

**In the Matter of**

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

**and**

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

**and**

**TAK-LING RACHAEL LI**  
**(the "Licensee")**

**ORDER**

As Council made an intended decision on November 13, 2012, 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 30, 2012; 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 Licensee is reprimanded.
2. A condition is imposed on the Licensee's general insurance licence that restricts her from upgrading her general insurance licence until such time as she has accumulated an additional 12 months of active licensing as a Level 1 general insurance salesperson.
3. A condition is imposed on the Licensee's general insurance licence that requires her to complete the Insurance Corporation of British Columbia's "Privacy Please" tutorial within six months of the date of this order.
4. The Licensee is fined \$1,000.00.
5. The Licensee is assessed Council's investigative costs of \$387.50.

6. A condition is imposed on the Licensee's general insurance licence requiring that she pay the above-ordered fine and investigative costs no later than **March 19, 2013**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's general insurance licence is suspended as of **March 20, 2013**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

This order takes effect on the **19<sup>th</sup> day of December, 2012**.



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C. David Porter, LL.B., FCIP, CRM  
Chairperson, Insurance Council of British Columbia

**AMENDED INTENDED DECISION**

of the

**INSURANCE COUNCIL OF BRITISH COLUMBIA**  
(“Council”)

**respecting**

**TAK-LING RACHAEL LI**  
(the “Licensee”)

**This amended intended decision replaces Council’s intended decision dated  
November 29, 2012.**

**INTRODUCTION**

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee, a Level 1 general insurance salesperson (“Salesperson”), acted in compliance with the requirements of the Act.

As part of Council’s investigation, on October 15, 2012, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss allegations that she accessed an Insurance Corporation of British Columbia (“ICBC”) database to look up an ICBC policyholder’s telephone number without the required authorization.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Licensee, an investigation report was distributed to the Committee 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 Committee made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee’s findings and recommended disposition, along with the aforementioned investigation report, were reviewed by Council at its November 13, 2012 meeting. At the conclusion of its meeting, Council accepted the Committee’s recommended disposition and 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, 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

The Licensee has been licensed with Council as a Salesperson for approximately eight years.

On April 19, 2012, the Licensee, while working at an insurance agency (the "Agency") she was authorized to represent, received a telephone call from an individual (the "Client") who she described as a long-term Agency client. The Client asked her for the telephone number of a third party (the "Driver") with whom he had been involved in a motor vehicle accident. The Client indicated the Driver was "*at fault*" in the accident and, as they had engaged in a discussion about settling the loss from the accident without making a claim, he wanted to contact the Driver.

The Client provided the Licensee with the Driver's name, driver's licence number, and vehicle type. The Licensee stated she was busy when she first spoke to the Client about the matter, so she took down the information he provided and advised she would call him back. The Licensee then conducted a search of ICBC's Autoplan Data Capture database using the information provided by the Client and obtained the Driver's telephone number. She called the Client approximately ten minutes later and provided him with the telephone number. The Licensee did not provide the Client with any other information about the Driver.

The Licensee submitted that, as part of her training at the Agency, she was made aware of the privacy requirements surrounding ICBC business. In this situation, she thought she was assisting with the claim process and simply forgot her privacy training.

ICBC subsequently received a call from the Driver, who reported receiving late-evening telephone calls from the Client. The Driver wanted to know how the Client obtained his telephone number. ICBC confirmed the access was made by the Licensee.

The Agency approached the Licensee after being alerted to the situation by ICBC. The Licensee advised that it was only then that she realized her actions were inappropriate. She provided a voluntary statement to ICBC, an apology letter to the Driver, and notified Council of the incident. She was apologetic and remorseful when dealing with ICBC, Council staff, and the Committee.



### ANALYSIS

There is no dispute that the Licensee accessed ICBC's database in an unauthorized manner and breached the privacy of an ICBC policyholder.

Based on the evidence, Council concluded the Licensee unintentionally acted contrary to the requirements surrounding confidentiality in a misguided attempt to assist an Agency client in a claim matter. In particular, the Licensee had no personal relationship with the Client and, as it was apparent to her that the Client and the Driver had voluntarily exchanged some personal information, she assumed that accessing the Driver's telephone number in ICBC's database and sharing this information with the Client was acceptable. What she failed to realize, despite her previous training on privacy, is that it is never acceptable to access ICBC's database without the required authorization. When presented with the situation, she ought to have told the Client to speak directly with ICBC, or brought the matter to the attention of her supervisor for direction.

Council has been very clear that maintaining the confidentiality of consumer personal information is one of the cornerstones of the insurance industry, and that breaches of consumer confidentiality, whether unintentional or not, are very serious and present the potential for significant harm. It is fortunate for the Licensee that no harm arose from her actions.

Council considered a number of previous cases in which consumer confidentiality was breached. The precedents reflect a range of breaches, from those involving intentional disclosure of information to a known criminal, to the negligent disposal of client records.

In *J. Cheema*, the licensee accessed the ICBC database for the purpose of providing confidential information about a vehicle's registered owner to an individual that had an extensive criminal history including narcotics trafficking, assault, and a weapons offence. Council determined that the licensee was aware of the individual's lengthy criminal background and was or should have been aware that his disclosure would have put the safety and security of the vehicle's registered owner at risk. Council cancelled the licensee's licence for a minimum period of two years.

In *M. Phendler*, the licensee observed an individual park closely in front of her, and thought that the individual had struck her vehicle. The two argued, and the licensee contacted her agency to obtain personal information about the driver and the ownership of the driver's vehicle. The licensee then left a threatening note on the driver's windshield. Council determined that the licensee accessed the driver's personal information in order to intimidate her. Council further found that the licensee was not credible in many of her submissions to Council. Council cancelled the licensee's licence for a minimum period of two years.



Similarly in *D. Henneberry*, the licensee accessed the ICBC database to determine the name of the owner of a vehicle on behalf of a friend who was involved in a road rage incident. The incident was identified by ICBC as a result of a complaint from the vehicle owner. When originally approached by his employer, the licensee did not admit to having accessed the database. Council noted that the licensee had been fully aware that disclosure of the information was contrary to ICBC requirements as well as his employer's procedures, yet he chose to disregard this. Council cancelled the licensee's licence for a minimum period of two years.

In *J. Gill*, the licensee accessed the ICBC database to obtain an ICBC policyholder's address which he provided to a client, despite knowing that the client wanted to place a lien on the policyholder's vehicle. Council determined the licensee was aware that his actions were improper and were therefore intentional, rather than negligent. At the time, the licensee was the co-owner of his agency. Council suspended his licence for a period of one year.

In *M. Crowe*, the licensee created and distributed marketing material that contained confidential information related to consumers who had not approved the use of the information to the extent represented in the material. Council found that although the licensee did not set out to breach consumer privacy, and that he mistakenly assumed he had the required approval to use consumer information in the manner that he did, he nonetheless breached confidentiality requirements. Council fined him \$1,000.00 for each breach of consumer confidentiality.

In *G. Yeung*, the licensee was fined \$1,000.00 after he mistakenly placed insurance records containing confidential client information in the recycling bin of his residential condominium building. Council accepted that the licensee did not intentionally dispose of the documents in an inappropriate manner. Nonetheless, he acted negligently and failed to demonstrate sufficient competence.

Council noted that in the cases which resulted in lengthy licence suspensions, the licensees had intentionally breached client confidentiality and did so for purposes that were clearly illegitimate. The nature of the suspensions were reflective of the fact that Council does not tolerate intentional breaches, let alone those involving privacy that could have resulted in public harm.

In this current case, given the Licensee's eight years of licensed experience and past training on privacy, she ought to have known that she was not permitted to access ICBC's database for the purpose that she did. However, the Licensee failed to realize this because, as concluded by Council, she was clouded by her intention of helping those involved in a claim matter and she genuinely believed she was not doing anything wrong. Council distinguished this behaviour from the cases involving lengthy suspensions where it was evident that the licensees' breaches of privacy could have negatively affected others.

In the end, Council determined that the Licensee acted carelessly in an isolated instance and it found her remorse and behaviour following the incident to be genuine and forthright. As such, it found this situation more similar to the *M. Crowe* and *G. Yeung* matters where the breaches arose from negligent behaviour, rather than intentional privacy breaches.

Council concluded that a fine of \$1,000.00 would appropriately address the Licensee's negligence. In addressing the concerns that she failed to realize the inappropriateness of her conduct at the time of the incident, despite her previous training on privacy and having been licensed for eight years previously, Council determined that education and a licence restriction were required.

### **INTENDED DECISION**

Pursuant to sections 231, 236, and 241.1 of the Act, Council made an intended decision to:

1. reprimand the Licensee;
2. impose a condition on the Licensee's general insurance licence that restricts her from upgrading her general insurance licence until such time as she has accumulated an additional 12 months of active licensing as a Salesperson;
3. impose a condition on the Licensee's general insurance licence that requires her to complete ICBC's "Privacy Please" tutorial within six months of the date of its order;
4. fine the Licensee \$1,000.00; and
5. assess the Licensee Council's investigative costs of \$387.50.

The intended decision will take effect on **December 19, 2012**, 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 **December 18, 2012**. 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.



Intended Decision  
Tak-Ling Rachael Li  
160520-11214  
November 30, 2012  
Page 6 of 6

If the Licensee does not request a hearing by **December 18, 2012**, 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 [www.fst.gov.bc.ca](http://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](mailto:FinancialServicesTribunal@gov.bc.ca)

Dated in Vancouver, British Columbia, on the **30<sup>th</sup> day of November, 2012**.

For the Insurance Council of British Columbia



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Gerald D. Matier  
Executive Director

GM/cmc