 general insurance agent's licence and the agency was fined \$20,000.00.

Council also considered the decision of *Accost Insurance and Financial Centre Inc.* which entered into a Settlement Agreement with ICBC after its owners were found to have engaged in two material breaches of the agency's ICBC Autoplan Agency Agreement. The breaches involved the improper issuance and voidance of ICBC Temporary Operating Permits and inappropriate access of ICBC's database. Council determined there was a culture of unethical practices at the agency and, as a result, the agency was fined \$20,000.00 and was responsible to pay Council's costs associated with the investigation and hearing.

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Council found the Agency's current situation bore some resemblance to the aforementioned cases and therefore a similar penalty against the Agency would be appropriate.

In the meantime, to address any risk to the public that may exist while the Agency undertakes its proposed changes, Council noted that it placed a condition on the Agency's licence which requires that, by April 12, 2011, the Agency appoint a new nominee who must meet specific criteria. Council further noted that the Nominee's licence was suspended effective March 15, 2011, pending further investigation into his misconduct.

INTENDED DECISION

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

1. fine the Agency \$20,000.00; and
2. assess Council's investigative costs of \$2,475.00.

The Agency is advised that should the intended decision become final, the costs and fine, which will form part of the Order, will be due and payable within 90 days of the date of the Order.

The intended decision will take effect on **May 10, 2011**, subject to the Agency's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Agency wishes to dispute Council's findings or its intended decision, the Agency 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 Agency must give notice to Council by delivering to its office written notice of this intention by **May 9, 2011**. 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 Agency does not request a hearing by **May 9, 2011**, the intended decision of Council will take effect.

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Even if this decision is accepted by the Agency, 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 **12th day of April, 2011**.

For the Insurance Council of British Columbia


Agnes Healey
Deputy Executive Director

AH/tlh