

In the Matter of

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

and

The **INSURANCE COUNCIL OF BRITISH COLUMBIA**
("Council")

and

CHERYL LEE DAS
(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 June 21, 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 **October 12, 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 **October 13, 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 **12th day of July, 2017**.


Michael Connors, CIP, CRM
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

CHERYL LEE DAS
(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 Council 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 held a general insurance licence in British Columbia since 2000. She obtained a Level 3 general insurance agent licence in September 2007, which was subsequently amended to a Level 2 general insurance agent licence in March 2017.

Overview: Toll Bridge Debt

In June 2015, the 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.

ICBC found that, for the 18-month period reviewed, the Licensee entered 32 false receipt numbers into ICBC’s system, which resulted in the toll bridge debts being overridden and allowing 32 ICBC Autoplan transactions to proceed, contrary to the ICBC Autoplan Manual.

On July 13, 2015, the Licensee was interviewed by ICBC. She stated that she had clients with toll bridge debt who did not have a credit card to pay the toll bridge debts and whose insurance would expire at midnight. The Licensee stated she would enter false receipt numbers for these clients, who she determined were in a difficult position. ICBC records show that 29 of the 32 false receipt numbers entered by the Licensee were entered within regular business hours when the toll bridge office was open and the toll bridge debt payments could have been paid, allowing the client to renew their Autoplan insurance before it expired.

The Licensee stated to ICBC that she did not think she was doing anything wrong because it was just a toll. The 32 Autoplan transactions involving bypassed toll bridge debts all resulted in compensation for the Licensee.

ANALYSIS

Council determined that the Licensee intentionally entered false receipt numbers in an attempt to facilitate insurance transactions on behalf of her clients. Council determined that, as an experienced insurance agent, the Licensee should have known this conduct was inappropriate and that her actions were a serious breach of her responsibilities.

Furthermore, Council noted that the Licensee never raised her practice with her agency or nominee, nor did she contact ICBC to get further guidance. Council was troubled by the number of times the Licensee entered false receipt numbers. Council noted that, with each of the 32 false receipt number transactions the Licensee entered to facilitate an insurance transaction, the Licensee benefited financially.

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 the 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 when overriding the toll bridge debt requirements, Council determined the Licensee's actions brought into question her trustworthiness, and that she had failed 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 her 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 this matter.

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 **July 10, 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 **July 11, 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 **July 11, 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.

Intended Decision
Cheryl Lee Das
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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 **21st day of June, 2017.**

For the Insurance Council of British Columbia



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

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