

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

JASWINDER SINGH GILL
(the "Licensee")

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 Licensee with written reasons and notice of the intended decision dated April 7, 2011; 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 suspension of the Licensee's general insurance and life and accident and sickness insurance licences for a period of one year, commencing May 3, 2011 and ending May 2, 2012;
2. the Licensee is prohibited from being a director, officer, partner or majority shareholder of an insurance agency for a minimum period of two years;
3. a condition imposed on each of the Licensee's licences requiring that he successfully complete an ethics course, as approved by Council, before the suspensions on his licences be removed;
4. the Licensee is assessed Council's investigative costs of \$1,175.00; and

ORDER

Jaswinder Singh Gill

File Number: 157842-I750

May 3, 2011

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5. as a condition of this Order, the Licensee is required to pay the investigative costs by **August 3, 2011**. If the Licensee does not pay the investigation costs in full by this date, the Licensee's licences will remain suspended and the Licensee will not be permitted to complete any annual filing until such time as the ordered costs are paid in full.

This Order takes effect on the **3rd day of May, 2011**.



Barbara MacKinnon, CAIB
Chairperson, Insurance Council of British Columbia

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")
respecting
JASWINDER SINGH GILL
(the "Licensee")

INTRODUCTION

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

As part of Council's investigation, on February 14, 2011, an Investigative Review Committee ("IRC") met with the Licensee and his legal counsel to discuss allegations that the Licensee accessed the Insurance Corporation of British Columbia's ("ICBC") extranet database and looked up confidential information on a person at the request of a third party.

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 Licensee, an investigation report was distributed to the IRC and the Licensee for review. A discussion of this report took place at the meeting and the Licensee 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 Licensee, 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 the conclusion of its meeting, Council 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 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

1. The Licensee has been licensed with Council since 2003; is currently licensed as a Level 2 general insurance agent; and has been licensed as a life and accident and sickness insurance agent since December 2007.
2. On or around January 29, 2010, the Licensee became a co-owner of Roadways Insurance Agencies Inc. (the "Agency") along with one other person. They purchased the Agency in equal shares from Ewen Ruth Fang. The Licensee is currently a director and officer of the Agency.
3. Prior to purchasing the Agency, the Licensee had not worked at the Agency. The Licensee stated that he had worked in the industry on a part time basis, except in more recent years when he began to work in a full time capacity.
4. One of the Licensee's insurance clients introduced another individual ("Client X") to the Licensee in February or March 2010, to insure Client X's van.
5. After insuring Client X's van, the Licensee did not have any further communication with Client X until April 2, 2010.
6. On April 2, 2010, the Licensee received a telephone call from Client X advising the Licensee that he wanted to confirm an address of a person owning a certain British Columbia licence plate number.
7. Client X provided the Licensee with the address of the person, asked for confirmation of the person's address, and advised the Licensee that he wanted to place a lien on the person's vehicle. The Licensee did not enquire about the nature of the lien.
8. The Licensee stated that he was "caught off guard" by Client X's telephone call and that it did not seem to him that he was doing anything wrong by looking up the information on ICBC's database.
9. After he obtained the information from the database, the Licensee confirmed for Client X the address associated with the person's licence plate number.
10. The Licensee claims that he did not access any information other than the address of the person. He further claims that Client X did not pay him for the information, did not threaten him, and did not promise to buy additional insurance from him in exchange for the information.
11. The Licensee claims that he did not know the person.
12. On November 27, 2009, Council issued a Notice advising the industry that penalties for unauthorized access to the ICBC database is considered a serious breach of confidential information and there had been cases where licensees have had their licences cancelled for a minimum period of two years.

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;
 - (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
 - (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 datewith 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 not 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 information, Council found that the Licensee did not act in a trustworthy manner, in good faith, and in accordance with the usual practice of the business of insurance, contrary to section 231(1)(b) of the Act. In particular, at the request of a client, the Licensee accessed the ICBC extranet database and looked up confidential information on a third party without any authority to do so whatsoever.

The Licensee did not dispute that he had accessed the ICBC database inappropriately and he expressed remorse for his actions. He acknowledged he had not paid attention to Council's Code of Conduct or other information on Council's website, such as Council's November 27, 2009 industry notice, which expressed the inappropriateness of this type of activity.

Council gave consideration to submissions from the Licensee's legal counsel that he is of good character and that this was an isolated matter which had already had a significant impact on the Licensee. In particular, that ICBC intended to prohibit the Licensee from having any ownership in an insurance agency that sells ICBC insurance and to also restrict him from doing any ICBC business as an insurance licensee. Council also gave consideration to the fact that the Licensee has not been subject to any discipline before by Council.

However, as established by Council, any situation where a licensee intentionally accesses confidential information without authority, must not be tolerated. The public places its trust in the industry to properly safeguard and manage personal and confidential information, and when this does not occur, it is considered a serious breach.

In this case, it was accepted that the Licensee may not have put his mind to the fact that harm could come to the third party whose information was inappropriately accessed. However, in Council's opinion, the Licensee had enough information to know that he was being requested to do something improper and therefore his actions were intentional and not a mistake. Council felt this reflected on his trustworthiness and ability to carry on the business of insurance in good faith and in accordance with the usual practice.

In determining an appropriate disposition, Council considered recent cases involving inappropriate ICBC database access. In *J. Cheema, D. Henneberry, and M. Phendler*, breaches of confidentiality occurred to an extent where the licensees knew that their actions were wrong and it was obvious that others could be prejudiced as a result. It was noted that in *D. Henneberry*, he had also engaged in a number of other ICBC related transgressions. In the end, the licensees' licences were cancelled for a minimum period of two years.

Council distinguished the present situation involving the Licensee from these cases in that it was accepted as fact that the Licensee did not know his actions could cause prejudice to others. However, the mere fact that he intentionally breached confidentiality requirements was in and of itself very serious and warranted a significant penalty, just not to the same extent as the previous cases. In this regard, Council determined that a one year suspension of the Licensee's licences is an appropriate penalty that would address the principles of specific and general deterrence, and also have a punitive affect.

Council further considered that as an agency director and officer, the Licensee is in a position of authority. This caused additional concern which, when coupled with the fact that the Licensee has been licensed for approximately seven years, aggravated the situation. In particular, it is not acceptable at any time to access confidential information without authorization as noted above, let alone by someone with the Licensee's experience and position of authority. Council concluded that this could lend itself to problems as others may rely on him in future as an agency principal, despite the fact that he exercised poor judgement on such a fundamental industry requirement. Council determined this additional concern must be addressed by restricting the Licensee's ability to be a directing mind of an insurance agency.

Finally, Council deemed that a course on ethics would be a rehabilitative measure that the Licensee could also benefit from.

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 and life and accident and sickness insurance licences for a period of one year;
2. prohibit the Licensee from being a director, officer, partner or majority shareholder of an insurance agency for a minimum period of two years;
3. impose a condition on each of the Licensee's licences requiring that he complete an ethics course before the suspensions on his licences can be removed; and
4. assess the Licensee Council's investigative costs of \$1,175.00.

The Licensee is advised that should the intended decision become final, the costs, 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 3, 2011**, 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 **May 2, 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 Licensee does not request a hearing by **May 2, 2011**, the intended decision of Council will take effect.

INTENDED DECISION
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March 15, 2011
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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:

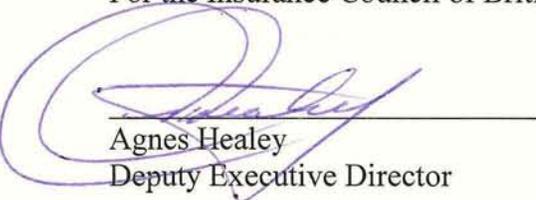
Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464
Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the 7th day of April, 2011.

For the Insurance Council of British Columbia



Agnes Healey
Deputy Executive Director

AH/tlh