

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 October 16, 2018 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 January 14, 2019; 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’s general insurance licence is suspended for a period of nine months commencing on February 6, 2019 and ending at midnight on November 5, 2019;
2. A condition is imposed on the Licensee’s general insurance licence that requires her to successfully complete the “Ethics for Insurance Brokers” course through the Insurance Brokers Association of British Columbia, or an equivalent course as approved by Council, on or before November 5, 2019; and
3. A condition is imposed on the Licensee’s general insurance licence that failure to successfully complete the required ethics course on or before November 5, 2019 will result in the Licensee’s general insurance licence remaining suspended and the Licensee will not be permitted to complete her 2020 annual licence filing until such time as this requirement is met.

This order takes effect on the **6th day of February, 2019.**



Ken Kukkonen
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA (“Council”)

Respecting

CHERYL LEE DAS
(the “Licensee”)

INTRODUCTION

On April 11, 2017, pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council made an intended decision after an investigation into the Licensee’s conduct with respect to entering false information into the Insurance Corporation of British Columbia’s system for the purpose of overriding outstanding toll bridge debts (the “Intended Decision”).

The Intended Decision set out Council’s findings of fact with respect to the Licensee’s conduct and its intended penalty of a fine in the amount of \$5,000.00.

The Licensee accepted Council’s Intended Decision and did not request a hearing to contest either Council’s findings of fact or the \$5,000.00 penalty intended to be imposed by Council.

Council also issued intended decisions and intended penalties of \$5,000.00 with respect to six other licensees relating to overriding outstanding toll bridge debts. None of the six other licensees requested a hearing to contest either Council’s findings of fact or the penalty intended to be imposed by Council.

FICOM’S APPEAL

On August 11, 2017, the Financial Institutions Commission (“FICOM”) appealed the seven Council decisions to the Financial Services Tribunal (“FST”) pursuant to section 242(3) of the Act.

FICOM did not challenge Council’s findings of misconduct and the findings were not cross-appealed by any of the seven licensees. Rather, FICOM argued that the \$5,000.00 fines imposed by Council for each of the seven licensees were unreasonable in the circumstances.

On July 31, 2018, the FST allowed FICOM’s appeals of the seven intended decisions and set aside the \$5,000.00 fines for each of the licensees. At paragraph 123 of Decision No. 2017-FIA-002(a), 003(a), 004(a), 005(a), 009(a), 007(a), and 008(a) (the “FST Decision”), the presiding FST Chair concluded:

My core finding in this decision is that subject only to clear mitigating factors in a particular case, it is only licensing action in the form of a suspension, cancellation or conditions (in addition to whatever other remedial option the regulator may consider appropriate in a case) that can adequately protect the public, secure its confidence and express the denunciation that such conduct warrants. It is my further view that, subject only to mitigating factors, a suspension of six months and the requirement to take an ethics course acceptable to the Insurance Council represents the minimum or baseline reasonable penalty that the licensee's conduct must attract. Whether the ultimate penalty is higher or lower depends on a consideration of mitigating or aggravating factors in a given case.

At paragraph 125, the FST Chair issued these directions:

- (a) The Insurance Council is to issue a new intended decision limited to the issue of intended penalty in each of these cases in accordance with these reasons. To be clear, the new intended decisions may not alter the factual findings and characterizations of the conduct set out in each decision.
- (b) Each licensee will have up to 14 days to request a hearing on the issue of penalty only. If no hearing is requested, the Council's decision will be final, subject only to an appeal by FICOM. If a hearing is requested, the outcome will be subject to appeal in the usual fashion by the licensee or FICOM.
- (c) Any hearing requested by the licensee as described in paragraph (b) in the response to the new intended decision, is not to be an opportunity for the licensee or the Council to arrive at new or conflicting findings of fact regarding conduct, as those findings were not challenged before the Council or the Tribunal and are now final and binding.

[Emphasis in original]

MITIGATING OR AGGRAVATING FACTORS, IF ANY

On October 16, 2018, Council met to make a new intended decision in the Licensee's case in consideration of the FST's directions and any mitigating or aggravating factors. Pursuant to the FST, Council began with a baseline penalty of a suspension of six months and the requirement to take an ethics course. Council then considered whether there were any mitigating factors or aggravating factors specific to the Licensee that would justify a reduction or increase to the baseline.

Records show that the Licensee entered a total of 32 false receipt numbers in order to override toll bridge debts when she processed Autoplan transactions. The percentage this represents of her total Autoplan transactions is unknown.

With regard to mitigating factors, Council considered the following:

1. The Licensee explained that she was only trying to help customers with toll bridge debts who were in a difficult position due to not having a credit card or whose insurance would expire at midnight.
2. The Licensee admitted she entered false receipt numbers to override toll bridge debts.

With regard to aggravating factors, Council considered the following:

1. The Licensee was first licensed as a level 1 general insurance salesperson with Council in October 2000. She became a level 2 general insurance agent in October 2002 and a level 3 general insurance agent in September 2007. Each level of licensing requires a greater degree of knowledge than the one below it. In addition, level 3 agents must also meet certain experience requirements and must be an officer, director or partner of, or hold management responsibilities within, the general insurance agency. Council held that the Licensee's level of licensing and her length of time in the industry were aggravating factors in her misconduct. In the Licensee's position, there should have been no doubt in her mind that her conduct was wrong and that nothing could reasonably justify it.
2. By entering false receipt numbers, the Licensee stood to benefit financially from related insurance transactions.
3. Council did not consider that the Licensee's explanation for her misconduct excused or justified the fact that she provided false information to an insurer. Records show that the insurance transactions were nearly all processed during regular business hours when the customers could have attended the toll bridge administrators' offices to clear their debts in person before purchasing automobile insurance. Customers could also have paid online or by telephone.

In consideration of the above, Council held that an increase to the baseline suspension is warranted.

NEW INTENDED DECISION ON PENALTY

Pursuant to sections 231 and 236 of the Act and in accordance with the directions and reasons set out in the FST Decision, Council made an intended decision to:

- (a) suspend the Licensee's general insurance licence for a period of nine months commencing on the date Council's intended decision becomes final; and
- (b) impose a condition on the Licensee's general insurance licence that requires the Licensee to successfully complete the "Ethics for Insurance

Brokers” course through the Insurance Brokers Association of British Columbia, or an equivalent course as approved by Council, prior to completion of the Licensee’s licence suspension.

The Licensee is advised that should the new intended decision become final, failure to successfully complete the required ethics course as required will result in the Licensee’s general insurance licence remaining suspended and the Licensee will not be permitted to complete any annual filing until such time as this requirement is met.

RIGHT TO A HEARING

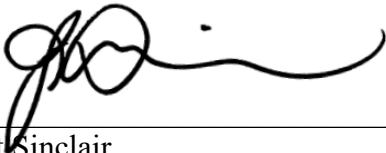
If the Licensee wishes to dispute the new intended penalty in accordance with the directions set out in the FST Decision, the Licensee may have legal representation and may present a case relating to mitigating circumstances for Council’s consideration. Pursuant to section 237(3) of the Act, to require 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 decision. A hearing will then be scheduled for a date within a reasonable period of time from the 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, the new intended decision of Council will take effect.

Even if this new intended decision is accepted by the Licensee, pursuant to section 242(3) of the Act, FICOM has a right to appeal this decision of Council to the FST. FICOM 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 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 14th day of January, 2019.

For the Insurance Council of British Columbia



Janet Sinclair,
Executive Director
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