INSURANCE COUNCIL OF BRITISH COLUMBIA

July 11, 2006

PLEASE REPLY WITH FILE
REFERENCE NUMBER: 145076-3

PRIVATE & CONFIDENTIAL

Mr. Royal J. Morton
Buckley Hogan, Barristers and Solicitors
200, 8120 128th Street
Surrey, BC
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Dear Mr. Morton

Re: Jagjit Singh Cheema ("Cheema")
File Number: 145076-3

On November 15, 2005, the Insurance Council of British Columbia ("Council") reviewed the circumstances relating to Cheema's conduct in accessing the Insurance Corporation of B.C.'s ("ICBC") computer terminal for the purpose of providing sensitive personal and confidential information to an individual with a known criminal background. At that time, Council made an Order pursuant to sections 231 and 238 of the *Financial Institutions Act* (the "Act") cancelling Cheema's insurance licence. Cheema appealed Council's Order to the Financial Services Tribunal ("FST"). On June 15, 2006, FST Presiding Member John B. Hall remitted the matter back to Council for reconsideration pursuant to section 242.2(11) with direction that within 30 days, Council:

- make a new order and reasons for it which include findings of fact and an explanation for the penalty Council believes is appropriate; or

- rescind the cancellation of Cheema's licence pending its new order and reasons consistent with paragraph 1 above.

In accordance with Mr. Hall's direction, on July 11, 2006, Council deliberated on this matter and made the intended decision and order pursuant to sections 231, 236, 238 and 241.1 of the Act as set out here. The following are the findings and reasons for Council's intended decision and order.

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ALLEGATION

Pursuant to section 232 of the Act, Council conducted an investigation into the following allegation:

> Cheema breached section 231(1)(a) of the Act by failing to act in good faith, in a trustworthy and competent manner and in accordance with the usual practice of the business of insurance, as required by Council Rule 3(2). In particular:
>
> > he improperly used ICBC's computer terminal with the intention to share confidential and sensitive personal information with an individual with an extensive criminal background.

DOCUMENTS REVIEWED BY COUNCIL

The documents reviewed by Council in consideration of this matter are detailed below:

i) copy of ICBC Investigator Greg Bodin's "Will Say" statements of interviews he conducted with Cheema on July 21, 2005 and August 4, 2005;

ii) evidence of Investigator James Chee;

iii) excerpt from Council's 2003 Bulletin publication, "Practice Issue: Important Reminder to General Insurance Agents, Salespersons or Nominees;"

iv) excerpts from Council's Code of Conduct;

v) ICBC Autoplan Extranet log-in screen and Autoplan Manual regarding an insurance licensees obligations under the Freedom of Information and Protection of Privacy Act; and

vi) submissions made by Cheema and Council to the FST.

EVIDENCE REVIEWED BY THE COUNCIL

Background

Cheema first obtained his Level 1 general insurance salesperson licence on August 4, 2000 and his Level 2 general insurance agent licence on January 8, 2001. He has been continuously employed by Meier & Co. Insurance Agencies Ltd. (the "Agency") since 2000.

On November 4, 2005, ICBC reported to Council that in June 2005, Cheema had used his access to ICBC's computer database to conduct a licence plate search on a vehicle operated by ICBC's Special Investigation Unit ("SIU"). ICBC's investigation revealed that Cheema intended to share the results of his search with Rick Sidhu ("Sidhu"), who had recently been released from jail for a weapons offence and had other criminal convictions for narcotics trafficking, obstruction of justice, assaulting a peace officer and breach of bail conditions.

Cheema admitted that he had conducted the licence plate search on behalf of Sidhu by accessing the Agency's computer terminal from a hook-up through his laptop computer at home. However, Cheema claimed he did not disclose information about the ICBC vehicle in question or ICBC staff members to anyone.

Council subsequently conducted its own investigation to evaluate Cheema's suitability to be licensed as an insurance agent and whether disciplinary action is warranted in the circumstances.

Investigation

ICBC Investigator Greg Bodin's ("Bodin") "Will Say" statements summarize his interviews with Cheema on July 21, 2005 and August 4, 2005. According to Bodin:

- Cheema admitted he conducted a licence plate search of a vehicle at the request of Sidhu, who he knew had a criminal background. Sidhu is not licensed as an insurance agent in B.C.; and
- Cheema had knowledge of the personal background of another individual of interest to ICBC, Sukhchain Dhaliwal ("Dhaliwal"), who ICBC was investigating in connection with another matter (not involving the Licensee) and Cheema's awareness of Dhaliwal's association or connection to Sidhu.

Inquiries with ICBC revealed further information as follows:

- On June 14, 2005, Bodin reviewed ICBC's electronic records and discovered that someone had conducted a licence plate search on the ICBC SIU vehicle he had used earlier that day.
- On June 23, 2005, Bodin identified that Cheema was the person who conducted the licence plate search.
- Bodin confirmed the licence plate search did not contain any personal information about himself or other ICBC employees. The information disclosed only that the vehicle was registered to ICBC, with a Victoria, B.C. address.
- Bodin's inquiries revealed that Sidhu has been convicted for trafficking in narcotics, unauthorized possession of firearms, obstructing justice by assaulting an off duty police officer and failing to comply with bail conditions.

- Bodin learned the Superintendent of Motor Vehicles had issued a prohibition under section 93(1)(a)(ii) of the *Motor Vehicle Act*, which prohibited Cheema from operating a motor vehicle between July 13, 2005 and August 12, 2005. According to Bodin, Cheema explained to him that this resulted from him "having too many traffic tickets." Cheema claimed he wrote a letter of appeal to dispute the driving prohibition and therefore believed he was still permitted to operate a motor vehicle pending him contesting the prohibition.
- Bodin's subsequent inquiries with ICBC's Driver Services Centre about this matter indicated Cheema had never filed a formal Notice of Dispute. Bodin commented that the Superintendent of Motor Vehicles renewed Cheema's driver's licence on August 13, 2005, valid until July 26, 2007. ICBC's current records do not show any outstanding fines owing from Cheema to ICBC.
- Bodin reported that despite his prohibition from operating a motor vehicle between July 13, 2005 and August 12, 2005, Cheema drove a car to his scheduled interview at ICBC's office in Abbotsford, B.C. on August 4, 2005.

The following is a summary of Cheema's submissions to ICBC and Council:

- he accommodated Sidhu's request, after being approached three times, to run the licence plate of interest for Sidhu, as he believed Sidhu's life was in danger. However, Cheema stated he was not threatened by Sidhu;
- he conducted the licence plate search for Sidhu "in the morning" from his home using a laptop computer linked to the Agency's computer terminal. He did not provide any other particulars or details surrounding the event, despite being asked by Council investigators to provide additional information beyond what he disclosed to ICBC;
- he neither passed on personal information about any ICBC employee to Sidhu nor did Sidhu view his computer screen. He noticed the vehicle was registered to ICBC with a North Vancouver address and immediately "aborted" his inquiry. According to Cheema: *"...It is not just because I seen ICBC's address that I stopped. I knew what I was doing was wrong and by the end of the day, I was glad I didn't pass any information along...";*
- this was the only circumstance when he actually conducted a licence plate search for purposes other than an insurance transaction;
- he has been asked between 5-10 times by different individuals who are not known to him to obtain personal information from ICBC's computer terminal;
- he acknowledged that if personal information was given to Sidhu, that person's *"life could have been in danger. I mean worse case scenario, someone shows up at your house or what not";*
- he did not approach or seek guidance from his nominee or ICBC;
- he acknowledged he had operated a motor vehicle to attend ICBC's offices for an interview with investigator Bodin on August 4, 2005 while he was prohibited from driving under the *Motor Vehicle Act*;

- he received a letter from the Motor Vehicle Branch ("MVB") and subsequently filed a "reply" outlining why he should not lose his licence and explaining his reasons why the MVB should reduce his prohibition term. He did not provide any documentation to ICBC or Council to corroborate his assertions;
- as he did not receive any correspondence from the MVB acknowledging his reply, he believed he was still entitled to drive and operate a motor vehicle on August 4, 2005; and
- he occasionally reads Council Bulletins, but does not recall reading the April 2003 edition on "Practice Issue: Important Reminder to General Insurance Agents, Salespersons or Nominees" regarding the issue of "accessing confidential client information for purposes other than the insurance transaction." (the "April 2003 Bulletin Article").

Kerry Meier ("Meier"), the Agency's nominee, made the following submissions to Council:

- he had met earlier with Bodin and affirmed his awareness of ICBC's concerns with Cheema's conduct;
- Cheema did not bring the incident to his attention;
- the Agency will continue employing Cheema, pending the outcome of Council's investigation;
- there have been no previous complaints from the public or ICBC about Cheema's insurance practice and Cheema's handling of ICBC inventory, cash and documents had been problem free;
- he has spoken to Cheema at length about this situation and is convinced that it was an isolated occurrence;
- based on Cheema's demonstrated attitude and demeanour since ICBC reported the concerns to his attention, he believes Cheema recognizes his actions were improper and had assured him it would not be repeated in future; and
- he had not read the April 2003 Bulletin Article and therefore did not discuss its contents with Cheema.

Cheema's Submission:

Cheema made the following submissions on this matter in furtherance of his appeal of a Council Order to the FST:

- Cheema's past friendship in high school with Sidhu does not and cannot reasonably support the inference that Cheema poses any risk to the public, especially when Cheema admitted being asked 5-10 times to do unauthorized searches in the past and refused;
- Cheema made a mistake accessing ICBC's database for purposes unrelated to an insurance transaction. However, Cheema's lie to a known criminal to stop harassment and his refusal to disclose any confidential information despite pressure to do so, indicates Cheema would protect the public when called upon;

- Cheema cooperated fully with investigators and does not want anything to do with Sidhu or his criminal friends. His conduct in the matter was a single momentary and unprecedented lapse in judgment which does not indicate that he cannot carry on the business of insurance in good faith or is untrustworthy; and
- Cheema has no prior disciplinary record. His transgression is minor and is deserving of a reprimand.

CODE OF CONDUCT

Council's Code of Conduct for Insurance Agents, Salesperson & Adjusters states:

Trustworthiness

Principle

In an industry where trust is the foundation for all dealings, you must meet rigorous standards of personal integrity and professional competence. These characteristics speak to the essence of what a licensee does. Failure to adhere to these standards reflects not only on you, but also on the profession. Trustworthiness is a fundamental element of each requirement in the Code.

Requirement

You must be trustworthy, conducting all professional activities with integrity, reliability and honesty. The principle of trustworthiness extends beyond insurance business activities. Your conduct in other areas may reflect on your trustworthiness and call into question your suitability to hold an insurance licence.

Guidelines

Conduct that would reflect adversely on your trustworthiness includes:

- dishonestly dealing with money or property;
- improper use of your position or knowledge as a licensee for personal benefit; (Bulletin - April 2003)
- intentionally misleading clients, insurers or Council through false statements or by withholding material information;
- knowingly prejudicing the interests of a client or principal for personal gain; and
- conduct in the nature of theft or fraud.

Acts of dishonesty outside your professional life may reflect on your trustworthiness to hold an insurance licence.

Examples of Misconduct

Used confidential client information provided by an insurer for a purpose other than intended.

Good faith

Principle

The insurance industry is based on fiduciary relationships. Accordingly, the exercise of good faith by licensees in the practice of the business of insurance is essential to public confidence in the industry. Good faith is a fundamental aspect of your conduct and a key element in each of the Code's requirements.

Requirement

You must carry on the business of insurance in good faith. Good faith is honesty and decency of purpose and a sincere intention on your part to act in a manner which is consistent with your client's or principal's best interests, remaining faithful to your duties and obligations as an insurance licensee.

You also owe a duty of good faith to insurers, insureds, fellow licensees, regulatory bodies and the public.

Guidelines

Conduct that would reflect adversely on your intention to practice in good faith includes:

- wilful disregard of duties and obligations under the Act, Rules and Code;
- misrepresentation or failure to disclose material information where required; (Bulletin - November 2002)
- unauthorized access, use or disclosure of confidential information; (Bulletin - April 2003)
- making improper use of your position as a salesperson, agent or adjuster;

Examples of Misconduct

Accessed confidential client information from an insurer's computer database without authority and subsequently communicated that information to another person.

LEGISLATION

Section 231 of the Act
Council may suspend, cancel or restrict licences and impose fines

(1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee

(a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,

then the council by order may do one or more of the following:

(f) reprimand the licensee or former licensee;
(g) suspend or cancel the licence of the licensee;
(h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
(i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;

(j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;

(k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount
(i) not more than $20 000 in the case of a corporation, or
(ii) not more than $10 000 in the case of an individual.

Section 238 of the Act
Summary procedure – superintendent or council

(1) If the superintendent or council, depending on which of them has the power to make the order,

(a) intends to make an order under section 48(2), 93(1) or (2), 99(2), 145(1), 231(1)(g), (h), (i) or (j), 244(2) or 245(1), and

(b) considers that the length of time that would be required to hold a hearing would be detrimental to the due administration of this Act,

then, despite section 237, the superintendent or council, as applicable, may make the intended order without giving a person directly affected by it an opportunity to be heard, but the superintendent or council, as soon as practicable after making the order, must deliver to that person

(c) a copy of the order and written reasons for it, and

(d) written notice of the person's right of appeal under section (2)

(2) A person directly affected by an order made under subsection (1) may, within 14 days of receiving a copy of the order,

(a) require a hearing before the superintendent or council, as applicable, by delivering written notice to the superintendent or council, or

(b) appeal the order to the tribunal.

(3) Within a reasonable time after receiving written notice referred to in subsection (2) (a), the superintendent or council, as applicable, must hold the required hearing and following the hearing must confirm, revoke or vary the order.

Rule 3 Licence Applications

Applicants to Satisfy Council

(2) If an applicant satisfies Council that the applicant:

(a) has met all of the requirements set out in the Act and Council Rules;

(b) is trustworthy, competent and financially reliable;

(c) intends to publicly carry on business as an insurance agent, salesperson or adjuster in good faith and in accordance with the usual practice of the business of insurance;

(d) has not in any jurisdiction:

(i) been refused, or had suspended or cancelled, an insurance licence or registration;

(ii) been convicted of an offence; or

(iii) been refused or had suspended or cancelled a licence or registration in any other financial services sector or professional field

for a reason that reveals the applicant unfit to be an insurance agent, salesperson or adjuster;

and

(e) does not hold other business interests or activities which would be in conflict to the duties and responsibilities of a licensee, or give rise to the reasonable possibility of undue influence.

then the Council may consent to issuing a licence.

FINDINGS AND REASONS OF COUNCIL

Council reviewed the evidence outlined above and made the following findings.

As set out in Council's April 2003 Bulletin, licensees are afforded access to ICBC's computer system for valid ICBC business purposes only. Access is governed by the terms of an insurance agency's agreement with ICBC and the Freedom of Information and Protection of Privacy Act. This is explicitly stipulated on the computer terminal screen at each log on and in ICBC's Autoplan Manual. Licensees must conduct themselves in good faith and make proper use of information available to them in their position. Council considers any misuse of a licensee's position for personal gain or benefit to be a breach of trust which can result in suspension or cancellation of an individual's insurance licence.

By his own admission, on June 14, 2005, Cheema remotely accessed ICBC's computer database at the request of Sidhu with the intention of identifying the registered owner of a motor vehicle based on a plate number provided to him by Sidhu. Sidhu had advised Cheema that he was seeking the information as he believed the occupants of the vehicle were "looking to kill him" or that he was "being followed and his life was in danger."

Accordingly, Council finds as a fact that Cheema knowingly and wrongfully used his position as an insurance agent to access ICBC's computer database for a purpose other than as required in the performance of his duties as a licensee.

While Cheema acknowledges that his conduct in accessing the ICBC database in the circumstances was improper, he states that he did not release any confidential information to Sidhu and had twice that day refused his request. Cheema stated that once he learned the vehicle was registered to ICBC, he immediately aborted the inquiry and advised Sidhu that he did not have access to the information he was seeking. Cheema submits he did this because the vehicle was registered to ICBC and he knew what he had done was wrong. He characterizes his conduct

as a momentary and isolated lapse in judgement.

Council put little weight on Cheema's submissions in this regard. Cheema's statements to investigators are inconsistent and self-serving. Council believes that Cheema has manufactured his explanations to suit the evidence, changing them as new information came to light. At one point, Cheema was forced to acknowledge to ICBC investigators that he had lied because his explanation was not possible.

Council also considered that despite Cheema's statement that he knew what he was doing was wrong and his subsequent show of remorse, he made no attempt to bring his actions to the attention of his nominee or ICBC. Council noted that Cheema had thirty days to bring his action to someone's attention before ICBC contacted him about his electronic search.

Additionally, Cheema stated he has been asked up to 10 times previously to conduct similar searches of ICBC's database. Although he states that he refused, he did not advise his employer, ICBC or any other appropriate party that people he knew were pressuring him to gain access to confidential information from ICBC.

Council found this behaviour speaks directly to Cheema's trustworthiness and intention to carry on insurance business in good faith. A trustworthy agent acting in good faith would not have conducted the ICBC search that Cheema did and had they, recognizing their conduct was wrong, they would have come forward and disclosed their actions. Additionally, a trustworthy agent acting in good faith would not conceal attempts by third parties to access ICBC's computer system.

Council found that Cheema has demonstrated a pattern of behaviour which is inconsistent with the requirements to be licensed as an insurance agent.

Whether Cheema actually shared any information he obtained from the ICBC database inquiry with Sidhu is irrelevant. It is clear that at the time Cheema accessed the ICBC database, he intended to provide Sidhu with the personal and confidential information of the vehicle's registered owner. He did this knowing that Sidhu had a lengthy criminal background. Cheema knew or ought to have known that Sidhu intended to use the requested information in a manner that would put the safety and security of the registered owner at risk.

On a balance of probabilities, Council finds that had the vehicle in question not been registered to ICBC, Cheema would have carried out the licence plate inquiry as intended and shared the information with Sidhu.

In doing so, Council determined that Cheema was not acting in good faith and in a trustworthy manner, contrary to the Act, Council Rules and the Code of Conduct.

Council determined that Cheema's actions and inactions bring into question both his trustworthiness and ability to act in good faith in the future. Council found Cheema's differing explanations as to what happened, the short timeline from when the ICBC car was spotted and when Cheema was asked to provide information and his failure to inform anyone of his actions, suggests that Cheema is not being honest about what actually occurred, making him a continued risk to the public.

INTENDED ORDER OF THE COUNCIL

In view of the above, Council found that Cheema no longer meets the requirements for licensing set out in Council Rule 3 and, pursuant to section 231(1) of the Act, made the following intended decision:

- Cheema's Level 2 general insurance agent's licence be cancelled for a minimum period of two years from the date Council's order becomes final.
- Cheema pay the costs of Council's investigation into this matter assessed at $1,375.00; and
- as a condition of this decision, Cheema is required to pay the above mentioned costs before his licence will be reinstated by Council.

This intended decision is made pursuant to Council's powers under sections 231, 236 and 241.1 of the Act.

The intended decision will take effect on **August 5, 2006**, subject to Cheema's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If Cheema wishes to dispute Council's findings or its intended decision, he may present his case at a hearing before Council where he may be represented by legal counsel. To require Council to hold a hearing, Cheema must give notice to Council by delivering to its office written notice of this intention by **August 5, 2006**. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the writer's attention.

If Cheema does not request a hearing by **August 5, 2006**, the intended decision of Council will take effect.

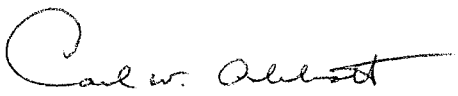
ORDER OF COUNCIL PURSUANT TO SECTION 238

Based on the above, Council determined immediate action was required to prevent further risk to

the public. Accordingly, Council orders, pursuant to section 238 of the Act, that Cheema's licence be cancelled immediately.

EFFECTIVE DATE OF SECTION 238 ORDER

Council's Order pursuant to section 238 will take effect immediately. Cheema has the right to require the Council to hold a hearing or may appeal the order to the Financial Services Tribunal.



Chairperson, Insurance Council of B.C.
File Number: 145076-3
July 11, 2006