

In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

JENNIFER LAI YEE CHIU
(the “Licensee”)

ORDER

As Council made an intended decision on November 28, 2022 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 November 28, 2022; 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 that:

- 1) The Licensee is fined \$4,000.00, to be paid by March 20, 2023;
- 2) The Licensee is required to complete the following courses, or equivalent courses as acceptable to Council, by March 20, 2023:
 - a. Privacy Compliance Course – How to Protect Your Brokerage Part 1 and 2 course, offered through the Insurance Brokers Association of BC; and
 - b. the Council Rules Course for general insurance salespersons and agents.

Collectively, the “Courses”.

- 3) The Licensee is assessed Council’s investigation costs of \$1,900.00, to be paid by March 20, 2023; and

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- 4) A condition is imposed on the Licensee's general insurance licence that failure to pay the fine and investigation costs and complete the Courses by March 20, 2023 will result in the automatic suspension of the Licensee's licence, and the Licensee will not be permitted to complete the Licensee's 2024 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.

This Order takes effect on 19th day of December, 2022



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")
respecting
JENNIFER LAI YEE CHIU
(the "Licensee")

1. Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Licensee breached the Council Rules and/or the Code of Conduct (the "Code") related to allegations that the Licensee took client information from an insurance agency (the "Previous Agency") and contacted clients to transfer business from the Previous Agency to another agency (the "New Agency").
2. On September 6, 2022, as part of Council's investigation, a Review Committee (the "Committee") comprised of Council members met with the Licensee and her legal counsel via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee and the Licensee and the Licensee's legal counsel prior to the meeting. A discussion of the investigation report took place at the meeting and the Licensee was given an opportunity to make submissions and provide further information.
3. Having reviewed the investigation materials and having discussed the matter at the September 6, 2022 meeting, the Committee prepared a report for Council which was reviewed by Council at its November 1, 2022 meeting. Council determined that the matter should be disposed of in the manner set out below.

PROCESS

4. 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

Background

5. The Licensee was first licensed with Council as a Level 1 general insurance salesperson (“Level 1 Salesperson”) on November 12, 1992 and was licensed as a Level 3 general insurance agent (“Level 3 Agent”) from April 19, 1996 to December 1, 2020. The Licensee has been licensed as a Level 2 general insurance agent (“Level 2 Agent”) since December 1, 2020.
6. The Licensee has maintained an authorization to represent (“ATR”) the New Agency since January 4, 2021. The Licensee was the nominee of the Previous Agency between September 1, 2004 and December 1, 2020.
7. Council received a letter from the owner and current nominee of the Previous Agency (the “Complainant”). The letter included a list of policies for which the Previous Agency had received letters of brokerage (“LOBs”), transferring the business to the New Agency.
8. The Complainant informed Council staff that the Licensee had been the branch manager at the Previous Agency for 15 years until the Licensee was laid off in December 2020 as business was affected by COVID-19.
9. Subsequently, the Complainant started receiving LOBs from insurance companies indicating that the Previous Agency’s clients were leaving for another agency. The Complainant advised that all the LOBs were for policies relating to personal lines insurance, excluding Autoplan renewals.
10. A copy of the Licensee’s employment contract (the “Contract”), signed on September 30, 2004, was provided to Council. [REDACTED]
11. The Complainant confirmed that the Previous Agency started receiving LOBs after the Licensee left, and the Licensee was the producer for most of the accounts. The Previous Agency shares commissions evenly with producers for new business and renewals; the Licensee’s commission payments were settled monthly by cheque and were made payable to her husband (the “Husband”).
12. Further, the Complainant stated that the Licensee had arranged for commission payments to be paid out to the Husband; however, there was no written agreement for this arrangement. The Husband was not an employee of the Previous Agency. The

Complainant provided six months' worth of commission cheques made payable to the Husband. The Licensee's mailing address and producer code appeared on the cheques.

13. The Licensee claimed that the Contract allowed her to take clients from the Previous Agency and confirmed that there was no documentation establishing her right to set up her own book of business. The Licensee maintained that most of her transactions between January 2021 and April 2021 were for her own clients and less than 15 were general clients of the Previous Agency.
14. The Licensee also explained that while working at the Previous Agency, she was told to keep clients' contact information in her personal phone so they could easily reach her for their insurance needs; some clients could have obtained the Licensee's phone number through friends, or from the Previous Agency's calendars, which were gifted to clients annually.
15. On September 1, 2021, Council conducted an interview with the Licensee. The Licensee confirmed the following:
 - a) the Licensee was allowed to take her clients away when leaving the Previous Agency. She usually contacted clients via instant messaging service providers;
 - b) the Licensee did not know that the Husband was receiving commission payments on her behalf, despite being the nominee of the Previous Agency, because she was only responsible for the underwriting and contracts with the clients and was not involved in the accounting. The Licensee stated that she could not receive commissions as the nominee;
 - c) the Licensee indicated that the commission payments did not belong to her, and that she was unaware of this incident until the interview; and
 - d) the Licensee denied contacting clients of the Previous Agency and asking them to move their business to the New Agency.
16. The Previous Agency received a total of 73 LOBs from January 2021 to September 2021 for policy renewal dates up until October 31, 2021. Of the 73 LOBs, 50 instances (68%) were for the Licensee's existing clients with the Previous Agency and 23 instances (32%) were for house clients and other producers. Of these 23 clients, 17 (74%) renewed with the New Agency in 2021, with 15 of the 17 policies being directly coded under the Licensee's portfolio at the New Agency.

17. On September 2, 2022, the Licensee submitted to Council three unverified sample letters from clients regarding renewal of policies, and unverified consent forms from six clients regarding collection of personal information.

The Licensee's Submissions to the Committee

18. The Licensee stated that she always prioritizes the interests of her clients and that she has a great relationship with her clients. She explained that over 70% of her clients have been using her insurance services for ten to fifteen years. Further, she claimed that her clients from the Previous Agency contacted her on the phone and/or visited her at the New Agency, requesting the Licensee to continue helping them with their insurance needs.
19. The Licensee claimed that she began to obtain the clients' written consent in 2018 to keep their records, including contact information. However, the Licensee did not keep a copy of the clients' written consent forms because she could obtain same from the clients when needed.
20. Regarding the commission payments to the Husband, the Licensee stated that she did not intend to mislead Council. She stated that she knew the Husband was receiving referral fees; however, she did not equate referral fees as commission fees. She was apologetic for this misunderstanding.
21. As a nominee, the Licensee explained that the Previous Agency refused to pay her commission; therefore, the Previous Agency arranged with the Husband to pay him a referral fee, which was lower than the commissions the Licensee would have received. She claimed that she did not take issue with the arrangement because money is not as important to her.
22. The Licensee stated that she was not permitted to access the accounting system of the Previous Agency, and that her only duty was to lead the front line of the agency. She was not involved with payroll. The Licensee acknowledged that she did not fully understand the responsibilities of a nominee in relation to the Council Rules and Code of Conduct. For example, the Licensee acknowledged that payroll would have been part of her responsibility as a nominee.
23. The Licensee confirmed that she did not initiate any communication with her clients after she left the Previous Agency; however, the Licensee provided conflicted statements as she also acknowledged that she contacted approximately 60% of her clients.

24. The Licensee admitted that she brought her phone from the Previous Agency to the New Agency. The Licensee confirmed that she kept client names and phone numbers on the phone. The Licensee stated that the clients gave her verbal instructions to notify them when she left the Previous Agency.

ANALYSIS

25. Council considered the investigation report, the Committee's report to Council, and the Licensee's submissions and determined that the Licensee's conduct amounted to clear breaches of section 3 ("Trustworthiness"), section 4 ("Good Faith"), section 5 ("Competence"), section 12 ("Dealing with the Insurance Council of British Columbia"), and section 13 ("Compliance with Governing Legislation and Council Rules") of the Code. Council Rule 7(8) requires licensees to comply with the Code.

26. With respect to the principles of trustworthiness and good faith, Council found that the Licensee demonstrated a willful disregard of her duties and obligations under Council Rules and the Code, since she did not understand the expectations associated with being a nominee of an insurance agency. Further, the Licensee admitted to using the clients' personal information to solicit them to renew their policies, which Council determined was unauthorized access and use of confidential client information.

27. In addition, Council was perplexed that the Licensee did not know the Husband was compensated over the years while she was employed at the Previous Agency. Council found that the remuneration the Husband received was, in effect, commission payments. As the nominee, she was responsible to Council for all activities of the Previous Agency, including payroll, which the Licensee admitted during the Committee meeting. Also, Council was troubled by the Licensee's admission that she kept confidential client information, including telephone numbers, on her phone. Council did not believe the Licensee's actions were honest mistakes; rather, the actions were contrary to the usual practice of the business of insurance.

28. Although the Licensee apologized for her misstatements to Council during its investigation, Council noted that the Licensee did not apologize until the Committee meeting, even though she had opportunities to do so during the investigation.

29. As for Council Rules, Council concluded that the Licensee breached Council Rule 7(1). On a balance of probabilities, Council did not believe that the Licensee had express written consent from all her clients to retain and use their personal information. Council noted that it is odd for a broker to ask each client to sign the above-noted consent form. To that

end, Council had concerns with the Licensee's credibility, given the Licensee's contradictory statements regarding client contact and commission payments. Even though the Licensee claimed that the Husband only received referral fees, which should be a fixed sum of money, Council noted that the amounts on the cheques included decimal numbers.

30. Council took several aggravating factors into consideration. For instance, Council noted that the misconduct took place over a period of time and involved many customers. Council considered the harm to the Previous Agency as well as the financial benefit the Licensee received from the misconduct, since she was paid commission on every new client brought to the New Agency. Council noted the Licensee's experience in the insurance industry as an aggravating factor, having been general licensed since 1992 and a nominee for over 15 years.
31. Another aggravating factor was the Licensee's contradictory statements during the investigation. In all, Council did not believe the Licensee to be truthful. Council also considered the misstatements that the Licensee made.
32. In terms of mitigating factors, Council accepted that the Licensee does not have a prior discipline history with Council and that she was cooperative during the investigation. Council further accepted that the Licensee appeared remorseful and acknowledged some misconduct. Lastly, Council noted that there was no known harm to clients.
33. Council is not bound by precedent to follow the outcomes from prior decisions, but similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case.
34. With respect to the Licensee's misconduct, Council considered the cases of *Jason Robert Verbeke* (April 2018), *Dolores Gertrude Findlater* (February 2018), *Douglas Arthur Fredell* (December 2016), and *Miodrag Subin* (April 2016).
35. *Jason Robert Verbeke* (April 2018) concerned a Level 2 Agent licensee who took clients' information on a spreadsheet when he left an agency. The licensee's position was that the clients were his and that he had a right to the information. He also claimed to have the clients' verbal consent. Council accepted that the licensee genuinely believed that the clients were his own, but he had not obtained express consent from the clients to keep the client information. Council ordered that the licensee take a privacy course and the Council Rules Course through the Insurance Brokers Association of British Columbia ("IBABC"). In addition, the licensee was fined \$2,500 and was assessed investigation costs of \$2,037.50.

36. *Dolores Gertrude Findlater* (February 2018) concerned a Level 2 Agent licensee who took copies of client records and Insurance Corporation of British Columbia (“ICBC”) documents while packing her belongings. The licensee stated that she inadvertently took the ICBC documents and returned them to the agency when she realized the mistake. In respect of the client records, the licensee defended her decision to take them as she thought that they belonged to her. Council determined that while there was no indication that the licensee had used client information inappropriately, she had improperly compiled, retained, and stored confidential client information without the knowledge and consent of the clients. Council ordered that the licensee take a privacy course through the IBABC. In addition, the licensee was fined \$2,500 and was assessed investigation costs of \$1,118.75.
37. *Douglas Arthur Fredell* (December 2016) concerned a Level 2 Agent licensee who represented his former agency for 15 years and had a contractual right to transition his clients from the former agency to a new agency. During the transition, the licensee emailed client information to his personal email account and saved information on his personal computer. For 18 clients, the licensee transferred their information to the new agency without obtaining letters of brokerage. Council determined that the licensee’s compilation, retention, and storage of confidential client information on his personal computer and then, subsequently, transferred to the new agency, without knowledge and consent of the clients, was contrary to the usual practice of the business of insurance. Council ordered that the licensee take a privacy course and the Council Rules Course through the IBABC. In addition, the licensee was fined \$2,500 and was assessed investigation costs of \$875.
38. *Miodrag Subin* (April 2016) concerned a Level 2 Agent licensee who was found with a flash drive of confidential information relating to 136 customers he had serviced through his former agency. The licensee did not have consent from his former agency or customers. Council determined that the licensee’s failure to consider the need for the customers’ consent was inappropriate, and that the licensee’s actions were aggravated by the fact that the information was kept on an unsecured memory stick and then subsequently left unsecured at the licensee’s new agency, where it was discovered and copied. Council ordered that without express knowledge and consent of the nominee of any insurance agency, the licensee must not remove from the agency’s offices any information about the agency’s clients. In addition, the licensee was fined \$2,500 and was assessed investigation costs of \$1,000.
39. Council determined that *Verbeke* and *Fredell* were most instructive as the facts were similar to the subject case. Both the licensees in *Verbeke* and the subject case claimed to

have the clients' consent to retain and use the information; however, in both cases there was a lack of clear, express consent from all clients. On the other hand, in both cases there did not appear to be client harm. *Fredell* was relevant as the case involved a contractual right to transition clients. Also, both the licensees in *Fredell* and the subject case have been employed by their respective agencies for a similar length of time. That said, the Licensee took several house clients of the Previous Agency, which Council determined was more egregious.

40. Council has determined that investigation costs should be assessed against the Licensee. As a self-funding regulator, the cost to investigate the misconduct of a licensee or former licensee should not be borne by members of the insurance industry unaffiliated with the investigation. This is particularly true when the evidence is clear that the actions of a licensee or former licensee have amounted to misconduct.

INTENDED DECISION

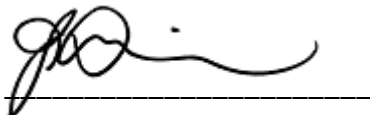
41. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:
- (a) Fine the Licensee \$4,000, to be paid within 90 days of the date of Council's order;
 - (b) Require the Licensee to complete the following courses (collectively, the "Courses"), or equivalent courses as acceptable to Council, within 90 days of the date of Council's order:
 - i) Privacy Compliance Course – How to Protect Your Brokerage Part 1 and 2 course, offered through the Insurance Brokers Association of BC; and
 - ii) Council Rules Course for general insurance salespersons and agents;
 - (c) Assess the Licensee Council's investigation costs of \$1,900.00, to be paid within 90 days of the date of Council's order; and
 - (d) Impose a condition on the Licensee's general insurance licence that failure to pay the fine and investigation costs within 90 days and complete the Courses within 90 days will result in the automatic suspension of the Licensee's licence, and the Licensee will not be permitted to complete the Licensee's 2024 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.

RIGHT TO A HEARING

42. 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 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 14 days of receiving the intended decision, the intended decision of Council will take effect.**
43. Even if the Licensee accepts this decision, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority (“BCFSA”) still has a right to appeal to the Financial Services Tribunal (“FST”). The BCFSA 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 visit the guide to appeals published on their website at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

Dated in Vancouver, British Columbia, on the 28th day of November, 2022.

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director