

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

HARRY WILLIAM FORSBERG
(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 29, 2017.

The subject of the hearing was set out in an amended Notice of Hearing dated June 11, 2019.

A Hearing Committee heard the matter on July 9 and 18, 2019 and presented a Report of the Hearing Committee to Council at its November 5, 2019 meeting.

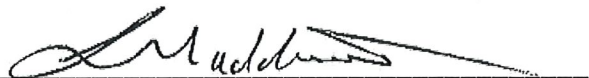
Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236 and 241.1 of the Act:

1. The Licensee’s general insurance licence is suspended for a period of eight months, commencing November 7, 2019 and ending at midnight on July 6, 2020;
2. The Licensee is fined \$3,000;
3. A condition is imposed on the Licensee’s general 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 one-half of the hearing costs in the amount of \$5,391.31 for a total of \$2,695.65;
5. A condition is imposed on the Licensee’s general insurance licence that failure to complete the above-noted course and pay the fine and hearing costs by no later than

Order
Harry William Forsberg
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July 6, 2020 will result in the continued suspension of his licence and he will not be permitted to complete his 2021 annual filing until such time as he has successfully completed the course and fully paid the fine and hearing costs.

This order takes effect on the **7th day of November, 2019.**

A handwritten signature in black ink, appearing to read "L. Maddison", written over a horizontal line.

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

HARRY WILLIAM FORSBERG
(the "Licensee")

Date: July 9, 2019
9:30 a.m.

-and-

July 18, 2019
9:00 a.m.

Before: Linda Lee Chair
Bob Scott Member
Howard Sale Member

Location: Suite 300 - 1040 West Georgia Street
Vancouver, British Columbia V6E 4H1

Present: David McKnight Counsel for Council
Zack Myers Counsel for Harry William Forsberg
Harry William Forsberg The Licensee
Elizabeth Allan Counsel for the Hearing Committee

BACKGROUND AND ISSUES

As set out in the Amended Notice of Hearing, dated June 11, 2019, the purpose of the hearing was to determine whether the Licensee:

1. Breached the requirements of the Act, Council's Rules and Code of Conduct and acted improperly in the renewal of Autoplan insurance by providing false toll bridge receipt numbers for customers and his personal toll bridge debt;

2. Failed to follow ICBC procedure in order to avoid paying toll bridge debt obligations for himself and for his customers;
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 Level 2 general insurance license;
 - b) Impose conditions on the Licensee's Level 2 general insurance license;
 - c) Fine the Licensee an amount of not more than \$10,000;
 - d) Require the Licensee to pay the costs of Council's investigation and/or this hearing;
 - e) Take any other measure that Council deems appropriate.

Council had conducted an investigation to determine whether the Licensee entered false information relating to Insurance Corporation of British Columbia ("ICBC") Autoplan transactions in an effort to override outstanding toll bridge debts owed by his customers and/or himself or his family members between January 1, 2014 and June 15, 2015 while employed at his agency. These toll bridge overrides were allegedly performed for tolls owing for both the Golden Ears toll bridge ("GETB") and Port Mann toll bridge ("PMTB").

On April 11, 2017, Council considered an investigation report on these issues.

On June 29, 2017, Council issued written reasons and provided a notice of an intended decision to the Licensee, pursuant to section 237(2) of the Act.

On July 13, 2017, the Licensee requested a hearing to dispute Council's intended decision, as was his right under sub-section 237(3) of the Act.

On June 11, 2019, the Amended Notice of Hearing was issued moving the date of the hearing to July 9, 2019 and, as explained further below, the hearing reconvened for approximately five minutes on July 18, 2019.

This is the written report of the Hearing Committee prepared in accordance with section 223(4) of the Act.

EVIDENCE

Exhibits

The following exhibits were entered by agreement the morning of July 9, 2019:

Exhibit 1 Agreed Statement of Facts

Exhibit 2 Council's Book of Documents

Exhibit 3 Licensee's Written Submissions and Book of Documents

On the morning of July 18, 2019, the Hearing Committee convened to preside over the hearing of the Licensee's wife, Suzanne Forsberg, with respect to similar allegations of misconduct. Prior to the commencement of that hearing, counsel for the Licensee, who was also counsel for Ms. Forsberg, applied to re-open the hearing for the Licensee. An additional document had come to light which counsel thought would assist the Hearing Committee in its deliberations with respect to the Licensee. He wished to enter it as an additional exhibit.

Council consented to this application and to the marking of this additional document as an exhibit to form part of the hearing record.

The Hearing Committee granted the application and entered the additional exhibit:

Exhibit 4 Email to Z. Myers, with attachment, undated.

Council provided a written argument at the conclusion of the hearing on July 9 and referred to a book of authorities that it had prepared as well as two other decisions, *Re Babcock* and *Re Johal*, which had recently been released by Council. The Licensee also provided a written argument, which was contained within Exhibit 3. Each party's written argument and the authorities referred to are considered further below.

Witnesses

Council did not call any witnesses.

The Licensee was sworn in and gave evidence on his own behalf. He was subject to cross-examination by Council and to questions from the Hearing Committee. His evidence is outlined in detail below.

Facts

The facts of this matter are set out in Exhibit 1 and in the evidence given by the Licensee.¹

The ICBC Autoplan Manual at Volume 1, section 12.5 sets out a toll bridge restriction requirement that “customers who have unpaid toll bridge fees are subject to a refuse to issue (RTI) by ICBC on their driver licenses, vehicle licenses and insurance policies”. The two toll bridge administrators were Quickpass for the GETB and TReO for the PMTB. ICBC applied a RTI restriction if more than \$25 was owed and the toll debt was over 90 days past due for the PMTB or if more than \$25 was owed and the toll debt was over 150 days past due for the GETB.

There are only two types of transactions which can be processed by a licensee for customers who have a RTI restriction applied by ICBC: non-licensed transactions and temporary operation permits which can last for a period of one to 15 days. No other transactions are permitted unless the customer has resolved his or her toll bridge debt directly with the toll bridge administrator. The licensee was required to confirm payment of the toll bridge debt prior to processing ICBC Autoplan transactions. Once confirmed, the RTI restriction could be removed by entering the receipt number provided by the toll bridge administrator to the customer.

The Licensee has been licensed as a general insurance agent with Council since 2005. He obtained his Level 2 general insurance license four years later, in 2009.

In June 2015, ICBC commenced an investigation pertaining to insurance agents overriding GETB and PMTB debts by entering false receipt numbers. There was an apparent glitch in the ICBC system that would allow a toll bridge debt, reflected as an RTI restriction, to be bypassed by entering a combination of any two letters followed by any five numbers (the equivalent of a false receipt number rather than a valid receipt number).

¹ Although each party entered a Book of Documents as an exhibit by consent, not all documents within those exhibits were referred to by counsel. The Hearing Committee has reviewed all documents but in producing this report and making its recommendations has only relied upon those documents which were incorporated into Exhibit 1 or identified and explained by counsel or the Licensee.

During the investigation, ICBC determined that the Licensee had processed six Autoplan transactions using false receipt numbers resulting in the removal of the RTI without the toll bridge debt being collected. ICBC also determined that the Licensee had facilitated the processing of two Autoplan transactions for his own vehicle with an RTI restriction by knowingly providing false authorization numbers to another agency staff member to remove the RTI restriction.

On January 18, 2016, an investigator from the ICBC Special Investigations Unit interviewed the Licensee for the first time. An investigator interviewed the Licensee a second time on January 22, 2016.

Exhibit 1, the Agreed Statement of Facts, incorporated documents located at tabs 1 – 6 of Council's Book of Documents (entered as Exhibit 2). The transcript of the Licensee's first interview with ICBC was included at Tab 4 of Exhibit 2. Relevant portions of the first interview are as follows:

- Q: *Very good. And are you familiar with the procedures in the Auto Plan manual?*
A: *Yes, yep.*
Q: *Has there ever been a time when you chose not to follow those procedures in order to help out a customer?*
A: *No. Nope. I look after me first.*
...
Q: *Do you get pressure at the dealership to make it happen?*
A: *I do not take any pressure from anybody. I don't care. I do what my job is required and nobody tells me what my job is, only myself.*
Q: *So have you ever helped a customer to get around the debt?*
A: *No.*
Q: *Okay. Have you ever keyed in an authorization number to bypass the debt without looking at a receipt?*
A: *No.*
Q: *Okay. So the numbers that you are keying in come from where?*
A: *From a receipt or the customer themselves. Or...*
Q: *Okay. So you never just made one up.*
A: *Well, no way back you used to just trust a customer. Oh, here's my number, okay you try it oh it worked.*
Q: *Okay.*
A: *I didn't know to take now they're really pushing us to have to have proof. You have to attach it to your documents and all that. Or that wasn't in the effect before.*
...
Q: *Alright, so have you ever punched in one of those numbers knowing that it was a false number?*
A: *No.*
...

Q: *Okay. And another one here. The number you used to bypass was [REDACTED]. So all of yours used the agent number to bypass toll bridge debt. So, I think we can probably agree that those numbers then would not have come from the customer.*

A: *No.*

Q: *Because they wouldn't know that. And it wouldn't come from the bridge. For a lot of reasons. One, but that's not paid. So the bridge didn't give you a bypass for it.*

A: *So it was either they told me, yeah I paid it, it's all paid up the date, okay. And that was the case back then. And then now they are stressing, you can't...after you are approved, you have to get papers and receipts, and all this stuff.*

Q: *So you are telling me that you weren't familiar with the proper procedure back then?*

A: *Exactly.*

...

Q: *So tell me where the numbers came from, then?*

A: *Probably in my head?*

...

Q: *Did you talk to Suzanne about it?*

A: *About what?*

Q: *About making numbers up.*

A: *No, no. She's in a different office and she separate and I'm on my own.*

Q: *Okay, so you guys have never had a discussion about how you can bypass debt doing...*

A: *No, no, I did my own.*

...

Q: *Yeah, okay. What about for your own vehicle. Have you ever bypassed debt for your own vehicle?*

A: *No. I don't do the insurance. Like usually we have to have the managers do it.*

...

Q: *Alright, so tell me about what happened back in July when you needed this renewal done [on his own vehicle]. So you went in and saw [his manager]?*

A: *Yeah. And then [the manager] was at the front and I said can you do my insurance? And this is the papers with all BC ID and everything. And then went to the back and started doing renewals and stuff. So then I just went and signed.*

Q: *So [the manager] came to you and said it's ready.*

A: *Yep.*

Q: *Okay. So [the manager] never came to you and said you have RTI debt. I need you to look after that.*

A: *No.*

Q: *Okay, so there's no discussion with [the manager] whatsoever about the fact that [the manager] got a RTI notification and couldn't process your transaction without an authorization number and you needed to call the bridge or somewhere else to deal with your debt.*

A: *No. No, not that I recall.*

Q: *Okay, so in other words the number that was used did not come from you?*

A: *No. That I remember. I don't remember that.*

Q: *You don't remember?*

A: *Nope.*

Q: *Okay, well if it didn't come from you I think you can agree with me that it wouldn't have come from the bridge office because they would not have spoken to [the manager] on your behalf.*

A: *No.*

Q: *Right?*
A: *Yep.*
Q: *So it didn't come from you? It didn't come from the bridge office? Where did it come from?*
A: *I don't know.*
...
Q: *Are you telling me that [the manager] created it?*
A: *I don't...I can't recall.*
...
Q: *Are you telling me that [the manager] created it?*
A: *I don't...I have no clue.*
...
Q: *So where do you think the number came from?*
A: *I don't know.*
Q: *You didn't give it to [the manager], you telling me.*
A: *I never had a receipt on me, nothing, no.*
Q: *Right, because it wasn't paid. So we know that you didn't have a receipt.*
A: *I honestly don't recall.*
Q: *You don't recall? But it did not come from you.*
A: *No.*
Q: *Okay. So are you telling me that [the manager] created it?*
A: *I don't know. I have no recollection. I'm not sure.*
...
Q: *Is there anything else you wanted to tell me that you thought might be important?*
A: *Nope.*
...
Q: *So where do you think [the manager] got the number from?*
A: *I don't recall.*
Q: *Okay. So it's the same situation as what we discussed with your own transaction. You didn't give it to [the manager]? The bridge didn't give them to [the manager], so where did they come from?*
A: *I don't know.*
Q: *Are you telling me that [the manager] made them up?*
A: *I don't know how [the manager] did it.*
Q: *You don't know how [the manager] did what?*
A: *Bypassed it and [the manager] just made up a code or...*
Q: *So is that what you are telling me?*
A: *Well I didn't do the transaction so I didn't. [The manager] never came to me and said, oh you need a code and just popped it out of my head...*
Q: *Okay, but you didn't give [the manager] these bypass numbers that start with TR?*
A: *No.*

The transcript of the Licensee's second interview with ICBC was included at Tab 6 of Exhibit 2.² Relevant portions of the second interview are as follows:

² Exhibit 1, the Agreed Statement of Facts, referred to this transcript being included at as "Exhibit 5" in Council's Book of Documents. In response to a question from the Hearing Committee, Council confirmed that the reference in the Agreed Statement of Facts should not be "Exhibit 5" but Tab 6 of Exhibit 2.

Q: ...So why are we here?
A: I'm...I did give or use wrong codes bypassing in Treo. Just that we get frustrated waiting for like an hour or two and it puts our whole day off so sometimes I am like I'm trying to contact the client to get an autho or whatever, so difficult sometimes. Somebody in our....office said oh yeah, you can use these codes, and [REDACTED] said it loud to the whole office.
...
Q: Who told you that? Or who did you hear that from?
A: It was...actually I think Suzanne hear it from [a supervisor]...
Q: So, who did you hear it from then?
A: Suzanne told me.
...
Q: Okay, alright. So you admit that you previously on Monday, gave [the investigator] a false statement?
A: Yes.
Q: Okay. And you were creating false authorization numbers to bypass debt for customers?
A: Yes.
...
Q: Okay. So when Suzanne, [the manager] did the renewals for...actually 2 for Suzanne and then [the manager] also did a renewal transaction for you as well as a change transaction.
A: Yes.
Q: So, tell me what happened because you provided a statement from [the investigator].
A: So I asked [the manager] to do my insurance. I was just at the back of the office and [the manager] was at the front and then I gave [the manager] a fake code. Yeah.
Q: So, when you were interviewed by [the investigator] and [the investigator] said where did those numbers come from, what did you tell us?
A: I don't know I said.
Q: You said you didn't know.
A: Yeah.
Q: And you said that maybe potentially [the manager] made them up.
A: Yeah [the manager] didn't.
...
Q: ...I'm assuming that you knew it was wrong when you were doing it.
A: We all know it's wrong. When somebody says it isn't they're...
Q: Okay. So you knew it was wrong and that's why you...
A: I didn't know it was that serious of a crime, you [REDACTED]
[REDACTED] and I feel like crap because just doing this little thing...You know it's not that little but you're not following the rules sort of.

Further facts in this matter became apparent from the *viva voce* evidence of the Licensee, which are set out directly below.

EVIDENCE OF THE LICENSEE

The Licensee testified that following his first interview with ICBC he spoke to his agency manager and admitted that he had entered false receipt numbers to remove the RTI restriction on certain transactions. His manager told him that he needed to “do the right thing” (which is what led to the second interview). Following that conversation, the agency imposed a modified employment contract upon the Licensee commencing on January 29, 2016. The following terms and conditions applied:

1. The agency required him to be supervised, which placed him under the same terms of supervision of insurance transactions as a Level 1 agent;
2. He was required to read Council’s Code of Conduct and pass a test of knowledge regarding the Code and acceptable forms of conduct;
3. He was required to read and follow the ICBC Autoplan Manual for compliance and to comply with the Manual at all times;
4. He was ineligible to earn commission income and his assigned commission clients were reassigned by the agency;
5. He was eligible to work office shifts and as a back-up on the road at one office on a full time basis. His hourly pay was adjusted to \$█ per hour and all transactions that were eligible for incentive sales bonus were to be audited for compliance before any incentive could be earned; and
6. Except where modified as described above, the terms of his employment with the agency remained in effect.

The Licensee stated that he agreed to those terms. He further stated that he was supervised as a Level 1 agent by his manager for a period of four months, during which time he conducted work solely in one agency office. His ineligibility to earn commission lasted a period of 18 months. He stated that he lost a lot of clients during that period of time. He read Council’s Code of Conduct and passed the knowledge test. The Hearing Committee was also directed to a certificate included in Exhibit 3 which demonstrated that the Licensee had completed Council’s Rules course on August 20, 2016.

The Licensee then gave evidence on the personal impact to him following his admission to his manager, and subsequently ICBC, of his wrongful acts. He stated that his living expenses were high and with his reduced income as a result of his modified employment contract with the

agency [REDACTED]

[REDACTED]. The Licensee also spoke about significant stressors which were present at the material time which may have influenced his decisions, [REDACTED]

With respect to the details of the Licensee's reduced income during a two year period, the Licensee directed the Hearing Committee to tab 9 of Exhibit 3 which contained a spreadsheet of income for the period 2015 through 2017. It is this spreadsheet in an easier to read format, plus income from 2018 and 2019 to date, and explanation from the agency's vice president of finance, which is contained in Exhibit 4, entered on July 18, 2019. The Licensee testified that as a result of his demotion to the equivalent of a Level 1 agent and loss of commissions during the relevant period of time his income dropped by \$ [REDACTED], which was not as much as he thought it would be.³

The Licensee then addressed an undated letter of apology which he had written to Council in which he expressed his deep shame and embarrassment for what had occurred, including [REDACTED], and caused a strong reflection of his professional responsibilities and duties as an agent. He did not think at the time that it was serious but he saw now how serious and damaging the situation was to his personal and professional reputation, as well as the reputation of his brokerage. He promised that it would never happen again.

Next, the Licensee addressed a letter of support which had been written by [REDACTED], who has known the Licensee for over 20 years and as an employee of the agency for approximately 14 years, which stated:

[The Licensee] is a genuinely responsible individual. He has always been very professional in all his dealings with me. He is a hardworking individual. My observation is he always tries to help everyone, he goes out of his way to help and is very dedicated to his family. I can convey that this entire experience has been

³ It appears as if the amount is actually \$ [REDACTED] which is comprised of a \$ [REDACTED] loss between 2015 and 2016 and a gain of \$ [REDACTED] from 2015 to 2017. Certainly the Licensee's commissions dropped but his gross payroll increased. The VP of finance assessed the Licensee's lost commission income at \$ [REDACTED] but again, this is not actual lost income as the majority of it was made up by increased hours worked. The VP of finance concluded that as of 2018 the Licensee's income had recovered due to the reinstatement of commission work and ongoing hourly earnings.

weighing on him as we have discussed it from time to time and he expresses the amount of stress and pressure given the uncertainty as to what may happen. This incident is out of character for him, but I believe he has learned very much from it.

The Licensee once again spoke to the tremendous emotional impact that this situation has had on him and that he had lost hours of sleep thinking about how bad it was and how wrong it was. He stated that he just wanted the process over with so he could go on with his life. It has taken a toll on himself, his wife and his family. His explanation as to why he gave false information to ICBC during the first interview was that he had never been through anything like that, he was very scared that he was going to lose his job and if he did lose his job he did not know how he was going to provide for his family [REDACTED]. After the interview he felt wrong about the situation and that is when he went to the agency's nominee who encouraged him and his wife to speak to ICBC again.

The Licensee concluded his evidence in direct by stating that he was "super sorry" for his wrongful acts and that he cannot believe that he did it. He explained that business got tougher over the years and he worked all the time. He wished that he could "take it back" and that he will "never ever do it again". He professed that if he saw his colleagues doing anything similar in the future that he would talk to his manager.

In cross-examination by Council, the Licensee admitted that he was aware that his wife was being interviewed by ICBC on October 13, 2015, but stated that she never went into detail with him as to what the interview was about. She only said that she was being investigated and she never said, and he didn't know, what her statement to ICBC contained. He stated that when he was at home he did not want to talk about insurance because he worked so much and sometimes he did not even want to turn on his laptop. He stated that Ms. Forsberg only spoke about her interview in very general terms and she never told him that she had denied her conduct or what she said. He said that prior to his first interview with ICBC that he never discussed with his wife what his answers were going to be to ICBC and that his answers were "from his own head". In response to Council noting that it was a coincidence that both he and Ms. Forsberg's initial statements to ICBC were to blame the branch manager, he responded that no one else was involved. It was only after his first interview that he discussed with his wife what he had said and they decided to go to the agency's nominee and tell her that they had lied.

Council questioned the Licensee about his motivations for these improper transactions using false receipt numbers. With respect to his personal vehicle transaction, he stated that he was simply trying to delay payment of the debt. He knew that he had to pay the debt eventually and he was not trying to avoid payment but that some months are tighter with finances than others. His toll debt ran up very high driving during the course of business. He stated that the

agency did not reimburse him for his toll bridge expenses. He was in some discussions with the agency's controller for reimbursement but the controller wanted receipts and he was "not great at keeping up with paper". He did eventually get some materials together but by that point the controller was no longer employed by the agency. In response to a question from the Hearing Committee about a replacement controller, the Licensee advised that he did not think that the controller was ever replaced and emphasized that the reimbursement was very hard to obtain. He conceded that he should have tried harder to get reimbursement but the possibility of reimbursement only materialized towards the end of the ICBC investigation.

The Licensee stated that at the time that his personal Autoplan renewal came due he knew that the amount owing was "up there" but did not know that he owed more than \$[REDACTED]. He also stated that [REDACTED] he was responsible for that toll bridge debt as well, which was more than \$[REDACTED]. His motivation for improperly processing the other six customer transactions varied. For two of them, he said that he received pressure from the general manager of a motor vehicle dealership where he regularly processed insurance. He stated that he should have said no to him and refused to complete the transaction. For the remaining four transactions, he stated that it was a convenience factor. He could not recall if those four customers were aware that they had debts.

The Licensee confirmed that he did not receive a suspension from ICBC as a result of his misconduct and that he has no other disciplinary history with Council.

SUBMISSIONS OF COUNCIL

As stated above, Council provided a written submission. Council's position was any penalty imposed on the Licensee ought to be in accordance with directions from the Financial Services Tribunal ("FST") in its decision 2017-FIA-002(a), 003(a), 004(a) 005(a), 006(a), 007(a) and 008(a) issued July 31, 2018 with respect to several licensees with similar toll bridge debt misconduct. In particular, in this case, Council highlighted paragraphs 101 and 102 which addressed the importance of trustworthiness in the industry:

*[101] It is my view clear beyond debate that repeated licensee conduct that causes the regulator and the public to question that licensee's trustworthiness strikes at the heart of the licence itself. **The importance of trustworthiness cannot be understated.** Nor should we forget what this term actually means.*

[102] The work of insurance agents is regulated for a reason. Insurance agents find themselves in a position of trust in relation to important financial transactions that have implications for their clients, for insurers and for the

*public. The insurance licence is a solemn obligation granted on the trust that the agent will work in accordance with the rules and standards created for licensees. **Trustworthiness means honouring that trust by doing the right thing even when it is inconvenient, even when no one is looking, even when an agent might not agree with the rules, even when an agent is under pressure to do the convenient thing and even when other agents are engaging in the same conduct.** Anyone with the means to do so can do the easy thing or the expedient thing. **The regulatory system would be meaningless if its participants, the public and the regulator could not have confidence in a licensee to act in a trustworthy fashion.***

(emphasis by Council)

With respect to penalty, Council submitted that the Hearing Committee should be guided by the FST's direction that subject only to mitigating factors, a suspension of six months and the requirement to take an ethics course acceptable to Council represents the minimum or baseline reasonable penalty that the Licensee's conduct must attract. Council also spent a portion of its submission identifying the relevant portion of the applicable Code of Conduct and Policy & Guidelines, January 2014, Section 4, which it noted that the Licensee breached.

On the subject of possible aggravating factors which may increase the FST's suggested six month suspension and requirement to take an ethics course Council emphasized the repeated lies and misdirection of the Licensee during his first interview with ICBC which were: that he never disregarded ICBC Autoplan Manual procedures to assist a customer; that he did not provide his manager with false receipt numbers in order to improperly bypass the RTI on his own insurance; and a suggestion that it could have been his manager who independently applied the false receipt number in order to bypass his RTI. The Licensee, an agent of 10 years at the relevant time, knew that his actions, and his lies to ICBC, were wrong, and yet he continued his misconduct on at least eight separate occasions and repeatedly lied to ICBC before eventually making his admissions of wrongdoing. Council did not identify any possible mitigating factors in its submission.

Council set out the sentencing principles and precedent decisions which guide the Hearing Committee. The fundamental purpose of sentencing for misconduct is to ensure the public is protected from further acts of misconduct by a licensee, as well as to prevent against similar acts or actions by other licensees in the future. The case of *Financial Services Commission v. The Insurance Council of British Columbia and Maria Pavicic*, November 22, 2005 states that some of the factors to be considered in sentencing include: the need to promote specific and general deterrence and thereby protect the public; rehabilitation, punishment and isolation of the offender; the need to maintain the public's confidence and the integrity of the

profession's ability to properly supervise the conduct of its members; and the range of sentencing in other similar cases.

Council took the Hearing Committee to seven precedent decisions which dealt with similar misconduct and which were decided after the FST's directions on penalty. It is somewhat an art and not a science in considering the applicability of these decisions as they all turn on their own facts. Each decision is unique to some degree and Council noted that the Hearing Committee is not bound by them. Despite this, Council summarized these precedent cases and identified similar factors which appear in these prior cases and to some extent dictate where the misconduct is placed on a spectrum. In summary, the precedent decisions can be described as follows:

Case Name	Licence Level	# False Transactions	Aggravating Factors	Mitigating Factors	Discipline
Nguyen	1	116	Licensed since 2004; stood to benefit financially	Level 1; admitted misconduct; 12 week ICBC suspension; apology; ethics course on own initiative	5 month suspension
Lee	1	36	Licensed since 2001; stood to benefit financially; told customers she was clearing their debt with a fake number	Level 1; admitted misconduct; wanted to help her customers	6 month suspension and ethics course
Babcock	1	50	High number of false transactions; stood to benefit financially; continues to dispute misconduct	Level 1; paid fine to brokerage; unflattering media coverage; no discipline history; support of agency	7 month suspension and ethics course
Johnson	2	53	Level 3 licensee and agency nominee at one point; stood to benefit financially; started misconduct 6 months after tolls established	Admitted misconduct; tried to make things easier for customers; 12 week ICBC suspension; apology; ethics course on own initiative	7 month suspension
George	1	34	Licensed since 2003; stood to benefit financially; failure to accept responsibility	Level 1; processed transactions outside of business hours when manager not available	8 month suspension and ethics course
Johal	1	1+ (20+ at agency)	Licensed since 2006; managerial position; knowledge of misconduct of other	Level 1; admitted misconduct; 2 month agency suspension plus additional 3 month ICBC	8 month suspension and ethics course

Case Name	Licence Level	# False Transactions	Aggravating Factors	Mitigating Factors	Discipline
			agents	suspension	
Das	3	32	Level 3; stood to benefit financially; transactions during regular business hours (customers could have paid)	Admitted misconduct; trying to help customers who did not have credit cards or whose insurance expired at midnight	9 month suspension and ethics course

Council submitted that the Licensee, as a Level 2 agent at the relevant time, who, during a period of eight months, processed six RTI bypasses for customers for convenience and provided false receipt numbers for his own vehicle and his family’s vehicle and then lied to ICBC during its investigation, should be subject to a 10 month license suspension, subject to a \$5,000 fine and mandatory completion of an ethics course.

Council’s final submissions were on costs. Council reminded the Hearing Committee that, unlike those precedent cases which were sent back from the FST to address the issue of mitigating and aggravating factors only, this was a hearing *de novo*. Council sought a recommendation that the Licensee be required to pay Council’s costs in accordance with the Hearing Costs Assessment Schedule in an amount to be determined. Council submitted that an order for costs is consistent with the principle that licensees should be responsible for misconduct and those costs should not be borne by those whose conduct is not in issue. Any order for costs should acknowledge that those costs should be paid before any suspension on the Licensee’s license is lifted.

When the Hearing Committee asked Council to specifically comment on the fact that it was seeking a fine in addition to a suspension, which was not present in any of the precedent decisions put before it, Council explained that it was the breach of trustworthiness and the blaming of the branch manager which, in its submission, more than supported a higher sanction.

SUBMISSIONS OF THE LICENSEE

In his closing submissions, the Licensee adopted the approach of addressing the penalty for both the Licensee and his wife, Ms. Forsberg, together. A focus of the submission was that the Hearing Committee needed to consider the unique circumstances of having two married licensees facing similar misconduct and, as a result, disciplinary penalties. There was nothing improper about this approach but Hearing Committee has been careful to only consider the evidence before it in this matter and acknowledged (although ultimately did not accept for

reasons discussed below) that there may be some special considerations given the reality that the fact patterns, and any penalty imposed, were intertwined.

A significant portion of the Licensee's submissions on penalty focused on the fact that no two precedent cases were alike and that none of the precedent decisions before the Hearing Committee considered a marital union between Licensees, a dual income based on holding valid licenses, personal factors which may have impacted the Licensee's conduct and the significant financial and emotional harm to the Forsberg family. Any punishment would co-exist between them, [REDACTED].

The Licensee submitted that in the *Babcock* case, Ms. Babcock did not admit her misconduct and showed no remorse. Further, she had a high number of false transactions – they were in the double digits (50) as compared to the Licensee's six false entries. Ms. Babcock was penalized with a seven month suspension. In reply, Council pointed out that the difference between the Licensee and Ms. Babcock was that Ms. Babcock did not attempt to blame someone else for her misconduct.

The Licensee reminded the Hearing Committee that he faced a demotion to a Level 1 licensee for a period of time as well as an 18 month period whereby he did not receive any commission and his renewal clients "disappeared" because he could not reach out to them. He admitted that he provided a false statement to ICBC but he recanted and provided as much information as possible within a period of only four days.

The Licensee submitted that the principle of specific deterrence had already been met. He took this matter very seriously, has experienced certain level of public shaming and it has dragged on for several years. As to general deterrence, he submitted that others in the company would be deterred as he, a respected agent of a certain age, was demoted to Level 1. In reply, Council attempted to clarify that any restrictions placed on the Licensee by his employer are a contractual arrangement and do not impact the responsibility of Council as a regulator.

The Licensee was agreeable to taking an ethics course as well as any other course that the Hearing Committee wished to recommend. There was disagreement between the Licensee and Council as whether the Licensee's conduct was tantamount to fraud, as Council had put it. The Licensee pointed out to the Hearing Committee that the debt did not disappear – it is just that by providing a false receipt number he was able to renew his license and delay payment of the debt. He agreed that there was a large degree of malfeasance and dishonesty but it was not fraud.

With respect to the mitigating factors, the Licensee submitted that he had shown a level of insight and understanding as to his misconduct and demonstrated that he continued to have strong personal relationships at the agency.

Finally, in response to Council's submission that it should receive costs of this hearing, the Licensee took the position that this was a streamlined hearing due to the Licensee's admissions and that none of his conduct was contested. The Licensee asked the Hearing Committee to consider his personal background and the financial and emotional consequences of making a recommendation for costs.

The Licensee concluded his submissions by stating that, considering all of the circumstances, and that a nine month suspension is the highest suspension imposed to date for this toll bridge debt misconduct and five month is the lowest suspension imposed to date, his period of suspension should be six months, if not a little below. With respect to the imposition of a fine, he stated that each case needs to be considered on its own circumstances and, while recognizing that he was complicit in processing his own false transaction, there was an extremely low number of false transactions overall.

FINDINGS OF THE HEARING COMMITTEE

The Licensee admitted the breaches as set out in points one and two of the Amended Notice of Hearing and the Hearing Committee finds that the Licensee breached the Act, Rules and Code of Conduct by committing those actions. The hearing was not an entirely streamlined hearing as the Hearing Committee still had to consider whether the Licensee is able to carry on the business of insurance in good faith, in a trustworthy and competent manner, and in accordance with the usual practices of the business, as required under Council Rule 7(8) and pursuant to section 231(1)(a) of the Act and what, if any, discipline ought to be imposed because of the Licensee's breaches.

The Hearing Committee is not prepared to make a finding that the Licensee is generally unable to carry on the business of insurance in good faith, in a trustworthy and competent manner, and in accordance with the usual practices of the business. The Hearing Committee does have very serious concerns with respect to the Licensee's misconduct and finds that in the past he has not carried on the business of insurance in good faith and in an appropriate manner. The Hearing Committee is of the view that the Licensee has learned his lesson and can be rehabilitated, but that a significant penalty must be imposed with conditions on his license in order to achieve an appropriate and fair result and fulfil the objectives of Council and the professional discipline process.

As a starting point, the Hearing Committee is concerned that the Licensee may still fail to appreciate the seriousness of his actions and the standards which are required of him as a member of a regulated profession. In his second interview with ICBC, the Licensee stated that he didn't know that it was "that serious of a crime" and suggested that his misconduct was a "little thing...You know it's not that little but you're not following the rules sort of". There was a dispute between the parties as to whether the conduct was fraud, or was tantamount to fraud, or something less. In the view of the Hearing Committee, nothing turns on this. The Licensee admitted his misconduct and whether or not it met the definition of fraud was not before the Hearing Committee. His misconduct was way beyond a "little thing" and more than "you're not following the rules sort of". It was a direct contravention of the Rules and a gross breach of his professional obligations which the Licensee knew or ought to have appreciated. His apology to Council acknowledged that his conduct was serious but focused on how it was damaging to him personally. Before the Hearing Committee, his apology turned more towards remorse and he repeated his promise that the conduct would not be repeated.

Second, the Hearing Committee is of the view that the Licensee's repeated and deliberate lies to ICBC on January 18, 2016, namely that he did not provide false receipt numbers for customers, he did not provide them to his manager for his own transactions and his suggestion that maybe his manager entered the false receipt numbers on their own accord is also a significant breach of Council's expected standards of licensees and is worthy of admonition.

The Hearing Committee acknowledges that the Licensee corrected his lies almost as soon as practicable. This is notable and he is to be commended for taking such steps. But this does not mitigate the fact that he repeatedly lied in the first place. The vast majority of other agents caught in this debt scheme admitted culpability immediately and this was a mitigating factor in penalty assessment. The absence of an admission is not a proper aggravating factor, but deliberately lying or misleading is a factor which should lead to an increased penalty. Further, the need for punishment and a message to the industry and the public that cooperation with ICBC or Council in its investigations is of utmost importance is necessary. Without cooperation from agencies and their licensees in investigations it is impossible to fully protect the public. It is for this reason that the Hearing Committee believes that it is necessary and appropriate to depart from precedent decisions which only impose a suspension and an ethics course and recommend additional sanction in the form of a fine. This Licensee's misconduct in repeatedly and deliberately lying to and misleading ICBC strikes at the very heart of the statements of the FST: trustworthiness means doing the right thing even when it is inconvenient, when no one is looking and when others may be engaging in the same conduct.

On a similar note, the Hearing Committee also feels it is necessary to directly address the Licensee's evidence that he never spoke with his wife in any detail about the investigation following her interview with ICBC. The Hearing Committee does not accept his evidence on this point and finds it wholly improbable. Further, it finds it inconsistent with the Licensee's evidence that it was his wife who told him about the "glitch" and the bypass, which is also contrary to the Licensee's evidence that they never spoke about work at home (which the Hearing Committee also does not accept). The Hearing Committee finds it inconceivable that a married couple, who are not only in the same industry but work for the same company, would not, even once over a period of several months, discuss an ongoing investigation by ICBC about a scheme which they both knowingly took part in and, by the autumn of 2015, at least one of them knew that they were being investigated because of those actions. The Licensee was resolute in his evidence that he did not discuss deliberately misleading ICBC in his interview with his wife prior to his first interview of January 18, 2016; however, the Licensee was also resolute in that first interview with ICBC that he did not participate in that scheme and that he did not know how his manager obtained a false receipt number in order to process his family's own insurance when a RTI was present. Both of these statements were of course false. The Hearing Committee found his unwavering evidence on this point not credible. The Hearing Committee is of the view that the Licensee did discuss the details of his wife's interview with her prior to his own interview. The Hearing Committee did not form a view on any discussions further than the Licensee knew why his wife was being investigated and that he had discussed this with her.

Two final aggravating factors considered by the Hearing Committee were that the Licensee stood to benefit financially from his misconduct (specifically by delaying payment of his own debt) and that the Licensee was also Level 2 licensee with significant experience in the industry at the relevant time.

At the same time, the Hearing Committee recognized a number of mitigating factors: there was an overall low number of false transactions; although the Licensee initially lied to ICBC, he retracted this as soon as practicable; he has been disciplined by his agency for a significant period of time with the resulting income loss; he has the support of his agency; he made an apology to Council at some point; he apologized again during the course of the hearing; he continues to express remorse and he has no disciplinary history with Council. But for these numerous mitigating factors the Hearing Committee's recommendations on penalty would likely have been in accordance with the penalty as sought by Council (which did not appear to have the benefit of the evidence brought forth by the Licensee as to mitigating factors when seeking its orders) or at least higher than as made in this report.

RECOMMENDATIONS OF THE HEARING COMMITTEE

The Hearing Committee recommends that Council consider the following penalty:

1. the Licensee's Level 2 general insurance license be suspended for a period of eight months;
2. the Licensee be fined \$3,000;
3. as a term and condition of the Level 2 general insurance license, the Licensee successfully complete an "Ethics for Insurance Brokers" course through the Insurance Brokers Association of British Columbia, or an equivalent course as acceptable to Council, prior to completion of the Licensee's license suspension; and
4. one half of hearing costs as assessed.

The Hearing Committee heard submissions about the difficult financial situation that his family would be in with both the Licensee and his wife receiving license suspensions. The Hearing Committee did not accept his counsel's submission that this ought to be a mitigating factor as to penalty. This is not a proper or recognized mitigating factor and, in any event, no decision on Ms. Forsberg's misconduct had occurred at the time of this hearing. Further still, making this a mitigating factor would not be fair to those licensees who are not married to another licensee who also committed misconduct and who do not have this argument available to them. Given the somewhat unusual nature of the parallel proceedings of the Licensee and his wife, this Hearing Committee does recommend that, if Ms. Forsberg also faces a suspension, Council give the Licensee the opportunity to serve his suspension either before or after any suspension imposed on his wife rather than his suspension being served concurrently. The Hearing Committee has considered all of the principles of sentencing put before it and is confident that this structure would adequately protect the public and meet Council's obligations while at the same time considering overall fairness to the Licensee and his wife.

With respect to costs, the Hearing Committee acknowledges the principles of a costs award as elucidated by Council. The Hearing Committee is also aware that any costs award is a discretionary award, costs awards should not be a barrier to Licensees seeking a hearing and such an award must be fair in all the circumstances. The Hearing Committee recognized and appreciated that the parties were able to arrive at an Agreed Statement of Facts, but there were still issues which were before the Hearing Committee. For these reasons the Hearing Committee was not prepared to make a recommendation of an award of costs to be assessed but recommends that Council should be awarded half its costs of this hearing, as assessed.

Finally, the Hearing Committee also recommends that the Licensee be permitted to pay the fine or costs at any point up until his suspension is concluded. If he does not pay the fine or costs prior to the conclusion of any suspension, his suspension should continue until he does so.

Dated in Vancouver, British Columbia, on the **7th day of October, 2019.**



Linda Lee, Chair of Hearing Committee
Insurance Council of British Columbia