



Ashish Kulkarni has appealed the Insurance Council of British Columbia ("Council") decision to the Financial Services Tribunal ("FST").

There is in a stay of Council's decision until the FST has considered the matter.

In the Matter of

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

and

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

and

ASHISH KULKARNI
(the "Licensee")

ORDER

Pursuant to section 237 of the Act, Council convened a Hearing at the request of the Licensee regarding Council's intended decision, dated March 28, 2013.

The subject of the Hearing was set out in an Amended Notice of Hearing dated July 5, 2013.

A Hearing Committee heard the matter on October 17, 2013, and presented its written report to Council at its January 14, 2014 meeting.

Council considered the Hearing Committee's written report 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 18 months.
2. The Licensee is fined \$1,000.00.
3. The Licensee is assessed Council's investigative costs of \$612.50.
4. A condition is imposed on the Licensee's general insurance licence that requires him to pay the above-ordered fine and investigative costs no later than **April 14, 2014**. If the Licensee does not pay the ordered fine and investigative costs in full by this date the Licensee will not be permitted to complete any annual filing until such time as the fine and investigative costs are paid in full.

The Licensee's suspension will begin on **January 28, 2014**, and end on **July 28, 2015** at midnight.

Order
Ashish Kulkarni
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This order takes effect on the 14th day of January, 2014.



Rita Ager, CFP, CLU, CHS, CPCA, FEA
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*
(S.B.C. 1996, c. 141)
(the “Act”)

AND

ASHISH KULKARNI
(the “Licensee”)

Date: October 17, 2013
9:30 a.m.

Before: Brett Thibault Chair
Michael Bennett Member
Gordon Stewart Member

Location: Insurance Council of British Columbia
Suite 300, 1040 West Georgia Street
Vancouver, British Columbia V6E 4H1

Present: David McKnight Counsel for Council
Matthew J. Jackson Counsel for Licensee
Ashish Kulkarni Licensee

BACKGROUND AND ISSUES

On March 12, 2013, Council made an intended decision, pursuant to sections 231, 236, and 241.1 of the Act, regarding allegations the Licensee accessed and obtained information about a third party from a database of the Insurance Corporation of British Columbia (“ICBC”) in an unauthorized manner and failed to be forthright afterwards when asked about the improper access.

In response, the Licensee requested a hearing pursuant to section 237(3) of the Act.

The purpose of the hearing was to determine if the Licensee is able to carry on the business of insurance in a trustworthy and competent manner, in good faith, and in accordance with the usual practice, as required under Council Rule 3(2) and pursuant to section 231(1)(a) of the Act. If the Hearing Committee determined the Licensee acted in a manner which brought into question his suitability, it may recommend to Council appropriate disciplinary action in the circumstances.

The Hearing Committee is constituted pursuant to section 232 of the Act. This is a report of the Hearing Committee, as required by section 223(4) of the Act.

Evidence reviewed by the Hearing Committee in consideration of this matter included:

- Exhibit 1 Agreed Statement of Facts
- Exhibit 2 Council's Book of Documents
- Exhibit 3 Statement from the Licensee
- Exhibit 4 Licensee's Book of Documents

FACTS

An agreed statement of facts was reached and the pertinent details are contained below.

The Licensee has been a Level 1 general insurance salesperson ("Salesperson") since August 2009, and during that period has worked for the same insurance agency (the "Agency"). The Licensee is approximately 22 years old and is currently enrolled as a student at Kwantlen University. Since 2009, the Licensee has worked primarily part-time, with periods of full-time employment during summer vacation.

The Licensee accessed the ICBC database for the purpose of determining the type of motor vehicle driven by the ICBC president. In accessing the ICBC database, the Licensee had access to the telephone number and home address of the ICBC president.

The Licensee had no interest in the individual personally, he was curious to see what kind of car an ICBC president drove. The Licensee did not have any intention of disclosing any of the information he acquired, nor is there evidence to suggest otherwise.

Shortly after the Licensee improperly accessed the database, ICBC became aware of the access and commenced an investigation. In February 2013, the Licensee, along with the Agency owner and general manager, met to discuss the database access. At that time, the Licensee provided a statement by email to ICBC in which he stated that he was at the Agency office around 5:45 p.m. on the day in question, but he did not admit to accessing the ICBC database.

The following day the Licensee was requested to provide additional information on such things as his user ID and which terminal he uses to complete ICBC transactions. In response to this request, the Licensee provided a statement which addressed these questions, but again did not admit to accessing the ICBC records of the ICBC president.

Around the same time, the Agency commenced its own internal investigation to determine who could have accessed the ICBC database. During this investigation, it was determined that a power outage at the Agency office had occurred at the time of the access, meaning it could not have happened at the Agency office. Once this was determined, the Agency spoke with the Licensee again, reminding him of the power outage and that it was not possible for anyone to have accessed the ICBC database from the Agency location at the time in question. Again, the Licensee did not admit to accessing the ICBC president's information.

Shortly after this discussion, the Licensee's father called the Agency to advise that the Licensee acknowledged that he did access the ICBC president's data. Shortly afterwards, the Licensee acknowledged, in writing, that he had looked up the personal information of the ICBC president.

For his part, the Licensee explained that he understood that he could not divulge any client information without a client's consent, but felt there was no harm in accessing the data on the ICBC database as long as he kept it confidential.

LICENSEE'S TESTIMONY

The Licensee testified that, as the power was out at the Agency office, he went to one of the automobile dealerships serviced by the Agency with the purpose of completing an ICBC renewal application for a friend. He was unable to process the renewal because the vehicle was required to go through AirCare first. While there, he took the opportunity to access the ICBC president's information.

When asked why he was attempting to conduct an insurance transaction at a dealership, the Licensee stated he was not aware that, as a Salesperson, he could not conduct insurance transactions at a dealership location if that transaction was not related to the sale of a vehicle at that dealership.

When asked why he had not previously disclosed where he had conducted the transaction, the Licensee stated he was never asked.

JANET PAULINE CARR'S TESTIMONY

Ms Carr is the Agency's general manager. She testified that the Licensee was trained to be an ICBC Autoplan road service agent. Ms Carr felt that the Licensee had strong ICBC technical knowledge. She stated the Licensee had received training at the Agency, which included the fact that he could not conduct unrelated ICBC transactions while at a motor vehicle dealership.

HEARING COMMITTEE'S FINDINGS

The Hearing Committee found there is no dispute that the Licensee improperly accessed the ICBC database for personal reasons. In the absence of any evidence to the contrary, the Hearing Committee accepts that the information accessed by the Licensee was not shared with any other individual and was only accessed for the reasons stated by the Licensee, to see what type of vehicle was driven by the ICBC president. Regardless, the Hearing Committee found the Licensee's actions represent a significant breach for a person with as much experience as the Licensee.

The Hearing Committee considered the actions of the Licensee once ICBC identified and began investigating the improper access of its database. The Licensee stated that, at the time he committed the breach, he felt he was not doing anything wrong because he had no intention of sharing the information with any other person. While the Hearing Committee is troubled by the fact that a licensee with three years of experience believed it was appropriate to access the ICBC database for reasons other than to conduct an insurance transaction, so long as he did not share the information, it accepts the Licensee's evidence. However, the Hearing Committee is concerned that if the Licensee truly believed he had done nothing wrong, why did he go to such lengths to deny the access when asked about it?

When initially approached about the access, the Licensee denied having accessed the ICBC database. The Licensee was then provided a second opportunity to admit to his actions, but did not do so. It was only after the Agency did its own investigation and remembered that the Agency office was without power on the day and time of the access, that the Licensee's denials began to unravel. However, even at that point, the Licensee declined to admit to his actions. It was only later that day that the Licensee, through his father, admitted to his actions. But for the circumstance that the Agency was without power during the time in question, the Licensee may have been able to perpetuate his lie and cover his tracks.

The Hearing Committee found that while the Licensee's access of the ICBC database was a significant breach, his denials, lack of forthrightness, and his attempts to cover up his actions seriously brought into question his trustworthiness and his ability to act in good faith and in accordance with the usual practice of the business of insurance.

Further highlighting its concern about the Licensee's suitability was his testimony that he had gone to an automobile dealership to access the ICBC database, even though such access is not permitted by his licence conditions. The Licensee explained that he was not aware that such practice was not permitted. This position was contradicted by the Agency's general manager, who stated the Licensee had been properly trained and should have known this. Further, the Hearing Committee did not believe that the Licensee, with more than three years of experience as a Salesperson and an ICBC roadrunner, would not know that such practice was not permitted and was contrary to his licence conditions. The Hearing Committee found the Licensee's statements in this regard self-serving and only raised further questions regarding his competency and trustworthiness.

The Hearing Committee found the Licensee's actions raised serious flags about his suitability to hold an insurance licence, such that a licence termination may be warranted. In the end, the Hearing Committee felt that a significant penalty was required, but a licence termination was not necessary.

RECOMMENDATION ON DISPOSITION

In considering the appropriate parameters for discipline, the Hearing Committee considered the cases presented by legal counsels as being relevant in this matter.

A number of cases involved analogous breaches of the Act. In *D. Henneberry*, the licensee improperly accessed ICBC's database to obtain personal and confidential information regarding the registered owner of a vehicle and conveyed this information to a third party, who used it to threaten the vehicle owner during a road rage incident. Council noted the licensee was fully aware that disclosure of the information to a third party was contrary to ICBC guidelines as well as the agency's own procedures, yet chose to disregard these rules. In this case, providing the information to the third party could have led to serious ramifications for the driver of the vehicle. Council noted the potential risk to the public in accessing the personal information was manifested when a member of the public was victimized. The licensee did not admit to his misconduct until he was certain he would be found out. Once he admitted to the misconduct, the licensee was not forthcoming with additional information throughout the investigative process. Pursuant to an order from Council, the licensee was deemed not suitable to hold a licence for a minimum period of two years and was assessed investigative costs.

In *J. Cheema*, the licensee accessed ICBC's database to obtain information on a vehicle, with the intention of sharing the information with an acquaintance known to be involved in criminal activity. Ultimately, the licensee did not disclose the information. He noticed the vehicle was registered to ICBC and advised his friend that he could not access the information he had requested. Council nonetheless found that, on a balance of probabilities, had the vehicle in question not been registered to ICBC, the licensee would have carried out the plate inquiry as intended and conveyed the information to his friend. Similar to *D. Henneberry*, the licensee did not advise anyone of what had occurred until ICBC conducted its investigation. Council imposed an order cancelling the licensee's licence, with reinstatement not to be considered for a minimum period of two years from the date of cancellation.

In *M. Phendler*, the licensee accessed the ICBC database to obtain information on a vehicle after exchanging words with the vehicle owner, because the vehicle owner had come in contact with the licensee's vehicle. The vehicle contact had not resulted in any damage to either vehicle. Council determined the licensee had acted in haste and without regard for the consequences of her actions. While the licensee was insistent she did not intend to use the information and had no interest in learning who the woman was, Council found the licensee had instinctively opted to call the agency and abuse her ability to access confidential information in order to intimidate the vehicle owner and assert control over the situation. Council imposed an order cancelling the licensee's licence, with reinstatement not to be considered for a minimum period of two years from the date of cancellation.

In *J. Gill*, the licensee accessed the ICBC database to obtain address information relating to a specific licence plate number for a third party, for the purpose of placing a lien on the vehicle. The licensee explained he did not think he was doing anything wrong and did not benefit from his actions. The licensee received a one-year licence suspension and had conditions placed on his licence.

In *T. Li*, the licensee accessed the ICBC database to obtain a telephone number of a driver for a third party who had been in an accident with the driver. The licensee received a reprimand, was fined \$1,000.00, and had conditions placed on her licence restricting her insurance activity.

In *B. Ketchen*, the licensee accessed the ICBC database for the purpose of prospecting for clients. The licensee received a \$500.00 fine and was required to take further education.

The Licensee's legal counsel also pointed to cases where serious offenses had occurred, but the penalties had not involved licence suspensions or cancellations. As an example, in *C. Bustillo*, the licensee created a false insurance document, collected a premium, and failed to properly place insurance coverage. The licensee received a \$2,000.00 fine and had conditions placed on her licence restricting her insurance activities and requiring additional education.

The Hearing Committee found that *D. Henneberry*, *J. Cheema*, and *J. Gill* were most representative of this matter, with *D. Henneberry* having a similar fact pattern.

The Hearing Committee gave consideration to the Licensee's argument that there are a number of cases where Council has found similar or more serious conduct has occurred but the penalty has been limited to fines and licence conditions, with the *T. Li*, *B. Ketchen*, and *C. Bustillo* matters being examples.

The Hearing Committee concluded that the Licensee's actions were a serious matter. Confidentiality of client information is a cornerstone of the insurance industry and a reasonable expectation of every citizen who provides information on a confidential basis. Council has been communicating this to the industry through Notices and disciplinary decisions. Breaches of confidentiality cannot be tolerated and it is important that Council be seen to address such breaches in a firm manner. As a result, the penalty needs to be a deterrent to both the Licensee and the industry as a whole.

While the Hearing Committee accepts that the Licensee only improperly accessed the ICBC database once, it felt the Licensee's attempts to deny or mislead during the subsequent investigation were just as serious. Had the Licensee been forthright in acknowledging his actions, the Hearing Committee may have been more likely to have recommended a penalty at the lower range of the cases referred to above.

However, the Hearing Committee believes that a strong message needs to be sent that breaches of confidentiality are unacceptable and attempts to cover up, mislead, or lie about one's actions will not be tolerated. By imposing a significant suspension, it will not only ensure the Licensee does not make a similar mistake in the future, but, just as importantly, the industry will appreciate that Council does not accept such breaches and that it is going to take a stand against anyone who elects to breach the public's confidential information.

The Hearing Committee recommends the Licensee receive an 18-month licence suspension, a \$1,000.00 fine, and be assessed Council's investigative costs of \$612.50.

On the issue of hearing costs, the Hearing Committee noted that the penalty being recommended is similar to what was proposed in the intended decision. The Hearing Committee felt that the intended decision imposed a significant penalty (licence suspension and fine) and, as a result, the Licensee deserved to be heard. Particularly, when significant penalties are being proposed, a licensee should be afforded the right to a hearing without risk of having to face significant hearing costs. For this reason, the Hearing Committee recommends that hearing costs not be assessed. In the alternative, if hearing costs are to be assessed, the Hearing Committee recommends that they not be more than 50% of the total amount.

Dated in Vancouver, British Columbia, on the 3rd day of January, 2014.



Brett Thibault, BA, FCIP, CRM
Chair of the Hearing Committee
Insurance Council of British Columbia