In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

KELSEY ELISE O'FERRALL
(the "Licensee")

ORDER

As Council made an intended decision on September 15, 2015, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated October 5, 2015; and

As the Licensee has not requested a hearing of Council's intended decision within the time period provided by the Act;

Under authority of sections 231, 236, and 241.1 of the Act, Council orders:

1. The Licensee's general insurance licence is suspended for a period of one year, commencing on **November 10, 2015** and ending at midnight on **November 9, 2016**.
2. The Licensee is assessed Council's investigative costs of $987.50.
3. A condition is imposed on the Licensee's general insurance licence that requires her to pay the above-ordered investigative costs no later than **November 9, 2016**. If the Licensee does not pay the ordered investigative costs in full by this date, the Licensee's general insurance licence will remain suspended, and the Licensee will not be permitted to complete any annual filing until the ordered investigative costs are paid in full.

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This order takes effect on the **27th day of October, 2015**.

Brett Thibault
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

KELSEY ELISE O'FERRALL
(the "Licensee")

Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Licensee acted in compliance with the requirements of the Act.

As part of Council's investigation, on August 10, 2015, a Review Committee (the "Committee") met with the Licensee to discuss allegations that the Licensee improperly accessed the Insurance Corporation of British Columbia ("ICBC") database in an unauthorized manner to access information on a consumer (the "Consumer") and stored confidential client information on her cell phone.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee's meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee was provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Committee prepared a report of its meeting for Council.

The Committee's report, along with the aforementioned investigation report, were reviewed by Council at its September 15, 2015 meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Licensee may then accept Council's decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Licensee.

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FACTS

The Licensee is a Level 1 general insurance salesperson ("Salesperson") and has been licensed since July 2, 2010. She held an authority to represent an agency (the "Former Agency") from July 2, 2010 until June 25, 2014, at which time she resigned and began to work for a different agency (the "Agency"). The Licensee has held an authority to represent the Agency since June 26, 2014.

On January 29, 2015, the Licensee accessed information about the Consumer's insurance policy through ICBC's broker query system ("BQS"). She also accessed the Autoplan Data Capture ("ADC") system to obtain the Consumer's contact information.

To access the BQS screen, the Licensee had to enter the Consumer's policy/licence plate number and the Consumer's name code (which is the first three letters of the Consumer's last name). Once this was entered, the Consumer's policy and vehicle information would have appeared. Policy information includes rate group type, collision rate group, comprehensive rate group, claim-rated scale, bodily injury and property damage coverage, collision coverage, comprehensive coverage, registered owner, and principal operator. Vehicle information would have included color, make, model, year, vehicle identification number, vehicle type, and the number of owners.

The Licensee explained that she met the Consumer while at the Former Agency, when he renewed an automobile insurance policy. The Licensee stated that the Consumer asked her for a courtesy call the following year, so she entered the Consumer's information into her cell phone and set a reminder. When the reminder came up, the Licensee had already moved to the Agency, so she accessed the Consumer's information in the BQS to determine if he had renewed his insurance policy. When the BQS screen showed the Consumer had not yet renewed the policy, the Licensee proceeded with a "*dummy renewal*" to double check that the information on the BQS screen was correct. The Licensee explained she did this because she believed the BQS screen was not always up-to-date with respect to renewals.

After accessing the BQS, the Licensee contacted the Consumer. The Licensee stated this was her normal practice when renewing automobile insurance policies, and stated that she was unaware of the "*business side of things*" and that it was improper for her to have acted the way she did.

The Licensee acknowledged that she had contact information on her cell phone belonging to numerous other clients that she dealt with while employed at the Former Agency. She confirmed she knowingly took this information with her to the Agency, despite being told not to bring any client information with her. The Licensee stated that she did not use any of the other information in her cell phone and has subsequently deleted all the client information in her possession.

The Licensee confirmed that she has completed ICBC's Privacy Please tutorial twice, most recently since joining the Agency.

ANALYSIS

Council determined that the Licensee improperly accessed the Consumer's information in the ICBC database. The Licensee improperly attempted to facilitate an automobile insurance renewal for a client of the Former Agency based on information she had obtained while working for the Former Agency, which she kept on her personal phone.

Council noted the Licensee had more than four years of experience as a Salesperson at the time of the transaction and knew, or ought to have known, the requirements of consumer consent before accessing any information on the ICBC database. Further, given the Licensee's level of experience, she knew, or ought to have known, that it was inappropriate for her to store client information in her cell phone.

Council noted that the Licensee believed she was attempting to be helpful to the Consumer and that she was remorseful for her actions. Council considered these to be mitigating factors; however, determined the Licensee knew, or ought to have known, that it was improper to access the Consumer's personal information in the manner in which she did, and that it was inappropriate for the Licensee to store confidential client information in her cell phone.

In determining a penalty, Council noted that in similar cases of unauthorized access of the ICBC database, it has imposed a minimum one-year licence suspension, subject to mitigating and aggravating factors. Council determined that a suspension was an appropriate penalty in this case.

INTENDED DECISION

Pursuant to sections 231, 236, and 241.1 of the Act, Council made an intended decision to:

1. Suspend the Licensee's general insurance licence for a period of one year.
2. Assess the Licensee Council's investigative costs of $987.50.

The Licensee is advised that should the intended decision become final, the investigative costs will be due and payable within 90 days of the date of the order. Failure to pay the investigative costs by the completion of the suspension period will result in the continued suspension of the Licensee's general insurance licence. The Licensee will not be permitted to complete any annual filing until the investigative costs are paid in full.

The Licensee's suspension will begin on **November 10, 2015**, and end at midnight on **November 9, 2016**.

The intended decision will take effect on **October 27, 2015**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention by **October 26, 2015**. 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 attention of the Executive Director.

If the Licensee does not request a hearing by **October 26, 2015**, the intended decision of Council will take effect.

Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464
Fax: 250-356-9923
Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **5th day of October, 2015**.

For the Insurance Council of British Columbia

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Executive Director
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