

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

and the

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

and

**RYAN DUNBAR CARRAT**  
(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 July 14, 2017.

The subject of the hearing was set out in a Notice of Hearing dated October 18, 2019.

A Hearing Committee heard the matter on November 15, 2019 and presented a Report of the Hearing Committee to Council at its January 14, 2020 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 license is suspended for a period of one month, commencing January 24, 2020 and ending at midnight on February 23, 2020;
2. The Licensee is fined \$5,000;
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. A condition is imposed on the Licensee’s general insurance licence that requires him to successfully complete the Council Rules Course;
5. The Licensee is assessed hearing costs in the amount of \$7,813.64; and

6. A condition is imposed on the Licensee's general insurance licence that failure to complete the ordered courses and pay the fine and hearing costs by April 23, 2020 will result in the automatic suspension of his licence and he will not be permitted to complete his annual filing until such time as he has successfully completed the courses and fully paid the fine and hearing costs.

With respect to the ordered hearing costs, as a self-funded regulatory body, Council looks to licensees who have engaged in misconduct to bear the costs of their disciplinary proceedings, at least in part, so the costs are not borne by other licensees in general. Further, Council acknowledges that the imposition of hearing costs in this case is not a barrier to due process and is fair in all the circumstances. Council also notes that the Licensee acknowledged and accepted at the hearing that costs should be awarded against him.

This order takes effect on the **24<sup>th</sup> day of January, 2020.**



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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

**RYAN DUNBAR CARRAT**  
(the "Licensee")

**Date:** November 15, 2019  
9:30 a.m.

**Before:** Frank Leong                      Chair  
Fraser Anderson                      Member  
C. John Crisp                          Member

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

**Present:** David McKnight and                      Counsel for Council  
Thea Hoogstraten  
Alison Murray, Q.C.                      Counsel for Ryan Dunbar Carrat  
Ryan Dunbar Carrat                      In person  
Elizabeth Allan                          Counsel for the Hearing Committee

**BACKGROUND AND ISSUES**

As set out in the Notice of Hearing, dated October 18, 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 for members of his family;
2. failed to follow ICBC procedure so that customers and members of his family could avoid paying toll bridge debt obligations;

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; and
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 license;
  - (b) impose conditions on the Licensee's general insurance license;
  - (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 this hearing;
  - (e) take any other measures that Council deems appropriate.

Council 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 his family members between January 1, 2014 and June 15, 2015 while employed at an insurance 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 and made an intended decision, pursuant to sections 231 and 236 of the Act, to impose discipline against the Licensee.

On July 14, 2017, Council issued written reasons and provided notice of the intended decision to the Licensee, pursuant to section 237(2) of the Act.

On July 28, 2017, the Licensee requested a hearing to dispute Council's intended decision, as was his right under section 237(3) of the Act.

The hearing took place on November 15, 2019. The delay in getting this matter to a hearing was explained by Council and was not attributable to any fault of the Licensee or Council. This is the written report of the Hearing Committee prepared in accordance with section 223(4) of the Act.

There have been a number of other hearings in the past year relating to toll bridge overrides performed by licensees. The Hearing Committee understands that this will be the final hearing report of a Hearing Committee related to the factual matrix of the toll bridge overrides.

## **EVIDENCE**

### *Exhibits*

The following exhibits were entered at the hearing by agreement:

- Exhibit 1**      Agreed Statement of Facts
- Exhibit 2**      Council's Book of Documents
- Exhibit 3**      Licensee's Book of Documents

Each of the parties also provided a written argument and referred to a book of authorities. The Hearing Committee reviewed all of these materials in preparing this report and certain aspects of these materials are referred to 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.<sup>1</sup> Briefly, at the material time the Licensee was licensed as a Level 1 general insurance salesperson and had been for approximately nine years. He was a "roadrunner" and was paid on a commission only basis. The Licensee's father was the general manager at one of the car dealerships that he served as a roadrunner.

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<sup>1</sup> Following the conclusion of the hearing, the Hearing Committee ordered a transcript of the proceedings and relied upon it in writing this report.

As set out in many other toll bridge cases, at the material time the ICBC Autoplan Manual at Volume 1, section 12.5 set 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 were only two types of transactions which could be processed by a licensee for customers who had a RTI restriction applied by ICBC: non-licensed transactions and temporary operation permits which could last for a period of one to 15 days. No other transactions were permitted unless the customer had 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.

In June 2015, ICBC commenced an investigation after it learned that false receipt numbers were being entered into the system. The Licensee agreed that for the period reviewed by ICBC, he entered in 33 “bypass codes” (a combination of any two letters followed by any series of five numbers) which resulted in the override of toll bridge debts and allowed ICBC Autoplan transactions to be processed without the toll bridge debt being collected. This agreed statement was clarified somewhat during the hearing when Council submitted that this was probably not completely accurate as in some cases the debt was paid by customers the same day or the next day. The final paragraph of the agreed statement of facts stated that “ICBC also determined that the Licensee facilitated the processing of three Autoplan transactions for vehicles in his father’s name where toll bridge debt was bypassed”. This statement was somewhat confusing for the Hearing Committee as it appeared as if the Licensee had agreed that this is what ICBC had determined, not that he agreed that is what had happened. When questioned on this point, the Licensee stated that he agreed that is what happened, but his evidence in direct and cross-examination was that his father did not have any toll bridge debt. This report will discuss this point of evidence further below.

Exhibit 2 was Council’s Book of Documents. Of particular note was the interview between ICBC and the Licensee on November 12, 2015 included at Tab 2 and a spreadsheet of the Licensee’s overrides included at Tab 6. Relevant portions of the 18 minute interview between ICBC and the Licensee include:

Q: *Okay.*

A: *But certain cases do require the override overridden because of Treo.*

Q: *Okay.*

A: *And their issues on their side. And then other times it gets more complicated. As far as reasons for overriding.*

Q: *Okay. So you are saying that you do override Treo and Golden Ears toll bridge debt?*

A: *Yep.*

Q: *Okay. So what. Give me an example of why you would override?*

A: *A few have been overridden because as the road agent, the police officers phone me for roadside renewals. So when they pull someone over without insurance, they call me, this is the customer, they are going to talk to you now, can you please make arrangements to renew, because we are not available to have the vehicle towed and we're awaiting on the roadside. So on example without having a Treo issue, a customer will call me, get all of the information and review coverages over the phone and I'll race to the roadside so that the police officer can move on.*

Q: *Okay.*

A: *But in situations like that, the police officers are putting a lot of pressure on me to make sure that I'm not leaving them on the road waiting for me when they have other things to do. That has been a situation that has happened more than 3 times.*

...

Q: *So, give me another time frame, give me another example of why you would override debt?*

A: *Pressure from the dealership. That would be the bulk of it. It's not...there's not a single one where it's to do the customer a favour to get them away from paying it, it's situations like that.*

...

Q: *Right.*

A: *And I could pull off 3 or 4 of them that they had phoned Treo and Treo has told them that there is no debt owing, and that they were going to investigate the situation.*

...

Q: *Hmmm.*

A: *And with the customer I call Treo to figure out their debt and they said, oh no problem, override and they [I] said I'm trying to do that, it's not working, and they said just try a different letters.*

Q: *Okay. So you are saying that you just key-in any random letters and your agency code, is that correct?*

A: *Yep.*

...

Q: *He's your dad. Okay.*

A: *We called Treo on that one.*

...

A: *He called. I was with him when he called. And he said no debt owing.*

...

Q: *So, umm like in your dad's case, ummm, the debt has never been cleared.*

A: *Right. But on the transaction date we had called Treo and Treo had said that there was no debt owed.*

...

Q: *Okay. So can you give any other explanation of why you would be doing this?*

A: *A lot of them directed by Treo, as far as these specific ones.*

...

Q: *So, why would you do this?*

A: *I understand that it was the wrong way to do the process. It was the wrong way.*

Council played the audio of this interview during the course of the hearing and closed its case after doing so.

### **EVIDENCE OF THE LICENSEE**

The Licensee was sworn in and gave evidence that although he was now a Level 2 general insurance agent, and had been since November 2018, he was a Level 1 at the relevant time. He initially worked in [REDACTED] but was transferred to the [REDACTED] branch of his brokerage some time ago. He explained that the term “roadrunner” as used in the agreed statement of facts meant that he is called to the dealership to be part of the sales transaction for the purchase of a vehicle by providing insurance and a license plate so that the customer can drive off the lot. As a “roadrunner” the Licensee testified that most of his day was addressing policy renewals for clients.

The Licensee explained that his days are very busy and he is on the road for much of the day. He needs to juggle his renewal clients with attendance at the various dealerships and sometimes he is supposed to be in two places at once. He gave evidence that during the time period captured by the ICBC investigation where there were 33 impugned transactions he completed a total of 5,264 Autoplan transactions.

With respect to his understanding of the toll bridge debt, he explained that the collection of this was a different procedure than collecting roadside tickets that were issued with which he was very familiar. ICBC did not offer any specific training around collecting toll bridge debt, nor did his office. No memoranda outlining the procedures to be used were circulated. He learned the procedures by doing transactions and speaking with clients. He agreed that the ICBC Autoplan Manual was available to him online but he did not understand it to offer guidance on toll bridge override procedures. He only used the Manual when he had questions about an individual’s insurance coverage.

The Licensee described the structure of his office. He would see the nominee once or twice a year: at the office summer party and maybe one other time. He communicated with his manager “in passing” and conversations with her were limited to manager/staff member issues. The other staff in the office rotated frequently and amongst them the Licensee was the staff member with the most experience in the insurance industry.

Much of the Licensee’s evidence in direct was about his understanding of the agency’s override procedure. His understanding, from TReO, was that use of the agency number ([REDACTED]) was the correct way to override and by entering those five numbers with two letters in front it permitted him (and other members of the agency) to proceed with a transaction when an “invalid” RTI appeared. He did not understand that by entering the code it eliminated debt and his practice was to instruct his clients to contact TReO or Quickpass to



investigate the matter. He further understood that ICBC would be able to view these overrides and that by using the agency code it was a signal to ICBC that something was irregular with the transaction. He was clear that his intention was not trying to help clients avoid paying toll bridge debts but it was only done in extenuating circumstances.

The Licensee described the 33 impugned transactions which represented 30 clients for which he applied an override (three clients had two transactions on a given day). In reference to Exhibit 2, Tab 6, he explained that the two transactions which occurred on December 15, 2014 were for an individual, Mr. P, and that he remembered calling TReO with Mr. P and TReO confirmed that there was no debt owing. The Licensee then used two letters followed by the agency number to process his transactions. Notably, it shows that the RTI was "cleared" 156 days later. Whether this meant that there was a debt which was cleared or whether it was not until this time when the issue was resolved was unclear. Similarly for the Licensee's client Mr. B, on May 24, 2014, the Licensee remembered calling TReO and was informed that there was no debt or that it had been resolved and so he entered the override as he understood he was supposed to do. The Hearing Committee notes in that case the RTI status was "cleared" 371 days later. Finally, on May 26, 2015, the Licensee processed a transfer and renewal for his client Mr. R. The Hearing Committee did not understand the Licensee to say that he called TReO and was advised that there was no debt but Tab 6 of Exhibit 2 shows that the RTI was "not cleared".

The Licensee also described roadside renewals where he would be called by the police who would ask if he was available to assist someone who they had pulled over and who did not have insurance. He would ask questions about where they were located and then the police officer would give the driver the Licensee's phone number. The Licensee would then gather the information from the driver and prepare the necessary documentation. He typically would not speak to the police officer after the initial call asking if he was available. He would then attend on the scene and collect the necessary signatures from the driver. He was able to identify two of the 30 clients who he believed were roadside renewals and explained that because he felt like he was being directed by a police officer to process the insurance transaction he would enter an override code and then inform the client of the debt owing when he attended on the scene. It was not clear to the Hearing Committee which two of the 30 transactions were roadside renewals and if the debt was cleared.

The Licensee gave some evidence about two transactions for his long time clients Mr. and Mrs. A who were in their 70s. The Licensee recalled that he informed Mr. A of his upcoming renewal and that there was a toll bridge debt showing and that he needed to resolve it. When Mr. A called either TReO or Quickpass from home, they asked to speak to his agent but the Licensee was not yet at his house because he was waiting for Mr. A to call the administrator. Mr. A became frustrated with the situation and so the Licensee overrode the RTI, processed

the renewals and then went to his house where they phoned either TReO or Quickpass together from his kitchen and resolved the issue.

With respect to the transactions for his father, the Licensee provided many details about those three transactions. The first transaction was when his father's renewal was approaching for his personal vehicle. The Licensee informed him that there was an RTI on the account which his father disputed because the toll bridge operator had his credit card on file and he was supposed to be on autopay. So, the two of them called TReO together and were informed that there was no debt owing and that the Licensee could go ahead and override the RTI. The second transaction was for renewal of a policy on a vehicle which was driven by a friend but his father was on title for the vehicle. Again, a RTI appeared on the account and they called TReO together which confirmed that no debt was owed and that the Licensee should proceed with the override. The third occasion was for the friend's vehicle again. He needed to process new plates for the vehicle as they had been stolen when she left it parked at the airport. He admitted that an RTI appeared during the transaction and he did not call TReO this time to confirm that there was still no debt owing but as this was less than a month from his last phone call regarding the RTI on this vehicle the Licensee felt that the situation had not changed. The RTI appeared under his father's name and he knew that his father had set up autopay.

Finally, the Licensee identified two additional transactions where he applied an override code in a dealership.<sup>2</sup> The Hearing Committee was not clear whether these two transactions were situations where he had perhaps succumbed to pressure from the dealership to close the transactions or whether he had called a toll bridge administrator and been directed to override. For the remaining 18 impugned transactions, the Licensee could not specifically recall the circumstances under which he applied the override code.

The Licensee recalled that several times when an RTI restriction appeared on screen that he turned customers away if a debt was noted and they could not pay it. The Licensee perceived several faults in the Quickpass/TReO system. He said that an RTI restriction appeared quite frequently in his business – approximately in 1/20 transactions that he processed. Although drivers in ██████████ were not close to either toll bridge, he understood that the invoicing system was flawed. It did not recognize addresses with a post office box, which many ██████████ residents have, and so drivers never received an invoice at all. Thus, no one was paying the debts and an RTI restriction would then appear on the account.

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<sup>2</sup> He stated that he applied eight overrides for five clients in dealerships. The three dual transactions described above were the only dual transactions evident in Exhibit 2, Tab 6 which leaves two remaining transfers which were processed in dealerships using the override code.

Turning to his November 12, 2015 interview with ICBC, the Licensee stated that he was informed by the nominee a few days before the interview that “we were in trouble” and that there were “some procedural errors” and ICBC wanted to speak to them about it. He did not understand that he was to be interviewed by an officer from the ICBC Special Investigations Unit, nor did he appreciate that it was an investigation or understand the magnitude of the investigation. The nominee told him that he would be speaking with ICBC for “15 minutes tops”. He did not prepare for the interview as he thought he was going to be re-trained on procedures and did not understand how serious the situation was until he was actually there and in the midst of the interview.

Since the ICBC interview the Licensee has changed his practice and refuses to override any transactions and he does not process insurance for family members any longer. His family members still use his brokerage but his colleagues will assist them with their insurance.

Notably, the Licensee voluntarily paid back all commissions that he earned as a result of the 33 transactions to his brokerage as soon as he learned what he had done. He advised the Hearing Committee that he did not want to profit from the situation. He stated that other steps he has taken include completing continuing education courses, paying closer attention to ICBC bulletins and making a point of speaking about procedures with other employees. If he has a question he does not hesitate to call ICBC directly if the Autoplan Manual does not provide a sufficient explanation.

The Licensee’s evidence in direct concluded with an explanation of his personal circumstances. [REDACTED]

[REDACTED] He wrote an apology letter to Council expressing remorse as he was not sure that he would be able to get those sentiments out during the course of the hearing. He expressed that [REDACTED] and he acknowledges that he made a mistake in doing what he did.

In cross-examination, the Licensee fully admitted that he did not follow proper ICBC procedures in entering two letters followed by [REDACTED] to override the RTI. He did not remember a specific incident when he called ICBC with respect to an override code but he said that he could not rule it out as a possibility. He gave evidence that in using the override code of two letters followed by his agency code that he attempted to use his initials but that this could not be duplicated and so he thought “they all started with the Rs. I think probably - I’m not going through the list. But there will be some Rs on there because I am – was attempting to use my initial”. Upon counsel for Council directing the Licensee (and the Hearing Committee) to the list of the 33 overrides, four started with “R”. He maintained that

he did not know about the Autoplan Manual override AA [REDACTED] and that he thought that he was providing ICBC with a way of tracking the transactions by using "[REDACTED]". He admitted that he now understands that using the agency code on its own did not correlate to a signal to ICBC and only AA [REDACTED] would do so.

The Licensee was also questioned on one of the reference letters that he had supplied in Exhibit 3. With respect to a letter from a VP, at Tab 2, the Licensee confirmed that in 2014 and 2015 he was not working actively with the VP. He also confirmed that the VP was incorrect in his statement that "Ryan used unique codes, provided by ICBC/TReO, in order to finalize these transactions".

In response to questions from the Hearing Committee, the Licensee confirmed that for both TReO and Quickpass there were occasions where he would process a transaction for a customer, an RTI would appear and the customer would be able to show proof of payment of the debt. He confirmed that he was sure that the first time that TReO told him to override that he would have used RC [REDACTED]. His explanation as to why that code did not appear on the list included at Exhibit 2, Tab 6 was that the first time he used the code he recalled that he did not complete the transaction but, because it had already been entered, it was no longer available to him.

The Licensee confirmed that he attempted to reach out to his ICBC district representative to try to obtain further information for this hearing but she informed him that ICBC had "moved on" and that she was not able to provide further information. The Hearing Committee posed several questions to the Licensee as to whether he had any further information about whether there were documented errors in the TReO/Quickpass system as he had identified. Counsel helpfully assisted the Hearing Committee with this line of questioning and confirmed that the documents that Council entered as Exhibit 2 were the extent of the documents which Council received from ICBC on this matter. It also pointed to the letters that the Licensee had supplied in Exhibit 3 which indicated that there were flaws in the system and the Licensee's direct evidence on the flaws in the system. Council's position was that there should not be any adverse inference drawn from the lack of documentary confirmation showing these alleged errors and it was not the Licensee's obligation to produce those documents. Council also clarified that it was not taking the position that there were no problems with the system and that there were not situations in which customers may have had errors on their accounts. Counsel for the Licensee confirmed that TReO disbanded prior to when disciplinary hearings against the Licensee commenced and so there was nowhere to go to obtain the information that the Hearing Committee was suggesting may have existed.

Finally, the Licensee confirmed for the Hearing Committee that in the nominee's reference letter included at Exhibit 3, Tab 4, he did not have numerous conversations with the nominee between 2006 and 2015. His opinion was that the nominee must have been referring to the

period after the ICBC investigation when he increased his involvement at the office when he wrote that statement. He also confirmed that he was not disciplined by either ICBC or his office for his actions but that he had paid back the commissions that he earned on the 33 transactions (which, although he did not have the exact number, could have been an amount anywhere from \$132 to \$1,980) and that he has completed CAIB 2 and CAIB 3 to complete his Level 2 licensing requirements.

### **SUBMISSIONS OF COUNCIL**

Council began its submissions by addressing the Licensee's credibility. Council suggested that the Licensee's evidence was too polished, rehearsed and that he had a selective memory about key events. Council did not accept that the Licensee perhaps had called ICBC to alert it to the issue as he said he may have. Council suggested that if this were the case he would have mentioned it in his interview with the Special Investigations Unit. Council also took the position that the Hearing Committee should not accept the Licensee's evidence that as a nine-year licensee he was aware of the Autoplan Manual but only looked at it with respect to placing insurance and not when issues of this nature arose.

Council further submitted that given the interview with the Special Investigations Unit took place nearly four years ago, the Licensee has had ample time to reflect and re-characterize evidence that he gave at that time. Council urged the Hearing Committee to prefer his evidence in the interview and not that given during the hearing, particularly when he was now providing details that he did not give to ICBC, such as when he first used his initials followed by the agency code it resulted in an aborted transaction. In response to the Licensee's evidence that he was taken by surprise during the ICBC interview, Council reminded the Hearing Committee that the Licensee knew for approximately a week prior that he was "in trouble", that the whole office would be speaking to ICBC and that the investigator identified herself from the outset as an investigator with the Special Investigations Unit. Council submitted that given those facts it is not credible to think that he thought that he would be talking about ICBC policies and procedures.

Council took the Hearing Committee to the reference letters included at Exhibit 3 and conceded that they are admissible but suggested that they should be given little or no weight as hearsay statements. Council reminded the Hearing Committee of the evidence that the VP never really worked with the Licensee and that unique codes were not in fact provided to the Licensee from ICBC or TReO and that the Licensee disagreed that he had many conversation with the nominee from 2006 to 2015. In addition, Council submitted that the nominee's letter contained double hearsay as it had what he believed was in the mind of the agents in the Licensee's office at the material time. Council additionally submitted that the letter from the Licensee's father and the letter from the Licensee's manager contained self-serving evidence and the manager's letter also contained double hearsay.

Council took the Hearing Committee to decision No. 2017-FIA-002(a), 003(a), 004(a), 005(a), 006(a), 007(a) and 008(a) of Chair Strocel of the Financial Services Tribunal. It urged the Hearing Committee to follow the guidance as set out in the decision in arriving at a conclusion on penalty in this matter. Council focused on Chair Strocel's comments about trustworthiness and that, subject only to mitigating factors, only licensing action in the form a suspension, cancellation or conditions that will secure public confidence and achieve deterrence. Council accepted that there were some mitigating factors in the case of the Licensee: no previous disciplinary history with Council, expressed remorse and that he called TReO with his father and obtained verbal confirmation that there was no debt owing; but there were numerous other transactions where that was not the case. Council submitted that the aggravating factors outweighed these mitigating ones.

As set out in Council's written submissions, Council referenced the Code of Conduct including its mission statement, the principles of trustworthiness and good faith and guideline of competence which it submitted should guide the Hearing Committee in assessing any finding of liability.

With respect to imposing a penalty, Council's submissions referenced the case of *Financial Services Commission v. The Insurance Council of British Columbia* of then-Chair Hamilton and the statutory authority granted by the Act. Council confirmed that it was not seeking a fine imposed on the Licensee but a suspension of the Licensee's license based on precedent decisions (while acknowledging that Council was not bound by precedent). Council sought an eight month suspension which it argued fell in the "upper range" of precedent suspension on the basis that in the past Council had taken a dim view of licensees who overrode debt for friends or family members, which was present on at least one occasion in this case. Council also sought an order that the Licensee complete of an ethics course, as well as hearing costs as per the schedule.

#### **SUBMISSIONS OF THE LICENSEE**

The Licensee disagreed with Council's assessment of his credibility and stated that he was a truthful and credible witness who tried to give his evidence in the best way that he could in relation to events that happened many years ago. He met with ICBC in November 2015 and did not hear anything further about the investigation until years after that (and this hearing took place nearly two years after that).

The Licensee also submitted that there was a lot of confusion over toll bridge debt when the procedures were first initiated. There was no individual training or direction to refer to the Autoplan Manual. He learned on the job. He never attempted to hide anything from the Special Investigations Unit officer during the interview and immediately told her that he thought he was entitled to proceed in the manner that he did, as a truthful person would. The

Licensee encouraged the Hearing Committee to look closely at the transcript as the officer was very much in control of the interview, asking pointed questions and interrupting responses at times. Admittedly, the Licensee may not have told her everything during the interview that he could but she was asking very focused questions about the events. His central evidence remained the same during the interview as it did during the hearing and he was remorseful from the start.

The Licensee conceded that he did not follow procedures as identified in the Autoplan Manual and accepted that there was a competency issue on his part given that he was not aware of the contents of the Autoplan Manual. Where the Licensee departed sharply from Council's position was that there is no evidence that he was being dishonest and he was never trying to help a client evade a bridge toll debt. He submitted that he misunderstood the process to override, as did his manager. Other reference letters were also consistent with the Licensee's understanding of the situation. If he were trying to "trick" the system he would have used random letters and numbers (consistent with the formulation of actual receipt codes) and not a traceable agency code. The Licensee also referred to letters in Exhibit 3 from the dealerships that he worked for which confirmed that at times they had to turn clients away because there was a confirmed existing debt which could not be paid, which supported the Licensee's evidence that he was not trying to help customers avoid a debt.

The Licensee's submissions on the application of Chair Strocel's precedent decision were, in essence, that the decision was not applicable at all to this matter. The comments in the decision were premised on the fact that there was evidence of deceptive behaviour, which was not present here (and in turn, no issue of trustworthiness). The licensees at issue in that case knowingly and repeatedly used false codes that they made up on their own accord. The Licensee submitted that his issue was one of competency and not dishonesty, and, in the result, precedent decisions which impose a penalty on the basis of incompetence are more instructive. The Licensee submitted that the mitigating factors more than outweighed any aggravating ones. He was very remorseful, there was no risk that the same or similar conduct would be repeated and that in all the circumstances a fine was an appropriate penalty.

The Licensee accepted that he should take whatever courses may be appropriate and that he be responsible for Council's costs of the hearing as per the schedule. He had requested this hearing and accepted that he should be responsible for the costs of it.

#### **FINDINGS OF THE HEARING COMMITTEE**

*Did the Licensee breach the requirements of the Act, Council's Rules and Code of Conduct and act improperly in the renewal of Autoplan insurance by providing false toll bridge receipt numbers for customers and for members of his family?*

The Hearing Committee finds, and the Licensee admitted, that he 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 (in the form of an override consisting of two random letters followed by his agency number of [REDACTED]) for customers and for members of his family (specifically his father). The codes that the Licensee entered were false codes in that they were not: (1) actual receipt codes provided by TReO or Quickpass; or (2) the proper override code of AA [REDACTED] provided by ICBC for his agency. The effect of this is that the override code acted as a false toll bridge receipt number and this was a breach of the Act, Council's Rules and Code of Conduct.

*Did the Licensee fail to follow ICBC procedure so that customers and members of his family could avoid paying toll bridge debt obligations?*

Unlike all previous disciplinary cases related these toll bridge overrides, the Hearing Committee in this instances was required to assess whether there was dishonesty in the Licensee's actions (in that he did so knowing it was wrong or trying to skirt the toll bridge system) or whether it was an issue of competency given the Licensee's evidence that he held the honest but mistaken belief that he was supposed to conduct overrides in this manner.

The Hearing Committee struggled with the Licensee's overall explanation for how he entered the override codes. With respect to roadside renewals, the Hearing Committee was astonished that a Licensee in business for nine years would legitimately think that the police would want him to apply an override rather than refuse the transaction as he was supposed to do. The Hearing Committee could also not understand why the Licensee would never ask the client to put the officer back on the phone to inform him or her of the RTI or even attend at the scene and then tell the officer that there was an RTI. Instead, he processed the transaction on the assumption that the police officer would rather not wait while the RTI was sorted or a tow truck was called and would prefer that he simply issue the insurance policy.

With respect to transactions for a family member, from the outset, the Hearing Committee was concerned about the Licensee's admission in Exhibit 1 that he "facilitated the processing of three Autoplan transactions for vehicles in his father's name where toll bridge debt was bypassed". Although worded in Exhibit 1 as an admission that ICBC determined this to be the case, he later stated that he was in fact agreeing that this was the case. In his evidence in direct, in cross-examination and in response to questions from the Hearing Committee, he was adamant that for the first two transactions linked to his father they called TReO together and were informed that there was no debt owing and had permission to bypass. On the third occasion, where he processed a transaction for a friend and his father was the co-licensee of the vehicle, he did not call TReO but assumed that the RTI was still appearing in error and that there was no debt owing because it was in his father's name and he had set up autopay.



This is difficult to accept and the Hearing Committee expects that a licensee who had been licensed for nine years would have made appropriate inquiries.

The Hearing Committee appreciated Council's concession that the Quickpass/TReO system sometimes showed a debt when there was no actual debt reflected by a "0" or "1" in the column of "TIME LAPSE BETWEEN RECEIPT AND RTI STATUS CLEARED" of Exhibit 2, Tab 6. The Hearing Committee also appreciated Council's clarification that it was not taking the position that there were no problems with the system and accepted that there may have been situations in which customers had errors on their accounts. In other words, it was not going as far as to agree with the Licensee's evidence that sometimes an RTI would appear when there was no debt showing beyond if the client had paid that day or the day before but it was not disputing the Licensee's evidence on this point. The Hearing Committee accepts that, for whatever reason, sometimes an RTI would still appear on a customer's account even if they had recently paid a debt or there never was a debt.

The Hearing Committee acknowledges that it is Council's case to prove but it was troubled to a degree that the Licensee did not provide at least some documentary evidence to support his version of the events that he was asking the Hearing Committee to accept. This is particularly so when he was asking Council to impose a fine rather than a suspension [REDACTED]. This supporting evidence which was theoretically available to him even in the absence of something from ICBC, Quickpass or TReO included phone records or, in the case of his father's transactions, charges to his credit card which may have shown autopay to either Quickpass or TReO, or in the case of the friend, a copy of a police report, to support his testimony. Even direct testimony from his father or the friend would have assisted the Hearing Committee.<sup>3</sup>

Having said that, in assessing the credibility of the Licensee, the Hearing Committee found him to generally be forthright and attempting to answer questions to the best of his ability. He was not evasive and his evidence starting with his interview with ICBC through the hearing was fairly consistent. Whether or not the Licensee was under a misapprehension of the nature of the interview with ICBC, he cannot be faulted for not stating everything that he knew about the relevant transactions or his motivations for doing so. It is obvious that the interview with ICBC was not in the nature of a conversation where the Licensee was invited to speak. Many questions were direct and to the point, put to him rapidly and at points bordered on being

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<sup>3</sup> The Hearing Committee reviewed the letters provided from the Licensee's father, coworkers and a client. The Hearing Committee appreciates that it may have been difficult for the Licensee to request the attendance of his father, the friend, coworkers and/or clients at the hearing and no doubt would have extended the length of the hearing past the one day which was allotted if they testified in support of the Licensee. Without sworn evidence and the opportunity to see those individuals in cross-examination or pose questions to those individuals the Hearing Committee is left with unanswered questions about the content of those letters and can give them limited weight.

unfair. It was more in the nature of the cross-examination at the hearing where admissions were sought. One notable passage in the interview with ICBC includes:

Q: *Okay. So, you're creating number, not knowing...knowing the customer has refuse to issue debt.*

A: *Well, they haven't refused to issue debt, that I've gotten to the point where I think that or with Treo that it is something that we can override.*

Q: *Okay.*

A: *And that's coming from Treo.*

Q: *Okay. So but you are making a decision against the manual and against legislation to override people's debt.*

A: *Yes.*

While the investigator is certainly entitled to push the interviewee on answers, the Licensee had just stated that his understanding was that there was no debt. She then repeated the question in a closed manner to elicit a positive response from him, which she received. While the investigator is also entitled to inform the Licensee the seriousness of the situation, she appeared to attempt to force the Licensee into some admissions by suggesting that his conduct was criminal in nature:

Q: *Because insurance, you know, being an insurance agent, insurance is based on utmost [sic] good faith. You are creating a false number. It's actually a criminal code offence in BC is to...there's one called uttering a forced/false document. Uttering a forged document. A document that you create a fake number for ICBC to act on. So this is a big deal.*

Finally, the interview concluded in the following manner:

Q: *Okay. So if you say that to them, what are you saying? Go look, you've got to go pay it tomorrow?*

A: *I say, please contact Treo. There's an issue with your account. It's either an amount owing, or an issue with their system. Not showing that they paid the amount.*

Q: *But these people, these people then go, huh, we can go to Ryan, because he will bypass our debt for us. And some of these people haven't paid. Like ever. Or it's like a year until they have to deal with a different agent that doesn't let them skate on it, right. Okay. I understand. [To the other investigator present] do you have any questions?*

A: *Nope.*

Q: *Okay. Perfect. The time is...*

The Hearing Committee was troubled that the Licensee was not given a chance to respond to that rather broad and incriminating statement.

The Hearing Committee believed the Licensee that he was attempting to show that the transactions could be traced back to him and if he was permitted to continually enter "RC [REDACTED]" that he would have done so. It would have been better practice for him to make a note in the appropriate place, but unfortunately he chose to proceed in the way that he did.

The Hearing Committee also somewhat faults the brokerage as it clearly did not train its employees about the universal override of AA [REDACTED] to use in special circumstances. This does not absolve the Licensee but it is of note. The Hearing Committee believes the Licensee that if he was made aware of the universal override at the relevant time that he would have used it accordingly.

The reality is that of the 33 impugned transactions for 30 customers, there was not one override where Council could show that it was more likely than not that the override was entered *for the central purpose* of helping a customer avoid a toll bridge debt. Council was essentially asking the Hearing Committee to accept that for the 20 or so transactions where the Licensee could not provide a specific explanation as to why he entered the override, entry of two letters followed by the agency code of [REDACTED], the same type of override that the Licensee used in situations where the primary purpose was obviously not trying to help customers override a debt (roadside renewals due to perceived pressure from the police, dealership transactions where there may have been pressure from the dealership, client and family transactions where he was told that TReO could not find a debt owing and customer transactions where he was attending at the residence on the same day) was used for improper purposes. The Hearing Committee is not convinced that such a conclusion is reasonable based on the evidence. If he was trying to deceive ICBC he could have attempted to mirror an actual receipt code. He did not do so.

In the end, all the Hearing Committee is required to do is decide whether Council has proven the elements of the Notice of Hearing on a balance of probabilities. The Hearing Committee finds that Council did not prove on a balance of probabilities that the Licensee failed to follow ICBC procedure so that customers and members of his family could avoid paying toll bridge debt obligations (even if that may have been the result). While his actions were wrong, the Hearing Committee does not see the evidence as establishing a dishonest intent by the Licensee.

The Hearing Committee agreed with Council that the Licensee probably did not contact ICBC about this and certainly ought to have done so. If he had, he would have found out what he was doing was incorrect. Or, he could have checked the Autoplan Manual or even made a note in the section of the form allotted specifically for notes like that he was instructed to override by TReO. Had he done any of those things it is very likely that the Licensee would not be facing any discipline at all. This was very poor practice on the Licensee's part, to say the least.

*Is the Licensee 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?*

The Hearing Committee finds that 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 practice, as required under Council Rule 7(8) and pursuant to section 231(1)(a) of the Act. The Hearing Committee accepts that the Licensee made a series of mistakes in his practice by not seeking out appropriate guidance when there were indications that something was not right, by not documenting his actions and in particular was grossly incompetent in believing that the police wished him to issue insurance renewals even if there was a debt owing. That is completely indefensible but it only occurred in two transactions. The Hearing Committee is confident that the Licensee has recognized his failures and upon completion of remedial education will be rehabilitated.

The Hearing Committee notes that the Licensee has already made two significant changes to his practice which supports the Hearing Committee's findings on these points: he refers his friends and family members to other employees of the brokerage and he no longer enters override codes for any reason. The Hearing Committee applauds the Licensee for adopting these best practices.

*Should the Licensee be subject to any disciplinary or other action in the circumstances?*

The Hearing Committee is of the view that the Licensee should be subject to disciplinary action, but the question is whether it is a period of suspension, a fine, or some combination of the two. There is no dispute as to remedial education or hearing costs. The Licensee was willing to accept whatever remedial education as may be ordered and also acknowledged that costs should be awarded against him in the circumstances.

Council sought a suspension of eight months. The Licensee argued vigorously against imposing a suspension relying upon the fact that Chair Strocel's comments of a baseline six month suspension subject only to aggravating or mitigating factors did not apply to him and that his incompetence did not warrant a suspension on its own. He was agreeable to a fine in an unspecified amount.

The Hearing Committee carefully reviewed all of the precedent toll bridge hearing decisions and the decision of Chair Strocel. In addition to the passages highlighted by the parties, in arriving at a conclusion of the applicability of the decision the Hearing Committee was guided by the following passages:

[35] FICOM relies on Law Society authority (*Law Society of BC v. Nguyen*, 2016 LSBC 21) for the proposition that "the imposition of a period of suspension ... is a significantly more severe penalty than is the imposition of a fine. ... Suspensions are reserved for the more serious demonstrations of misconduct". FICOM argues that the \$5000 fines here fail to achieve that goal, send the wrong message and are unreasonable when dealing with conduct which goes to the heart of

professionalism or trustworthiness. FICOM submits that public confidence and deterrence (both specific and general) require a suspension.

[36] FICOM argues that a period of suspension is warranted whenever the misconduct involves dishonesty; subject to mitigating factors to determine the length of suspension or whether a fine will achieve the goals of licensee discipline. FICOM notes that the Insurance Council has previously imposed a 6 month suspension on an agent in one case for the same conduct, in a single instance, on his own behalf (*Re Kanesaratna Sharma Sivagnana Iyer* July 11, 2017), and a one year suspension where a licensee processed a new plate transaction for a friend, falsely stating that she received an ICBC debt payment (*Re Karishma Christina Jetha Beharry*, April 18, 2016).

...

[96] FICOM argues that while the Insurance Council in each case stated that it is necessary to send a “serious message”, the uniform \$5000 fine it imposed “fails to achieve that goal. Not only does it fail in achieving the goals of sentencing, it sends the wrong message. A fine is wholly inappropriate and unreasonable when dealing with conduct which goes to the heart of professionalism and trustworthiness: repeated acts of dishonesty in order to achieve completion of insurance transactions.” FICOM argues “Serious misconduct involving dishonesty warrants a significant period of suspension in order to achieve the goals of the Council’s mandate: to ensure public confidence in the regulator and regulated industry, together with the need for specific and general deterrence”. FICOM argues that a period of suspension is warranted whenever there is dishonest conduct, “subject to mitigating factors to determine the length of suspension or whether a fine will achieve the goals of licensee discipline.”...

...

[98] I agree that the \$5000 fines – which were not accompanied even by a tentative explanation which considered the factors that informed the nature of the remedy selected and the amount selected - should be set aside because they fail to adequately or reasonably reflect the values of public protection, specific and general deterrence and denunciation where a licensee has engaged in repeated conduct that has brought that licensee’s trustworthiness into question.

...

[103] I have not been asked to review a penalty for a single case of falsifying toll bridge receipts, and I will not comment on how a single instance would properly be regarded if it was an isolated instance of poor judgment or a temporary lapse. The Council in this case made the broader intended finding, not challenged by the licensees, that each licensee’s repeated conduct brought into question his or her trustworthiness. Thus, it must be accepted on this appeal that the individual respondents falsified numbers many times. Those repeated falsifications could only reasonably be viewed as a significant aggravating factor.

...

[116] The proper course of action for these licensees is to decline to falsify numbers. The problem belongs to their customers, not them. The customers can deal with this directly. It is better for the insurance industry that they decline to act and blame an inflexible regulator than to compromise

their integrity. The Insurance Council's penalties must reinforce this message in clear and certain terms. .

...

[119] In my view, it is a reviewable error for a regulator whose trust in a licensee has been shaken to at the same time assert that "there is no suggestion" of any ongoing risk to the public or ICBC. This submission fails to adequately grasp the significance of the finding that a person's trustworthiness has been called into question, particularly where, as in all these cases, that behaviour has become habitual. It reinforces my view that the Council's penalty determination was unreasonable.

[120] Where, as here, the regulator has failed to fashion a penalty at the more serious end of the remedial scale when it has found conduct that calls into question a licensee's trustworthiness – the ability to act in a way that is honest and straightforward even where it is inconvenient and even in the face of client complaints and even if it involves a subject matter (such as bridge tolls) which are a matter of public debate – that regulator has failed to reasonably protect the public interest.

Given that the Hearing Committee has concluded that there was no evidence of deception and that the Hearing Committee is satisfied that there are no issues of trustworthiness, it is of the view that it is not bound by the direction of the FST to start from a baseline penalty of a suspension of six months and then account for any aggravating or mitigating factors. As discussed above, the Hearing Committee felt that the facts were more akin to very poor judgment, with two episodes of temporary lapses in processing roadside renewals, and one episode of carelessness in not calling the toll bridge administrator to confirm that there was no toll bridge debt when an RTI appeared in issuing a new plate for the friend. The Hearing Committee was of the view that it was open to it to recommend on the imposition of a fine if this would fulfil the objectives of professional discipline and sanction.

However, the Hearing Committee felt that a suspension was necessary in this case to fulfill the objectives of professional discipline. Specific deterrence was not a central concern with this Licensee. The Hearing Committee believes that he has learned a very important lesson and will not repeat the misconduct. The Hearing Committee felt that general deterrence of other members of the profession and the need to maintain the public's confidence in the integrity of the profession justified a suspension, something typically reserved for more serious misconduct, over a fine alone. Members of the profession need to realize the importance of taking the simple, reasonable and prudent steps of referring to the Autoplan Manual or making the appropriate inquiries with ICBC and not relying on third party information. For these reasons, the Hearing Committee recommends a one month suspension coupled with a fine of \$5,000.

Even if the Hearing Committee were bound by Chair Strocel's directions, the Hearing Committee would have arrived at the same result. The Licensee demonstrated that he had

taken all steps that he could have in mitigating any penalty imposed. Nearly every single mitigating factor which was present in other toll bridge cases was present here: the Licensee was a Level 1 salesperson at the relevant time; he admitted his misconduct from the outset; he has no previous disciplinary history; he expressed remorse including an apology letter to Council (although it was dated one day before the hearing); he immediately and voluntarily returned his commissions earned from the 33 transactions; and, he has the support of his agency who was under the same mistaken impression as to the availability of a bypass (including his own manager).

The aggravating factor was limited to his nine years' of experience, which was not insignificant, but he received little guidance on toll bridge overrides from his brokerage and manager. Also, while there were 33 impugned transactions, Council and the Hearing Committee accepted that for at least some of those transactions the Licensee had called the toll bridge administrator and was told to override the RTI as no debt could be found because there was no debt owing. If his total number of transactions is reassessed with this in mind, he had the lowest number of transactions out of any of the licensees who faced disciplinary proceedings on these facts. This is particularly of note considering the total number of Autoplan transactions that he completed during this time.

It cannot even be said that he stood to benefit financially as he returned his commissions earned immediately upon being informed of his wrongdoing. The Licensee was not a Level 2 or 3 agent, he was not in a management position, he is not disputing his misconduct and he did not tell his customers he was clearing or bypassing debt (indeed his evidence as accepted by the Hearing Committee was the opposite with the exception of the two roadside renewals). Council submitted that it is an aggravating factor when a Licensee entered an override for family members or friends, but that is only the case when the intent was to delay payment of the debt, which is not proven here. When these mitigating factors are balanced against the sole aggravating one, the Hearing Committee was of the view that any suspension imposed would be at the very lowest end of the spectrum and well below the current "low water mark" of a five month suspension.

#### **RECOMMENDATIONS OF THE HEARING COMMITTEE**

For the reasons set out above, the Hearing Committee recommends that Council consider imposing the following penalty on the Licensee:

1. the Licensee's general insurance license be suspended for a period of one month;
2. the Licensee be fined \$5,000;

3. as a term and condition of his 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, and the Council Rules course, or an equivalent course acceptable to Council; and
4. hearing costs, as assessed.

The Hearing Committee recommends that the Licensee complete the recommended courses and pay his fine and costs prior to completion of the Licensee’s licence suspension and that his suspension continue until such courses are complete and amounts are paid.

Dated in Vancouver, British Columbia, on the **12<sup>th</sup> day of December, 2019.**



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Frank Leong, Chair of Hearing Committee  
Insurance Council of British Columbia