

In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

LISA MICHELLE PAPINEAU
(the “Licensee”)

ORDER

As Council made an intended decision on September 26, 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 September 26, 2022; and

As the Licensee has not requested a hearing of Council’s intended decision within the time period provided by the Act;

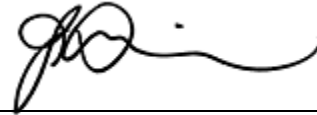
Under authority of sections 231, 236, and 241.1 of the Act, Council orders that:

- 1) The Licensee’s general insurance agent license is suspended for a period of 8 months, commencing on October 14, 2022, and ending at midnight on June 14, 2023;
- 2) The Licensee is required to complete the following courses, or equivalent courses, as acceptable to Council:
 - a. the Council Rules Course for general insurance and adjusters;
 - b. Privacy Compliance – How to Protect Your Brokerage Part 1, offered through the Insurance Brokers Association of BC;
 - c. Privacy Compliance – How to Protect Your Brokerage Part 2, offered through the Insurance Brokers Association of BC; and

- d. Ethics and the Insurance Professional course, offered through the Insurance Institute of Canada.

Collectively, the “Courses”.

- 3) The Licensee is assessed Council’s investigation costs of \$1,937.50, to be paid by January 12, 2023;
- 4) A condition is imposed on the Licensee’s general insurance licence that requires the Licensee to complete the above-ordered courses and pay the above-ordered investigations costs in full prior to the licence suspension being lifted.



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

LISA MICHELLE PAPINEAU

(the “Licensee”)

1. 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, Council Rules, and Code of Conduct, and in particular to determine whether the Licensee breached Rule 7(1), section 3 (“Trustworthiness”); section 4 (“Good Faith”); section 5 (“Competence”); and section 7 (“Usual Practice of Dealing with Clients”) of the Code of Conduct by disclosing confidential client information to a third party.
2. On August 9, 2022, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met via video conference with the Licensee to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee and the Licensee 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. Having reviewed the investigation materials and having discussed the matter with the Licensee, the Committee prepared a report for Council.
3. The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its September 13, 2022, meeting, where it was determined 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

5. The Licensee is a Level 2 general insurance agent (“Level 2 Agent”) who has held a general insurance licence with the Insurance Council since December 2003 and has held authority to represent an agency (the “Agency”) since April 2008.
6. On June 14, 2022, the Insurance Council received an email from the nominee for the Agency, concerning allegations that the Licensee had accessed personal information from an Insurance Corporation of British Columbia (“ICBC”) transaction without consent or express authority from the affected client, and shared the information via text message to her manager without a related business reason.
7. Mr. X visited the Agency to add an additional driver to his ICBC insurance policy. The transaction was completed by another agent at the Agency. The Licensee did not assist in the transaction. The Licensee advised that after Mr. X left, individuals at the Agency, including herself, were commenting on Mr. X’s good looks and how it was a shame that he had a girlfriend, who he had added as the additional driver to his ICBC policy. Shortly after the transaction, the Licensee was at the printer and front counter area when she saw Mr. X’s ICBC paperwork and noticed the name Ms. Y as the individual who was added as a driver to Mr. X’s ICBC policy.
8. The Licensee had a business relationship with Ms. Y and Ms. Y’s husband, Mr. Z. Although the Licensee had a business relationship with Mr. Z, the Licensee also claims to have had a personal relationship with Mr. Z and Ms. Y. After the Licensee discovered that Ms. Y had been added as an additional driver to Mr. X’s ICBC policy, she called Mr. Z that same day. The Licensee was working on placing insurance on Mr. Z’s mother’s home and decided to call Mr. Z approximately 30 minutes after discovering that Mr. Z’s wife, Ms. Y, had been added to Mr. X’s ICBC policy. The Licensee admitted there was no urgent business need to call Mr. Z at that time. The Licensee further admitted that the call was more of an emotional call to check in on Mr. Z and that the discussion of Mr. Z’s mother’s home insurance was the secondary purpose.
9. In this telephone call, the Licensee stated that she and Mr. Z discussed the home insurance policy and Mr. Z’s relationship with Ms. Y. The Licensee stated that Mr. Z had previously mentioned that he was having marital issues with Ms. Y and that they were undergoing counselling. The Licensee stated that she asked Mr. Z how the marriage counselling was going. The Licensee stated that she had a personal rapport with Mr. Z, and it was not uncommon for them to discuss personal matters during business transactions. The Licensee denied advising Mr. Z of any details about the ICBC transaction that Mr. X had completed, or that Ms. Y had been added to Mr. X’s ICBC policy.

10. Shortly after the telephone call with Mr. Z, the Licensee texted her manager who was away on holiday to state “a hottie just came in and added his [girlfriend] to his policy as a driver. Her name is Ms. Y.”
11. Within a few hours after the Mr. X transaction was completed, Mr. X emailed the nominee of the Agency with a complaint stating that the Licensee (who was named specifically) had helped him add Ms. Y to his ICBC policy and that shortly after the transaction was completed, the Licensee called Ms. Y’s husband informing him that a male was in the office and added Ms. Y to his insurance as his girlfriend. The nominee advised the Licensee of the complaint, but the Licensee could not recall if she read the complaint or was just told the details of the complaint.
12. The Licensee did not complete the ICBC transaction but did admit that she had no business reason to look at the ICBC policy of Mr. X or to see who was added as an additional driver. The Licensee further admitted that she did not have a reason to text her manager that Ms. Y was added to a client’s ICBC policy and that it was strictly gossip. The Licensee denies telling Mr. Z about Ms. Y being added to Mr. X’s ICBC policy. The Licensee advised she was puzzled about Mr. X’s complaint as she had not completed the ICBC transaction, and she did not interact and has never interacted with Mr. X. Further, the Licensee denied advising Mr. Z that Ms. Y was added to Mr. X’s ICBC policy.
13. After becoming informed of the complaint, the Licensee called Mr. Z for a second time that day. The Licensee stated that she asked Mr. Z if he and Ms. Y had gotten into an argument or if Ms. Y had mentioned anything about the Licensee, as she just received a complaint against her. The Licensee denied advising Mr. Z any of the details of the complaint but said she was only inquiring with him whether he knew of any reason someone might make a complaint about her. When questioned why the Licensee would call Mr. Z about the complaint, the Licensee stated that she believed that her comments about Mr. Z and Ms. Y’s marriage may have led them to fight and as a result, Ms. Y wanted to make a complaint about the Licensee.
14. ICBC investigated this incident and determined that the Licensee’s conduct amounted to a breach of customer privacy by sharing personal information with no business reason to do so. ICBC prohibited the Licensee from conducting Autoplan business for a period of 180 days.
15. At the time of the incident, the Licensee held supervisory duties as the Agency manager was on vacation.

ANALYSIS

16. Mr. X was a client of the Agency. Information related to Mr. X's ICBC transaction, and the identity of the additional driver was information acquired by the Agency in the course of an insurance business transaction. Council has concluded that the Licensee failed to engage in the usual practice of the business of insurance by viewing Mr. X's ICBC transaction for no business reason and then sending a text message to her manager regarding the confidential information of Mr. X's ICBC transaction. The Licensee admitted that the text message was done strictly to gossip.
17. Council concluded that the Licensee failed to recognize her obligation to hold in strict confidence all information acquired from a client in the course of a professional insurance relationship concerning the affairs of a client and that she must not divulge such information other than the purpose of that transaction unless expressly authorized by the client. In this instance, there was no authorization from the client to release information related to the ICBC transaction. The Licensee should not have relayed any of the ICBC transaction information to her manager purely to gossip and in doing so failed to hold confidential client information in strict confidence.
18. Council noted that the timeline of events was suspicious on the day in question as the events unfolded in a short span of time. Additionally, the Licensee's telephone call to Mr. Z, upon learning Ms. Y was added to Mr. X's ICBC policy, had peculiar timing. Although there is not sufficient evidence to suggest that the Licensee advised Mr. Z that Ms. Y was added to Mr. X's policy, it left some doubt as to how Mr. X pursued a complaint in a short time frame against the Licensee directly and noted that Mr. Z knew Ms. Y was added to his ICBC policy.
19. The Licensee's actions in texting confidential information for an ICBC transaction that she was not involved in demonstrated that the Licensee was not acting in the client's best interest or acting with decency of purpose.
20. Council has concluded that the Licensee's actions in disclosing confidential information amounted to misconduct. Council considered the impact of Council Rule 7(8) and Council's Code of Conduct guidelines on the Licensee's conduct, including section 3 ("Trustworthiness"), section 4 ("Good Faith"), section 5 ("Competence"), and section 7 ("Usual Practice of Dealing with Clients"). Council concluded that the Licensee's conduct amounted to breaches of the above Code of Conduct sections and the professional standards set by the Code.
21. Prior to making its conclusion in this matter, Council took into consideration the following precedent cases. While it is recognized that Council is not bound by precedent and that

each matter is decided on its own facts and merits, Council found that these decisions were instructive in terms of providing a range of sanctions for similar types of misconduct.

22. Katharine Rachael Mae Styles (April 2014) concerned a Level 1 general insurance salesperson with approximately 3 years of experience, who accessed the ICBC database to obtain information about a third party without consent, and for a purpose other than conducting an insurance transaction. The licensee looked up the Claim-Rated Scale discount of her friend. Council took into consideration that the licensee was forthcoming to her employer and Council, and that the licensee was terminated from the agency. As a result, Council ordered the suspension of the licensee's licence for a period of eight months and assessed investigative costs.
23. Kristen Michelle Burr (October 2014) concerned a licensee who used the ICBC database to obtain information about a consumer without obtaining consent. There was no evidence that the information was passed to other parties outside of ICBC. The licensee was cooperative with the investigation. The licensee looked up a driver's information on the ICBC database after the driver allegedly collided with her vehicle. Council accepted that the licensee did not set out to breach a consumer's privacy or act in an unauthorized manner. The licensee was also cooperative with Council's investigation and Council received a reference from her manager. Council ordered the suspension of the licensee's licence for a period of six months and assessed investigative costs.
24. Nirmal Kaur Binnag (December 2015) concerned a Level 3 general insurance agent with approximately 8 years of experience, who used the ICBC database in an unauthorized manner to access information about a licensed driver without his knowledge or consent. There was no evidence that the information was passed to a third party. The licensee accessed the database to confirm a personal matter. Council found the licensee failed to act in a trustworthy manner, in good faith and in accordance with the usual practice of the business of insurance. Council ordered the suspension of the licensee's licence for a period of one year and assessed investigative costs.
25. Council considered the relevant mitigating and aggravating factors in this matter. The mitigating factors considered were that the Licensee cooperated with Council staff throughout the investigation and that the Licensee already suffered consequences for her actions by her ICBC autoplan suspension. In considering aggravating factors, Council noted that the Licensee appeared to lack appropriate insight as to how her conduct amounted to wrongdoing. Additionally, Council highlighted that the Licensee had extensive experience in the industry and held supervisory duties the day of the incident, noting that the Licensee was not demonstrating appropriate business conduct for those she was supervising.

26. Council has concluded that the Licensee's conduct was akin to that of the precedents and that a similar disciplinary outcome in the middle range of the precedents should be imposed on the Licensee. Council has determined that it is in the public's interest for the Licensee to be prohibited from holding a licence for eight months. Council believes that it would be beneficial for the Licensee to complete privacy and ethics related courses so that no further breaches arise in the future.
27. After weighing all of the relevant considerations, Council views the Licensee to be in breach of Council's Rules and the Code of Conduct and concludes that it is appropriate for the Licensee to be suspended for eight months. Council also concludes it is appropriate the Licensee be required to complete the following courses, or equivalent courses as acceptable to Council, the Council Rules Course for general insurance and adjusters, the Privacy Compliance – How to Protect Your Brokerage Part 1 and Privacy Compliance – How to Protect Your Brokerage Part 2, offered through the Insurance Brokers Association of BC and the Ethics and the Insurance Professional course, offered through the Insurance Institute of Canada, and assessed the investigation costs of \$1,937.50.
28. With respect to investigation costs, Council believes that these costs should be assessed to the Licensee. As a self-funded regulatory body, Council looks to licensees who have engaged in misconduct to bear the costs of their discipline proceedings, so that those costs are not otherwise borne by British Columbia's licensees in general. Council has not identified any reason for not applying this principle in the circumstances.

INTENDED DECISION

29. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:
- a. Suspend the Licensee's general insurance agent licence for eight months, commencing on the date of Council's order;
 - b. Require the Licensee to complete the following courses, or equivalent courses as acceptable to Council:
 - i. the Council Rules Course for general insurance and adjusters;
 - ii. Privacy Compliance – How to Protect Your Brokerage Part 1, offered through the Insurance Brokers Association of BC;
 - iii. Privacy Compliance – How to Protect Your Brokerage Part 2, offered through the Insurance Brokers Association of BC; and
 - iv. Ethics and the Insurance Professional course, offered through the Insurance Institute of Canada.collectively the "Courses"

- c. That the Licensee be assessed Council's investigation costs in the amount of \$1,937.50, to be paid within 90 days of Council's order; and
- d. That a condition be imposed on the Licensee's general insurance licence that requires the Licensee to complete the Courses and pay the investigation costs in full prior to the licence suspension being lifted.

30. Subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

RIGHT TO A HEARING

31. If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case in 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 fourteen (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 this intended decision, the intended decision of Council will take effect.

32. Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right of appeal to the Financial Services Tribunal ("FST"). The BCFSA has thirty (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 **26th day of September, 2022.**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director