

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

ERNIE NGUYEN
(the “Licensee”)

ORDER

As Council made an intended decision on April 11, 2017, pursuant to sections 231 and 236 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 July 19, 2017; 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 and 236 of the Act, Council orders:

1. The Licensee is fined \$5,000.00.
2. A condition is imposed on the Licensee’s general insurance licence that requires the Licensee to pay the above-ordered fine no later than **November 8, 2017**. If the Licensee does not pay the ordered fine in full by this date, the Licensee’s general insurance licence is suspended as of **November 9, 2017**, without further action from Council and the Licensee will not be permitted to complete any subsequent annual filings until such time as the ordered fine is paid in full.

This order takes effect on the **8th day of August, 2017**.



Ken Kukkonen
Vice Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

ERNIE NGUYEN
(the “Licensee”)

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 by entering false information relating to Insurance Corporation of British Columbia (“ICBC”) Autoplan transactions in an effort to override outstanding toll bridge debts.

An investigation report was considered by Council at its April 11, 2017 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 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 Licensee.

FACTS

The Licensee has been licensed in British Columbia as a Level 1 general insurance salesperson (“Salesperson”) since 2004.

Overview: Toll Bridge Debt

In June 2015, ICBC commenced an investigation after becoming aware that some insurance licensees may be entering false information relating to ICBC Autoplan in an effort to override outstanding toll bridge debts. Under Volume 1, section 12.5 of the ICBC Autoplan Manual, the *Toll Bridge Restriction* requirements state that “customers who have unpaid toll bridge fees are subject to a refuse to issue (RTI) by ICBC on their driver licences, vehicle licences, and insurance policies.”

For the period under review, there were two toll bridge administrators, Quickpass for the Golden Ears Toll Bridge (“GETB”) and TReO for the Port Mann Toll Bridge (“PMTB”). Since the initial investigation, TReO now has the capacity to administer both bridges.

An RTI restriction related to toll bridge debt was applied differently depending on the bridge. For the PMTB, an RTI restriction was applied if more than \$25.00 was owed and the toll was over 90 days past due; and for GETB, an RTI restriction was applied if the toll debt was over 150 days past due.

An insurance licensee was not able to accept payment or make payment arrangements for toll bridge debts on behalf of a customer. In such situations, an insurance licensee was to direct the customer to contact the applicable bridge administrator to pay the outstanding toll bridge debt. An insurance licensee was then required to confirm the customer had paid the toll bridge debt in full before processing an ICBC Autoplan transaction.

ICBC Investigation

An RTI restriction relating to a toll bridge debt could be overridden if an insurance licensee entered a receipt number that was issued by Quickpass or TreO to a customer upon the payment of an outstanding toll bridge debt. Valid receipt numbers contain a combination of letters and numbers.

For the 18-month period from January 1, 2014 to June 15, 2015, ICBC compared all of the valid receipt numbers issued to customers by Quickpass and TreO, to all the receipt number entries made by every insurance licensee into ICBC’s system for the same period. This resulted in a list of false receipt numbers, which included details on the insurance licensee who completed the transaction and the name of the customer involved in the insurance transaction.

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ICBC found that, for the 18-month period reviewed, the Licensee entered 116 false toll bridge receipt numbers when processing insurance transactions. The use of the false toll bridge receipt numbers resulted in the override of toll bridge debts and allowed ICBC Autoplan transactions to proceed without the toll bridge debt being collected.

In an interview with ICBC on June 2, 2015, the Licensee stated that he entered false receipt numbers he created for his regular clients for the GETB. In some cases, his clients would ask him if he could override the debt for them. The Licensee stated he would pick a number at random and enter a false receipt number in order to process the ICBC insurance transaction.

On June 9, 2015, the Licensee wrote to ICBC stating that he did not appreciate the severity of his actions when he overrode GETB debts. He noted that in some of the cases where he provided a false toll bridge receipt number, the client had provided proof the toll bridge debt was paid by showing him their online banking transactions.

Following the ICBC investigation, the Licensee completed an ethics course at the request of his nominee.

ANALYSIS

Council determined that the Licensee intentionally entered false receipts in an attempt to facilitate insurance transactions without inconveniencing his clients. Council determined that as an experienced Salesperson, the Licensee knew or ought to have known this conduct was inappropriate and that his actions were a serious breach of his responsibilities.

Council acknowledges that insurance licensees face significant pressure from customers to complete insurance transactions in a timely manner. However, insurance licensees are also expected to carry on the business of insurance in a competent and trustworthy manner, in good faith, and in accordance with the usual practice of the business of insurance. In addition, an insurance licensee has a duty to an insurer to comply with the process established for completing an insurance transaction on behalf of that insurer. The Licensee's actions in entering false toll bridge receipt numbers breached that responsibility to ICBC.

By failing to follow ICBC's procedure by overriding the toll bridge debt requirements, Council determined the Licensee's actions brought into question his trustworthiness, and his ability to act in good faith and in accordance with the usual practice of the business of insurance.

Council determined the Licensee's conduct was a serious breach of his responsibilities and it is necessary to send a clear message to both the Licensee and the industry that such a serious breach of practice is unacceptable. Council concluded that a significant fine is appropriate in the circumstances.

INTENDED DECISION

Pursuant to sections 231 and 236 of the Act, Council made an intended decision to fine the Licensee \$5,000.00.

The Licensee is advised that should the intended decision become final, the fine will be due and payable within 90 days of the date of the order. In addition, failure to pay the fine within the 90 days, will result in the automatic suspension of the Licensee's general insurance licence and the Licensee will not be permitted to complete any annual filing until such time as the fine is paid in full.

The intended decision will take effect on **August 8, 2017**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

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 **August 7, 2017**. 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 **August 7, 2017**, 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 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 **19th day of July, 2017**.

For the Insurance Council of British Columbia



Gerald Matier
Executive Director
604-695-2001
gmatier@insurancecouncilofbc.com

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