

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c. 141)
(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

JUGJIT SINGH SUMRA
(the “Licensee”)

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee to dispute an intended decision of Council dated June 21, 2017.

The subject of the hearing was set out in a Notice of Hearing dated May 8, 2019.

A Hearing Committee heard the matter on June 20, 2019 and presented a Report of the Hearing Committee to Council at its October 1, 2019 meeting.

Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236 and 241.1 of the Act:

1. The Licensee is precluded from applying for a general insurance licence for a period of 8 months, commencing October 18, 2019 and ending at midnight on June 17, 2020;
2. The Licensee’s life and accident and sickness licence is suspended for a period of 8 months, commencing October 18, 2019 and ending at midnight on June 17, 2020;
3. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires him to successfully complete the “Ethics for Insurance Brokers” course through the Insurance Brokers Association of British Columbia, or an equivalent course as acceptable to Council;
4. The Licensee is assessed hearing costs of \$3,371.81; and
5. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that failure to complete the above-noted course and pay the hearing costs by

Order

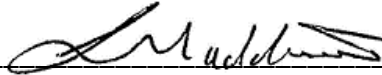
Jugjit Singh Sumra

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midnight on June 17, 2020 will result in the continued suspension of his licence and he will not be permitted to complete any annual filing until such time as he has successfully completed the course and the hearing costs are paid in full.

This order takes effect on the **18th day of October, 2019.**



Lesley Maddison
Chairperson, Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

REPORT OF THE HEARING COMMITTEE

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(R.S.B.C. 1996, c. 141)
(the “Act”)

AND

JUGJIT SINGH SUMRA
(the “Licensee”)

Date: June 20, 2019
9:30 a.m.

Before: Lesley Maddison Chair
Linda Lee Member
Frank Mackleston Member

Location: Suite 300 - 1040 West Georgia Street, Vancouver, British Columbia

Present: David McKnight Counsel for Council
Elizabeth Allan Counsel for the Hearing Committee
No appearance The Licensee, Mr. Sumra

BACKGROUND AND ISSUES

On April 11, 2017, Council made an intended decision, pursuant to sections 231 and 236 of the Act, which sought to impose discipline on the Licensee regarding allegations that the Licensee breached the Act, Council’s Rules and Council’s Code of Conduct by entering false information relating to Insurance Corporation of British Columbia (“**ICBC**”) Autoplan transactions to override outstanding bridge toll debts for the Golden Ears Toll Bridge (“**GETB**”) and the Port Mann Toll Bridge (“**PMTB**”).

This is one of many cases involving licensees who overrode outstanding debts for the GETB and PMTB for insurance clients. Without going into extensive background and detail, there was an issue in the ICBC system which permitted an override of these outstanding debts and allowed for insurance to be processed without entering a valid receipt number which was otherwise required before processing any insurance transaction. ICBC conducted an investigation which included reviewing an 18-month period which compared valid receipt numbers against receipt numbers which were actually entered. The Licensee was one of

many insurance agents who ICBC determined had likely entered invalid receipt numbers. ICBC investigated the Licensee further, including interviewing him, and determined that he had overridden his personal toll bridge debts (among other violations).

On June 21, 2017, in accordance with section 237 of the Act, Council provided the Licensee with written reasons and notice of its intended decision. On June 22, 2017, in accordance with section 237(3) of the Act and as was his right, the Licensee requested a hearing before Council to dispute the intended decision.

On May 8, 2019, the Hearing Committee issued a Notice of Hearing for this hearing to take place on June 20, 2019. As set out in the Notice of Hearing, the purpose of the Hearing was to determine whether the Licensee:

1. Breached the requirements of the Act, Council's Rules and Council's Code of Conduct and acted improperly in the renewal of his personal Autoplan insurance by providing a false toll bridge receipt for both GETB and PMTB debt;
2. Failed to follow ICBC procedure in order to avoid paying his personal toll bridge debt;
3. Is able to carry on the business of insurance in good faith, in a trustworthy and competent manner, and in accordance with the usual practice, as required under Council Rule 7(8) and pursuant to section 231(1)(a) of the Act;
4. Should be subject to any disciplinary or other action in the circumstances; and if so, whether Council should do one or more of the following in accordance with sections 231, 236 or 241.1 of the Act:
 - (a) Reprimand, suspend or cancel the Licensee's general insurance licence and/or life and accident and sickness insurance agent licenses;
 - (b) Impose conditions on the Licensee's general insurance licence and/or life and accident and sickness insurance agent licenses;
 - (c) Fine the Licensee an amount not more than \$10,000;
 - (d) Require the Licensee to pay the costs of Council's investigation and/or of the hearing;
 - (e) Take any other measures the Council deems appropriate.

The Notice of Hearing concluded with the caution that failure to attend the hearing may result in Council making a determination of the matter in the Licensee's absence.

The hearing commenced at 9:34 a.m. on June 20, 2019. At the outset of the hearing, legal counsel for Council provided the Committee with an email he had received from the Licensee earlier that morning at 6:26 a.m. It read as follows:

...
Unfortunately I will not be able to make my hearing. [REDACTED]. I do apologize

I was trying to get some proof that it was not me who renewed my insurance and not me who bypassed the toll fine. I know for a fact I was out of town and someone at the office renewed my car for me but can't get any proof of that.

I do understand without any proof my statement above is irrelevant therefore I do take all blame. At the end of the day it was my code that was used to renew my car insurance. I just hope, whoever are the decision makers in regards to my life license suspension/ fine will take in the fact that I have never ever done anything in the past to jeopardize my license and hopefully give me Bare minimum outcome [sic].

My life license is my sole income earner and without my license I would not be able to provide for my family.

Again I do apologize for any inconvenience I may have caused to all of you this morning. [REDACTED]

Please forward anything that I need to sign to acknowledge my mistake

Let me know if any questions...

Counsel for Council responded to this email at 8:19 a.m. setting out some of the history of correspondence between the parties about the hearing taking place on June 20, 2019 and confirming that Council intended to proceed with the hearing in his absence, including leading evidence from a witness from ICBC regarding the investigation into his conduct. Counsel confirmed that Council would be seeking a suspension of his licence, a fine and hearing costs against him. Counsel informed the Hearing Committee that at 9:02 a.m. he received a reply to this email from the Licensee which stated, "Thank you and I understand".

With respect to proceeding in the absence of the Licensee, Council made submissions that the Licensee had known about the June 20, 2019 date of the hearing since May 1, 2019 and that he had been served with the Notice of Hearing on May 9, 2019. Council further advised that prior to receiving the emails on the morning of the hearing, the parties had correspondence about how the hearing would proceed, a possible Agreed Statement of Facts and confirmed that the Licensee would not be submitting any documents or witnesses.

Council's position was that the hearing should proceed in the Licensee's absence, particularly in light of the statements in his email that the Licensee accepted the blame for his actions.

The Hearing Committee adjourned to consider the emails presented by Council and its submissions with respect to the appropriate course. It was clear that the Licensee had knowledge of the hearing more than six weeks in advance of the hearing and was not uninformed or confused about what was taking place. The Licensee was not claiming that he did not know about the hearing or was unprepared for the hearing. He stated that he was [REDACTED] and was not coming. Further, he did not request an adjournment of the hearing in his emails to Council.

The Hearing Committee considered the Licensee's statement that he was trying to gather evidence and could not do so; however, this was clearly not the basis for his absence. That statement was also not entirely aligned with his statement to Council in advance of the hearing that he would have no further documents or witnesses to bring forth at the hearing and his acceptance that he took "all blame" and that he acknowledged his "mistake".

The Hearing Committee accepted that the Licensee was aware that the hearing may proceed in his absence as this was set out in the Notice of Hearing as well as brought to his attention in the email of 8:19 a.m., which he acknowledged that he understood.

The Hearing Committee also accepted that the Licensee was generally aware of the nature of evidence that Council would lead against him. Council had informed the Licensee that in absence of an Agreed Statement of Facts it would be calling a witness from ICBC and relying upon a transcript of his interview during ICBC's investigation. The Licensee knew that as a result of the hearing he could face cancellation or suspension of his licence, a fine and/or costs. Again, this was in the Notice of Hearing and was touched upon by the Licensee himself as he stated that a suspension or fine were possible outcomes in his email to Council of 6:26 a.m. The possibility of costs was also set out in Council's email of 8:19 a.m., which he acknowledged that he understood.

[REDACTED]

The Licensee was obviously aware that he could ask Council to communicate with the Hearing Committee on his behalf as in his email he that he hoped "whoever are the decision makers in regards to my life licence suspension/ fine will take in the fact that I have never ever done anything in the past to jeopardize my licence and hopefully give me Bare minimum outcome [sic]". This was the extent of what the Licensee attempted to communicate to the Hearing Committee and it was essentially a submission on mitigating factors on penalty.

Finally, the Hearing Committee considered the public interest in proceeding with this hearing. A significant amount of time had elapsed since the matters at issue (which dated back to as early as 2014) and the intended decision (dating back to April 2017). [REDACTED]

[REDACTED] He simply stated that he would not be in attendance, and, when informed for a second time that the hearing may proceed in his absence, confirmed that he would not be in attendance.

It was after 10:00 a.m. when the hearing reconvened, which was more than 30 minutes after the hearing was set to commence. Having heard nothing further from the Licensee, in consideration of all of the circumstances as set out above and balancing the interests of Council in fulfilling its mandate to protect the public with ensuring procedural fairness for the Licensee, the Hearing Committee decided to proceed with the hearing despite the Licensee's non-attendance. This is the Hearing Committee's Report.

EVIDENCE

Exhibits

Upon the Hearing Committee deciding to proceed with the hearing, the following exhibits were entered by Council:

- Exhibit 1** Email chain between legal counsel for Council and the Licensee, dated June 18, 2019 – June 20, 2019 at 6:26 a.m.
- Exhibit 2** Email chain between legal counsel for Council and the Licensee, dated June 18, 2019 – June 20, 2019 at 8:19 a.m.
- Exhibit 3** Council's Book of Documents

Council also provided a written argument and a brief of authorities as well as a copy of Council's Code of Conduct. Council called one witness, an officer with ICBC's special investigations unit (the "SIU Officer"). The SIU Officer's evidence was relevant to the liability portion of the hearing.

Evidence of the SIU Officer

The SIU Officer gave evidence that she has been employed by ICBC since March 1996. She became a special investigations unit investigator in 2006 and was promoted to special investigations unit officer in January 2009. She continues to work in that role. Her duties as a

special investigations unit officer include both civil and criminal investigations – essentially any situation where ICBC is investigating allegations of fraud.

The SIU Officer was initially involved in the investigation of what she referred to as “bridge toll debts” and looking at bridge toll charges in relation to crossing the Golden Ears Bridge. During the course of that investigation, the scope expanded to also look at charges for crossing the Port Mann Bridge. The SIU Officer explained that, at the relevant time, when a vehicle crossed the bridge, a toll charge was levied against that vehicle. The driver then had 90 days to pay that charge if it arose from crossing the Port Mann Bridge and 150 days to pay if it arose from crossing the Golden Ears Bridge. A notation of “refuse to issue” (“**RTI**”) was applied by ICBC on a driver’s licence and insurance file if those toll bridge charges for either bridge reached \$25 or more. The amount over and above \$24.99 was not known by ICBC – it could be \$25.01 or it could be hundreds or thousands of dollars.

ICBC was informed when those thresholds were met (\$25 or more owing and 90 or 150 days past due, as applicable) by the toll bridge administrators: TReO for the Port Mann Bridge and Quickpass for the Golden Ears Bridge. At that point, ICBC would apply the RTI to the applicable driver. The SIU Officer took the Hearing Committee through the applicable pages of the ICBC Autoplan Manual which were in place at the relevant time related to these toll bridge debts as contained in Exhibit 3 which further explained this system.

ICBC came to learn that there were some suspicious transactions at a specific brokerage with respect to the removal of the RTI. As a result, ICBC completed a data run and contacted TReO and Quickpass for the relevant receipts. Upon reviewing the data and legitimate receipts, ICBC determined that there was a work-around available in the system whereby instead of entering the TReO or Quickpass generated bypass number (which was issued after payment of the debt which should have started with the letters “GA” or “GB” followed by a series of unique numbers), entering any two letters followed by any five numbers would achieve the same bypass result.

As part of the investigation, the SIU Officer met with the Licensee to interview him on August 11, 2015. She stated that when she interviewed him he was a Level 1 general insurance salesperson (“Level 1 Agent”) who worked part time at an insurance agency in Surrey, British Columbia (the “Agency”), while also working full time with a health services company.

A transcript of this ICBC interview with the Licensee was included in Exhibit 3. Some of the particularly relevant portions of the transcript include:

Q: *So what’s your understanding of the process when someone comes in and you go to start the transaction and they have a debt?*

- A: *Yeah. Basically they would need a -- like a reference number.*
- ...
- Q: *Okay. And have you ever processed a transaction, when someone didn't have an authorization number?*
- A: *I would have to say -- probably a few times.*
- Q: *A few times. Okay, so if Quickpass was closed or --*
- A: *It was, yeah, like a -- I remember one incident probably a month, maybe. It was like a -- you know, they were closed. His insurance was expiring at midnight. And it was like just before we're closing.*
- ...
- Q: *So what -- if you don't have a code, and they're there, and Quickpass was closed, and, you know, maybe it's a good client, and you don't want them to be driving without insurance, or whatever, what are you keying in?*
- A: *Well, once -- a couple of times, I did key in a generic number.*
- ...
- Q: *So this generic number, what do you use?*
- A: *Usually like two alphabets and a couple of numbers.*
- ...
- Q: *So you just make them up?*
- A: *I have been.*
- ...
- Q: *Have you ever done it on your own transaction?*
- A: *Oh, mine comes up in July? No, mine comes up on October. To be honest -- last one, yes.*
- ...
- Q: *Okay? So, it's fair to say that you're confirming that you've entered an invalid number to bypass the debt?*
- A: *Yeah. I would have, yeah, for sure.*
- Q: *Okay. And why would you have done that?*
- A: *Again, it was -- I'll just need to get it done, and I knew I was going to pay it, but again, I was just in the office and I have to get the insurance done.*
- ...
- Q: *So, just so we're clear, you started this transaction at noon on the 26th of September, and your insurance wasn't due till the 29th.*
- A: *Yeah.*
- Q: *So it was three days in advance, right?*
- A: *Yeah.*
- Q: *You would have had an opportunity to pay it previously, right?*
- A: *Well, yeah. Yeah.*
- Q: *Okay.*
- A: *Yeah. It was just -- I get -- inconvenience, I guess, for me.*
- ...
- Q: *You guys aren't the only ones. Right? Don't get me wrong, right? Okay. So how many years have you been doing this for?*
- A: *I would have to say probably about two, two and a half years, probably.*
- ...
- Q: *Okay.*
- A: *A number know. I never really sighted receipts so.*

Q: *Okay. Do you - - are you aware that procedure tells you you're supposed to sight the receipt?*

A: *To be honest, no, I did not know that.*

...

Q: *Is there anything else you think is important that you need to tell?*

A: *No.*

Q: *Okay.*

A: *That's really it, I guess. So I've probably, you know, done ten to twelve files in a year.*

Q: *Okay.*

A: *Not many people. That's about it. I'm not really in the office that much.*

Q: *Okay. Yeah, it's like a part-time gig for you.*

A: *Yeah, very part-time.*

Q: *Okay.*

A: [REDACTED].

The SIU Officer confirmed that she conducted and taped that interview which took place in the lunchroom at the Agency. She stated that at no time did the Licensee advise her that his answers were untrue, that he was confused or did not understand her questions, that someone else renewed his insurance for him or that he was out of town for a period of time.

The SIU Officer then took the Hearing Committee through a series of documents from her investigation. The first was a summary document from the Broker Governance Department of ICBC (Tab 3 of Exhibit 3) which was created at ICBC on or after October 9, 2015. It included a summary of the false receipts entered by the Agency as a brokerage for the Golden Ears Bridge only, as at that time ICBC was not aware of any improper bypasses for the Port Mann Bridge. During his interview, the Licensee admitted that he bypassed debts owing for both bridges. The summary sheet recorded this fact and showed that 219 of the 226 Golden Ears Bridge receipts entered by the Agency during the January 1, 2014 – June 15, 2015 data run were “presumed false”.

The SIU Officer gave evidence that the ICBC Will Say Statement included at Tab 4 of Exhibit 3 was a fair summary of her interview with the Licensee; however, as the Hearing Committee had a transcript of the actual interview with the SIU Officer, it did not rely on this document as forming part of the factual record.

The SIU Officer also testified about the documents contained at Tabs 5 and 6 of Exhibit 3, which were screen captures of two different screens from internal ICBC systems created by the Broker Governance Department at ICBC. The first showed the Licensee's licence plate (which was confirmed by the plate given in his interview), linked to invalid bypass numbers and transactions on September 26, 2014 at 12:44:58 with producer code [REDACTED] (which was confirmed by the Licensee as his producer code in his interview) to the Licensee's account.

The second showed the ICBC/MV Debt Processing system and established that overrides were keyed into the Licensee's account on September 26, 2014 at 12:44:58 to permit him to purchase insurance. The Hearing Committee understood that this document also showed that at some point thereafter and prior to November 4, 2015, a debt in the amount of \$590.05 was paid to the Licensee's account (which otherwise would have been owing at the time of the transaction on September 26, 2014).

In response to questions from the Hearing Committee, the SIU Officer confirmed that she could not state the exact number of bypasses entered by the Licensee, although she estimated that it was in the range of 20 to 30 based on the total number of improper transactions attributed to the Agency and the number of employees who admitted misconduct. She stated that the Licensee's admission to her that he processed about 10 to 12 improper transactions per year for a two and a half year period also put the number of transactions within this range (i.e. 25 to 30 total transactions). The Licensee did not use a unique user ID, which is different than his producer code of [REDACTED], so it was theoretically possible that someone else could have completed those transactions on his account identified at Tabs 5 and 6, just as it was possible that someone else could have paid the Licensee's debt owing to ICBC, although the SIU Officer reminded the Hearing Committee that the Licensee admitted that he completed his own transactions with a false receipt number during the course of his ICBC interview.

SUBMISSIONS OF COUNCIL

Council prepared written submissions to assist the Hearing Committee with this matter. Council submitted that the Licensee's admissions during the course of his interview with the SIU Officer were sufficient for the Hearing Committee to determine that the Licensee had breached his obligations as a licensee and that the allegations in the Notice of Hearing had been proven.

Council's position with respect to penalty was that although the Licensee was not part of a Financial Institutions Commission appeal to the Financial Services Tribunal ("**FST**") (decision indexed as No. 2017-FIA-002(a), 003(a), 004(a) 005(a), 006(a), 007(a) and 008(a)) involving other licensees who had been penalized by Council for overriding ICBC bridge toll debts (those licensees had not requested a hearing on the merits and were therefore limited to making arguments with respect to mitigation per the FST), the Hearing Committee should still be guided by the FST's comments and directions on penalty at paragraphs 104 and 123 as follows:

[104] Trust in the licensee lies at the foundation of the grant of the licence. Repeated conduct that calls into question the trustworthiness of a licensee can only reasonably be addressed by a

regulator taking action on the licence. Subject only to mitigating factors evident in the record before the Council at the time of the intended decision or after a hearing, it is only licensing action in the form of a suspension, cancellation or conditions (in addition to whatever other conditions the regulator may wish to attach) that can adequately protect the public, secure its confidence, achieve general deterrence and express the denunciation that such conduct warrants....

...

[123] 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.

Council then proceeded to take the Hearing Committee through possible mitigating and aggravating factors in this instance. As the Licensee was not present to make submissions himself as to any mitigating factors, Council noted that the Hearing Committee should consider his statements contained in Exhibit 1 that his "life licence is my sole income earner and without my licence I would not be able to provide for my family"; however, Council also stressed that this is the same consideration for the vast majority of licensees who find themselves in disciplinary proceedings. Council later agreed that the Licensee's statement in Exhibit 1 that he had "never done anything in the past to jeopardize my licence" was confirmed by an absence of any previous disciplinary history with Council and should also be considered as a mitigating factor.

With respect to aggravating factors, Council pointed to the number of times the Licensee admitted to entering the false receipt to effect an override at 20 to 30 times, including processing his own insurance transaction for personal gain or benefit. Council stated that the Hearing Committee could also consider his explanation for processing such transactions was that it was convenient.¹ Council also pointed out that, after requesting a hearing to dispute liability, the Licensee failed to appear but at the same time tried to advance a defence that he was out of town when the alleged conduct occurred but then at the same time accepted responsibility for it. Council submitted that this lack of acceptance of responsibility and contrition was also an aggravating factor. Further, Council noted that, unlike other licensees, he had not taken any remedial courses on his own accord. Additionally, the Licensee had been licenced for almost 20 years at the time of the impugned conduct. Council's position

¹ See the Licensee's statement to ICBC that "Yeah. It was just -- I get -- inconvenience, I guess, for me."

was that the aggravating factors overwhelmed any mitigating circumstances and that the suspension ought to be higher than the six month baseline identified by the FST.

Council then identified the relevant principles of sentencing for the Hearing Committee to consider in these circumstances, namely that any discipline needs to ensure that the public is protected from further acts of misconduct. Council identified the oft-cited passage in *Financial Services Commission v. The Insurance Council of British Columbia and Maria Pavicic* (November 22, 2005) where Chair Hamilton identified four of the factors to consider: the need to promote specific and general deterrence; rehabilitation, punishment and isolation of the offender; the need to maintain the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members; and, the range of sentencing in other cases. Council highlighted that the Hearing Committee was not bound by precedent and that other cases only provided guidance. The principle of proportionality applied.

Council helpfully summarized the following cases for the Hearing Committee which addressed the same or similar conduct: *Ernie Nguyen (2019)*, *Heidi Martina Tonja Johnson (2019)*, *Cheryl Lee Das (2019)*, *Edmond George (2019)* and *Mi Keun Lee (2019)*. The suspensions imposed in those cases ranged from between 5 and 9 months. Council in this matter was also seeking to have the Licensee complete an ethics course as a term and condition of his licence, which was also part of the direction from the FST.

Finally, Council made submissions on costs. Council argued that the hearing should not have been necessary and that the Licensee put Council to the trouble and expense of having to call an ICBC witness when he did not end up disputing his liability before the Hearing Committee. Council pointed to the hearing costs schedule which was included in its book of authorities and stated that costs should be assessed according to this schedule. As the hearing had been less than 2.5 hours it was the lower amount which would apply to that line item.

In response to questions from the Hearing Committee, Council confirmed that there was no evidence, unlike some other licensees facing similar misconduct, that the Licensee had already been suspended by ICBC or the Agency. Council also confirmed that the Licensee had been provided with a copy of the transcript, which was entered as part of Exhibit 3, as of May 9, 2019 – more than six weeks before the hearing.

FINDINGS OF THE HEARING COMMITTEE

Liability

The Hearing Committee was faced with some competing evidence as to liability. There was the evidence of ICBC regarding its investigations as to the misconduct of the Licensee which

strongly implicated the Licensee but could not, with 100% certainty, establish proof of his misconduct, the admissions by the Licensee to ICBC when faced with the results of the ICBC investigation where he fully admitted to his misconduct and stated unequivocally that he had nothing further to add, but then an 11th hour statement in his email that “I know for a fact I was out of town and someone at the office renewed my car for me but can’t get any proof of that. I do understand without any proof my statement above is irrelevant therefore I do take all blame”.

In the end, the Hearing Committee accepted the evidence of the SIU Officer who was a forthright, knowledgeable and credible witness. And, although they were hearsay statements, the Hearing Committee also accepted the statements of the Licensee in his interview with the SIU Officer. In addition to the Licensee’s admissions of misconduct, the Hearing Committee was astounded that the Licensee did not understand and appreciate that he was supposed to sight receipts prior to processing toll bridge transactions.

The Hearing Committee finds that Council has proven the allegations in the Notice of Hearing to the requisite degree and the Licensee breached the requirements of the Act, Council’s Rules and Council’s Code of Conduct and acted improperly in the renewal of his personal Autoplan insurance by providing a false toll bridge receipt for GETB and PMTB debt, failed to follow ICBC procedure in order to avoid paying his personal toll bridge debt and did not carry on the business of insurance in good faith, in a trustworthy and competent manner, and in accordance with the usual insurance practices, as required under Council Rule 7(8) and pursuant to section 231(1)(a) of the Act.

The Hearing Committee came to a conclusion on the Licensee’s culpability considering all of the evidence before it. The Hearing Committee did consider the Licensee’s statement that he knew for a fact that he was out of town and “someone at the office” renewed his car insurance for him. When weighed against the other evidence, the Licensee’s bald assertions in his email did not make sense considering the entire context of the situation. He readily admitted his improper conduct and provided reasons and details about its occurrence during his interview with ICBC and stated that he had nothing further to add. He had possession of the transcript for many weeks prior to the hearing and did not proffer any explanation as to why those statements were mistaken or untrue until only hours before the hearing. Further, that interview with ICBC took place on August 11, 2015, less than a year after he was supposedly out of town, which, according to the transcript, was a notable time in his working history at the Agency as he stated that it was during that time that he stated he cashed in his commissions. In the eyes of the Hearing Committee, it was more likely than not that the Licensee would have a better recollection of his schedule at the time of the interview rather than four years later. For these reasons, the Hearing Committee did not accept the Licensee’s

email statement that he knew that he was out of town at the relevant time and someone else had processed his Autoplan transaction.

Penalty

Although this hearing was not a result of the FST's decision of July 31, 2018 which remitted certain of the "toll bridge cases" back before Council to make determinations on penalty alone, the Hearing Committee accepts Council's submissions that in recommending any penalty the Hearing Committee should still be guided by the FST's direction of an appropriate baseline penalty of a suspension of six months and completion of an ethics course, subject to appropriate aggravating or mitigating factors. The impugned conduct was the same conduct as the conduct which was before the FST.

There were several aggravating factors to consider in this matter. The Hearing Committee largely accepted Council's submissions that it should consider the number of times the Licensee processed renewals with invalid receipts numbers,² the period of time over which the misconduct occurred and the fact that he renewed his own Autoplan for personal benefit as aggravating factors. While only a Level 1 Agent, the Licensee had been licenced for almost 20 years at the time of the impugned conduct and should have known how wrong his actions were. The fact that he did not reflect on his suitability as a licensee. The Hearing Committee was of the view that the Licensee's failure to attend the hearing was not an aggravating factor but was a matter that should be considered with respect to costs of the hearing. In a similar vein, the last minute lack of accountability, and failure to take any prior remedial steps, were not aggravating factors but showed a lack of mitigating circumstances in this case.

With respect to mitigating factors, the Hearing Committee accepted the Licensee's submission that he had no disciplinary history with Council. Other than that fact, there were essentially no other significant mitigating factors that the Hearing Committee could look to in justification of a suspension less than six months. The fact that the Licensee depended on his licence to earn income and provide for his family is not a proper mitigating factor, as that will be the case for many licensees. Further, there was an absence of real evidence on the issue.

Unlike some of the other decisions, there is no evidence that the Licensee had already served a suspension from the Agency or ICBC. At page 3 of tab 1 of Exhibit 3 there is mention that the

² The Hearing Committee acknowledges that the exact number of false or invalid transactions was not before it but that it occurred more than once a year and possibly as many as 30 times in total. The Hearing Committee also recognises that the Licensee was only impugned with wrongfully completing his own transactions but considered the overall number of transactions with respect to the degree that he did not carry on the insurance business in good faith and in a trustworthy and competent manner.

Agency was suspended from conducting Autoplan business for 30 days effective March 24, 2016, which is consistent with submissions from Council. The Hearing Committee did not understand this suspension to materially impact the Licensee as his work at the Agency was “very part-time” for him. While this 30 day Autoplan suspension was considered by the Hearing Committee as a mitigating factor, it was not a significant one and did not seriously impact its assessment of penalty in this matter. There was also no evidence that the Licensee had proactively taken remedial education or that he had apologized for his conduct as seen in some of the precedent cases. Finally, while an admission of guilt and expression of remorse normally could be a mitigating factor, here, while that was initially the case, the Licensee resiled from this at the last minute and stated that he did not in fact do this and it was some other unnamed person who improperly renewed his Autoplan for him (and then he, or someone else, must have late-paid his outstanding fees when the Licensee knew that those fees were due at the time of renewal).

In sum, the Hearing Committee accepted with Council’s submissions that the aggravating factors strongly outweighed the mitigating ones and that a suspension higher than the six month baseline as identified by the FST was warranted in the circumstances. The Hearing Committee also considered that other orders, in addition to the suspension, were available to it, including as the addition of a term and condition on his licence that he be required to successfully complete the “Ethics for Insurance Brokers” course or an equivalent course as accepted by Council prior to the completion of the suspension.

RECOMMENDATIONS OF THE HEARING COMMITTEE

In light of the evidence before it and its finding that Council had proven the allegations against the Licensee in the Notice of Hearing, the Hearing Committee recommends as follows:

1. The Licensee’s general insurance licence and life and accident and sickness licence be suspended for a period of 8 months;³
2. As a term and condition of the licences, the Licensee successfully complete an “Ethics for Insurance Brokers” course through the Insurance Brokers Association of British

³ Council sought a suspension of both licenses. In the Licensee’s email entered as Exhibit 1, he states that his life licence is his sole source of income, suggesting that he no longer has a general insurance licence. If he does, the Hearing Committee is of the opinion that both licenses need to be suspended to fulfill the objectives of professional discipline.

Columbia, or an equivalent course as acceptable to Council, prior to completion of the Licensee's licence suspension; and

3. The Licensee pay the reasonable costs of the hearing, as assessed in accordance with the applicable Schedule, payable prior to the completion of the Licensee's suspension.

The Hearing Committee felt that the costs of the hearing was also an appropriate order in the circumstances considering that: (1) the Licensee sought a hearing (as was his right) but then failed to appear at the hearing at the last minute; and (2) the Hearing Committee was recommending a penalty against the Licensee squarely within the range sought by Council. Therefore the Hearing Committee was not prepared to recommend any concession to the Licensee on an order of costs.

Dated in Vancouver, British Columbia, on the **17th day of September, 2019.**

A handwritten signature in black ink, appearing to read 'L. Maddison', with a long horizontal flourish extending to the right.

Lesley Maddison, Chair of Hearing Committee
Insurance Council of British Columbia