

**REASONS FOR DECISION**

**IN THE MATTER OF**

THE PROPOSED ACTION OF THE  
INSURANCE CORPORATION OF BRITISH COLUMBIA (ICBC)  
TO CANCEL THE DRIVER TRAINING SCHOOL LICENCE  
OF s.22

<b>Hearing Chair:</b>	Frances Sasvari, Director, RoadSafetyBC
<b>Appearing:</b>	Owais Ahmed, Counsel for ICBC s.22
<b>Dates of Hearing:</b>	March 14, 15, 16 and 27, 2017
<b>Reasons Issued:</b>	April 28, 2017

### **ICBC's Proposed Action**

On September 15, 2016, the Insurance Corporation of British Columbia ("ICBC") proposed to cancel the driver training school licence of s.22 in accordance with s. 27.03(3) of the *Motor Vehicle Act Regulations*, B.C. Reg. 26/58 ("MVAR"). By way of a Notice of Intention to Show Cause dated October 20, 2016 (and later amended on February 14, 2017), s.22 exercised its right under s. 118.4 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 ("MVA"), to show cause why this proposed action should not be taken.

Pursuant to s. 118.6 of the MVA, the Superintendent of Motor Vehicles (the "Superintendent") may direct that ICBC take or refrain from taking the proposed action to cancel the driver training school licence. The Superintendent has referred this show cause hearing to me under s. 118.2 of the MVA.

Section 27.03(3) of the MVAR provides that ICBC may cancel a driver training licence for several reasons. The sections on which ICBC relies in its proposal to cancel the licence of s.22 are as follows:

- (a) the licensee engages in fraudulent, deceptive or unconscionable practices in the operation of a driving school ... (s. 27.03(3)(a))
- (b) the licensee fails to maintain or provide to [ICBC] the records required under this Division [Division 27 – Driver Training] (s. 27.03(3)(c)); or
- (c) failure of the ... licensee to comply with any requirement of this Division (s. 27.03(3)(e)).

### **Preliminary Matters**

In its Notice of Intent to Show Cause, s.22 noted "cancel[ation] of Driving School[s] DEAS access" as one of ICBC's proposed actions it intended to challenge at the Show Cause Hearing. "DEAS" refers to ICBC's Driver Examination Access System, which allows driver tests to be booked by telephone or online. At the pre-hearing conference and again at the start of the Show Cause Hearing, I explained that the Superintendent of Motor Vehicles has no statutory authority to approve or set aside ICBC's decision to cancel DEAS Access for s.22

On the first day of the Show Cause Hearing in this matter, s.22 requested that s.22 be allowed to remain in the hearing room throughout the hearing as an "owner/principal" of s.22 s.22 was also scheduled as a witness for s.22 There had been no indication prior to the Show Cause Hearing, either in writing or at the pre-hearing conference, that s.22 was an owner. s.22 provided no documentary evidence to show s.22 s.22 was an owner. The licence for s.22 was only in the name of s.22 I therefore found that s.22 was the only party to the proceeding. Thus I denied the request to allow s.22 to remain in the hearing room throughout the proceedings, but s.22 was permitted to attend the remainder of the Show Cause Hearing after s.22 had testified.

After s.22 testified, an application was made by s.22 to have s.22 recalled as a witness so that s.22 could make a "statement" but that application was later withdrawn.

After ICBC completed its reply to s.22 closing submissions, s.22 made a request for sur-reply. I denied this request as it could not identify any new issues raised by ICBC

in its reply that required response and its intended submissions would have been repetitive of arguments already made.

## **Evidence**

### ***Overview***

s.22 has held a driving school licence and a driver training instructor's licence in the province of British Columbia since s.22 (ICBC does not seek to cancel his driver training instructor's licence). s.22 operates s.2 business under the name s.22 The vice-president is s.22 is also a driving instructor for the school. s.22 manages the school when s.22 is away and also works as a driving instructor. s.22 s.22 s.22

s.22 language of origin is s.22 An interpreter was required to interpret for s.22 and s.22 when they gave their evidence in this Show Cause Hearing. At other times during the hearing, when necessary, s.22 interpreted for s.22

ICBC is responsible for monitoring the driver training industry, conducting inspections and handling complaints from the public or the industry. To do so, ICBC has hired inspectors throughout the province. During the period of 1999 – 2015, ICBC had six inspectors who were responsible for monitoring and inspecting approximately 450 driving schools in British Columbia.

One of the major components of an inspection is a review of a driving school's records. Section 27.06 of the MVAR refers to a number of standards and obligations of a driving school, including maintaining certain records for a period of three years and producing them to ICBC:

(4) A driver training school must maintain records as required by the Insurance Corporation of British Columbia for a period of 3 years, including but not limited to

- (a) records of students trained, including student's name, driver's licence number, class of driver's licence, date, time and length of each lesson, name of instructor of each lesson, subject taught, type of training, and fee charged for each lesson,
- (b) records of each instructor employed, including name, driver's licence number, a copy of the driver training instructor's licence, dates of refresher training given to the instructor, and
- (c) records of all vehicles used for driver training by retaining a copy of each vehicle's registration and proof of insurance coverage.

(5) A driver training school must, during regular business hours and all other reasonable times, permit the Insurance Corporation of British Columbia or designate to

...

(b) examine all records and other material and equipment used for operation of the driver training school,

...

(d) copy records and other material pertaining to the operation of the driver training school.

Other standards and obligations set out in s. 27.06 of the MVAR which are relevant to this matter are:

(2) A driver training school must provide a written statement to each student, before commencement of training and before the payment of any fees, disclosing all of the following:

(a) the name and address of the driver training school;

(b) the fees for enrollment, tuition, services, equipment and vehicle rentals;

(c) the extra charges that might be incurred by that student;

(d) how many persons can be in the driver training school vehicle during the student's lesson time and their reason for being in the vehicle;

(e) the actual amount of practice driving time the student will receive during each lesson;

(f) the actual fee for each lesson;

(g) the refund policies of the driver training school.

(3) A driver training school must provide to each person to whom driver training is supplied a written itemized statement of services provided or rental charged and a receipt for each payment made.

(8) A driver training school must maintain a registered office in British Columbia at which all communications and notices may be served and at which records of the driver training school must be maintained.

(10) A driver training school must, within 10 days of receipt of a request from the Insurance Corporation of British Columbia and in the form requested, update or provide further details as specified in the request concerning

...

(b) records respecting the operation of the driver training school that the driver training school is required to maintain under this Division.



Also relevant to this matter is ICBC's DEAS for booking driver tests by telephone or online. There are two "portals" to the DEAS for access by external users: a driving school portal and a public portal. In order to use the driving school portal for DEAS, a driving school must agree to and sign a "Driver Training & Certification Access to Road Test Booking Service Terms and Conditions" form (the "DEAS Terms and Conditions"). This document allows a driving school to use the DEAS on a number of terms and conditions. The relevant terms and conditions in this matter are as follows:

- The Driver Training School is permitted to make appointments only on behalf of students who are in an active training program with the school.
- The Driver Training School must obtain written authorization to disclose personal information to ICBC for the purpose of booking a road test, from each student for whom it will be booking an appointment.
- When making appointments, the Driver Training School must identify the driving school by name, Driver Training certification number, telephone number and also must provide the student driver's licence number, student's last name (spelled correctly), class of licence, the desired location, and approximate date required.
- The Driver Training School must not use one student's driver's licence number to hold open appointments for other student(s).
- Cancellations and Rebookings must be completed 48 hours or more before the scheduled appointment time. Extenuating circumstances may be called to DEAS call centre for review and monitoring.
- The Driver Training School must make every effort to minimize the number of appointments made by individual students and the number of students who do not attend for road test appointments.
- The Driver Training School may not cancel or change appointments made by individual students unless authorized by an ICBC Driving School Inspector.

A copy of the DEAS Terms and Conditions was signed by s.22 on August 20, 2002.

### ***Inspections and Action Plans from 2001 to 2013***

The inspector responsible for s.22 and the s.22 neighbourhood of Vancouver, including s.22 during 1999 – 2015 was Anthony Chiu, who has worked as a Driving School Inspector since 1999. s.22

Mr. Chiu gave evidence that when he was going to inspect a driving school, he would contact the school in advance to set up a convenient time and date to conduct the inspection. This would allow the driving school time to gather together the documents required for inspection. At the inspection of a driving school, Mr. Chiu would check to ensure that the driving school was meeting its s. 27.06 MVAR requirements. Anthony Chiu testified that while there was no specific schedule for inspections, an internal target for schools that had previously been found in compliance with the MVAR requirements was an inspection approximately every three years.

Mr. Chiu testified that he would make himself available on the last day of training for driving school instructors to answer questions but, after the instructors graduated, each driving school was responsible for the ongoing training and education of its driving instructors. However, Mr. Chiu would talk to driving schools about their obligations under Division 27.

Mr. Chiu attended at s.22 a number of times during this time period. As well, Mr. Chiu testified that he would attend s.22 Annual General Meetings and dinners and that there was good communication between s.22 and ICBC, through him.

The inspection history for s.22 began on November 23, 2001, following a complaint by a former student of the driving school. This student contacted the ICBC call center and advised that s.22 had booked a driving test appointment for s.22 although s.22 had stopped being a student of s.22 in October 2001 and was now a student of a different driving school.

The ICBC call center employee who took the complaint about s.22 advised Anthony Chiu of the allegation. The DEAS system showed that someone with the same name as the complainant was noted as a student of s.22 and was booked for a future driving test appointment for January 4, 2002. Mr. Chiu testified that he contacted s.22 about this, and in the conversation s.22 admitted that s.2 transferred driving test appointments to other people. Mr. Chiu advised s.22 to stop this activity and set up an inspection to look at the school's records. This information is recorded on an "Incident Report" form.

At the Show Cause Hearing, s.22 argued that this information was not relevant due to its age. I found the information was relevant and allowed it in with the caveat that I would later determine the weight to be given to the information; my decision regarding the weight of this information is found later in this decision. The parties agreed that any correspondence related to this matter that post-dated the September 2016 cancellation letter was not relevant for the purposes of the Show Cause Hearing.

On December 17, 2001, Anthony Chiu conducted an inspection of s.22 Mr. Chiu testified that if deficiencies are found in an inspection, the school is issued an "Action Plan". Following the inspection, Mr. Chiu issued an Action Plan to s.22 The actions required by s.22 were as follows:

1. Clarify maximum # of people in the vehicle during training in school policy
2. Clarify car rental for road test and standby in school policy
3. Must record and itemiz[e] all students' payment[s]
4. Must add class of license and all subjects taught to student records

The due date for all four required actions was noted as January 2, 2002. This Action Plan was signed by s.22 and witnessed by Anthony Chiu.

Following this December 17, 2001 inspection, further inspections of s.22 were conducted over the years with the result that a number of Action Plans were issued. The history of Action Plans is as follows:

#### April 2, 2003

1. Must provide a copy of school policy to all students
2. Must revise student consent and release form DTC 205 to meet ICBC requirement
3. Must not book road test appointment for any non-active students
4. Must ask all students to sign the consent form DTC 205 if they wish the school to book road test on their behalf
5. Must maintain all student records for the last 3 years ready for inspection
6. Must not ask student for their [ICBC] security keyword or mother's maiden name
7. Must release all non-exist[ent] or non-active student's appointments within 48 hours from today's date
8. Operator acknowledge[s] this is the second warning since Nov 23, 2001

The due date for all eight required actions was noted as “ongoing”. The “student consent and release form” referred to in #2 of the Action Plan pertained to ICBC’s written consent form which students had to sign for a driving school to book road tests on their behalf through the DEAS driving school portal. The requirement under #3 pertained to booking driving tests in DEAS for individuals who were no longer students with s.22 which was not permitted under the DEAS Terms and Conditions. The requirement for #5 pertained to the requirement under s. 27.06(4) of the MVAR that a driving school maintain student records for the last three years. The requirement for #6 pertained to a confidential key word that ICBC requires for all people who apply for a driver’s licence in the province. This key word is almost always the maiden name of the individual’s mother. This confidential key word is used by ICBC to identify people and to ensure that those individuals with whom it is doing business are the correct people. Action item #7 required s.22 to release all driving test appointments from DEAS for all non-active students within 48 hours.

#### July 27, 2005

Must instruct all instructors of the school to comply with the following:

1. Must identify themselves as driving school when making road test appointments
2. Must not obtain student’s [ICBC] personal keyword or mother’s maiden name for any reasons or purposes
3. Must not use student driver’s licence number to hold open appointments for other student(s)
4. School must maintain accurate student records as per 27.06(4)(a) of MVAR
5. Must obtain student consent and release form signed by student(s) in order to book road test on their behalf
6. School must maintain accurate records on all instructors and training vehicles as per 27.06(4)(b) and (c)

The due date for all six required actions was July 27, 2005, which Mr. Chiu testified meant that s.22 s.22 had to be in compliance on that same date.

#### May 29, 2007

1. Must ensure all instructors understand that under the Provincial Personal Information Protection Act, driver training school and its instructors must not obtain any student’s personal information or [ICBC] keyword other than the information outlined in 27.06(4)(a) of Motor Vehicle Act Regulations
2. Must ensure all instructors from the school obtain written consent from students before book[ing] any road test appointments on student’s behalf
3. Must ensure no instructors from the school use one student driver’s licence number to hold open appointments for other students
4. Must ensure all instructors from the school only make road test appointments on behalf of students who are in active training program with the school
5. Must ensure all instructors from the school provide a copy of school policy to every student prior to commencing any training
6. Must ensure all instructors issue receipts for every payment received
7. Must ensure all instructors from the school not engage in false, deceptive or misleading advertising or make a false, deceptive or misleading statement as per 27.10(2)(c) of Motor Vehicle Act Regulations.

The due date for the first six action items was “ongoing” and the due date for the last action item was May 29, 2007.

April 24, 2008

1. Must obtain copy of instructor license at school
2. Must obtain update[d] vehicle records from instructors
3. Not all receipts available for inspection
4. Must record all subjects taught
5. Must use Consent & Release Form provided by ICBC

The due date for the action items was noted as “ongoing”.

August 5, 2008

Third Notice

1. Must ensure all instructors understand that under the Provincial Freedom of Information and Protection of Privacy Act, driver training school and its instructors must not obtain any student’s personal information or keyword other than the information outlined in 27.06(4)(a) of Motor Vehicle Act Regulations.
2. Must ensure all instructors from the school obtain written consent from students prior to book[ing] any road test appointments on student’s behalf.
3. Must ensure all instructors from the school identify themselves as driving school when booking road test appointments.
4. Must ensure no instructors from the school use one student driver’s licence number to hold open appointments for other students.

Second Notice

1. Must ensure all instructors from the school only book road test appointments on behalf of students who are in active training program with the school.
2. Must ensure all instructors from the school provide a copy of school policy to every student prior to commencement of any training.
3. Must ensure all instructors issue receipts for every payment received.
4. Must ensure all students ... carry their learner’s licence prior to commenc[ing] any driving training.

Addition[al] Information

- Copy of the action plan developed on July 27, 05 and May 29, 07 provided to s.22

The due date for the action items was noted as August 5, 2008. Anthony Chiu testified that this Action Plan contained a “Second Notice” and a “Third Notice” in order to remind s.22 that this was not the first time these issues had arisen and been flagged. Mr. Chiu also testified that these items were discussed with s.22 s.22

June 25, 2013

Previous action plans developed on April 02, 2003; May 29, 2007 and August 5, 2008 and ... acknowledged by s.22

1. Must ensure all instructors from the school provide a copy of school policy to every student prior to commencement of any training.
2. Must ensure all instructors issue receipts for every payment received.
3. The school only make appointments on behalf of students who are in an active training program with the school.

The due date for these action items was noted as “ongoing”.

July 23, 2013

Previous Action Plans developed on April 2, 2003; July 27, 2005; May 29, 2007; August 5, 2008 and June 25, 2013 and ... acknowledged by school owner s.22 must ensure all instructors of s.22 must comply [with] the followin[g]:

1. Must obtain written authorization from students to book road test on student’s behalf.
2. Must identify as s.22 and provide accurate information when making road test appointments.
3. Must not use one student’s driver licence and/or name to hold open appointments for other student(s).
4. Only make road test appointments for students who are in active training program with the school.
5. School must maintain student records for the last 3 years.
6. Must not maintain any student’s personal information or [ICBC] keyword other than the information provided in 27.06(4)(a) of Motor Vehicle Act Regulations.
7. All instructors must comply [with] ICBC Driving Industry Code of Conduct of ICBC Access to Road Test Booking Service Terms and Conditions; ICBC Driver Training Industry Code of Conduct and Action Plans developed on April 02, 2003; July 27, 2005; May 29, 2007; August 5, 2008; and June 25, 2013 provided to s.22

The due date for all the action items was noted as “ongoing”; the last action item also had a due date of July 23, 2013. This Action Plan was created approximately one month after the previous Action Plan. According to Mr. Chiu, the likely reason this particular Action Plan was developed so close in time to the previous Action Plan was that it may have been triggered by a complaint received by a student, although Mr. Chiu was not completely confident on this point.

All of the Action Plans set out above were signed by s.22 testified that Mr. Chiu did not give s.22 details about the issues in the Action Plans, but that s.2 signed them “out of respect” for s.22 Chiu. s.22 stated that s.2 understood that, based on these Action Plans, the driving school had some problems and had to improve. s.22 also testified that the driving school had made progress over the years. However, when asked about the improvements that had been made, s.22 answered that s.22 holds an annual general meeting every year at which Division 27 requirements are emphasized and that Mr. Chiu is invited to the meeting to speak. s.22 testified that it was s.2 hope that Mr. Chiu would provide his thoughts as to what improvements could be made.

s.22 further testified that Mr. Chiu had recommended s.22 use a contract with its instructors that stipulated that the instructor must obey ICBC’s and s.22 rules, including that the instructors could not use student names to book road tests online. s.22 also testified that s.2 was advised by Mr. Chiu that this contract would guarantee and protect that s.22 School would not be closed. No copy of this contract was submitted as evidence by School, nor did s.22 question Mr. Chiu about this alleged conversation and contract during its cross-examination of him.

***Issues with Use of the DEAS by s.22***

***Prior to December 2015***

ICBC documented some of the issues it found with use by s.22 of the DEAS in its online “ICBC Driver Training & Certification DAT Inspection Trail Audit” database (“DAT”). Mr. Chiu testified that these are internal notes which document every time an inspector has contact with a driving school

regarding compliance and/or complaints with its use of the DEAS. The DAT contained the following information for s.22

August 5, 2010:

Discuss the conduct of instructors with the school [in] regards to keyword and flipping appointments with student's knowledge. Told school they must use the Consent and Release Form provided by ICBC. If they wish to translate it into s.22 then wording must be verbatim.

June 25, 2013:

Fail to ensure instructors to provide school policy to students. Fail to ensure instructors to comply [with] RTTC not to obtain student's keyword and hold open road test appointments.

August 27, 2014:

Meeting with School Owner s.22 and s.22 DLO Manager [Richmond Driver Licensing Office Manager, Kim Ypenburg] to discuss an instructor from the school continu[ing to] fail to comply with Code of Conduct. Kim decided to give the school one last chance before impos[ing a] DEAS suspension.

October 10, 2014:

Attended school annual meeting. Delivered info on Code of Conduct, DEAS Terms & Condition[s] and link to DTCBC.com regarding Div 27.

Mr. Chiu testified that Manager Kim Ypenburg had the authority to impose sanctions.

On May 19, 2015, Anthony Chiu and his manager, Jeff Johnston, met with s.22 and hand delivered a letter which stated that "our Special Investigations Unit and Driver Training Inspectors ha[ve] established that one of your employees has been involved in manipulating the DEAS system, in order to block road test positions and maintain an inventory of 'early' road test bookings." The letter further references the Terms and Conditions for access to the DEAS which state, "failure to comply may result in the withdrawal of the DTS' [driver training school's] access to DEAS and Web DEAS, at ICBC's sole discretion". s.22 is then advised in the letter "that effective immediately, your company's access to DEAS has been suspended until further notice and investigation". This letter was signed by Ben Shotton, Manager, Driver Licensing Integrity and Oversight.

Mr. Chiu testified that "block booking" occurs when a driving school books road test positions in DEAS in order to maintain an inventory of earlier dates for road tests for its students than would otherwise be available if booking according to the terms and conditions. Block booking is done by using a driver's licence number from a student or someone else to book a road test, then cancelling the road test for that individual at a later date and immediately booking the time slot for another student thus giving that student an earlier test date. Mr. Chiu testified that because the average wait time for booking a driving test is approximately three months, a driving school can generate more business if it can offer students earlier test dates.

The DEAS Terms and Conditions do not allow the practice of block booking:

- The DTS [driver training school] must not use one student driver's licence number and/or name to hold open appointments for other student(s).

On May 26, 2015, May 29, 2015, June 2, 2015, and June 19, 2015, s.22 responded to the DEAS suspension via correspondence that set out the steps s.22 would take to address the concerns ICBC raised if it reinstated the school's DEAS access. These steps included the following:

- School password will only be issued to group leaders. Driving Instructors will be divided to small groups. Group leaders will be in charge of supervising and monitoring school account usage for exam dates.
- Strictly enforce and monitor instructors['] use of school account and ICBC's rule of conduct regarding account usage. Instructor/s who violate the conduct will not only be punished by ICBC, the school will reserve the right to fire and/or fine violat[ing] instructor.
- Group leaders will randomly ask road test student[s] about [their] road test booking process, to discourage future violations.
- Review the s.22 Instructor Agreement with every instructor, emphasis[ing] the agreement's effectiveness and restrictions to instructors. When instructor violate[s] the Agreement, the school will release the instructor from school and report to ICBC.
- During the absence of School Principle s.22 Vice Principles s.22 and s.22 will be in charge of daily activities of the school. And inform the Principle of the daily events.
- Frequently change the school password. Events such as instructor leaving school, password will be changed immediately. Forbid other instructors who [are] not from our school [to] use the school account.
- s.22 will hire s.22 ... as DEAS coordinator to do all the school bookings.

In response to s.22 proposals, Ben Shotton wrote to s.22 on June 26, 2015 to request some clarification about the role of s.22 and some other items. After receiving further information from s.22 Mr. Shotton wrote s.22 again on July 15, 2015 regarding s.22 proposals and stated:

... this level of commitment is encouraging and provides ICBC the confidence that s.22 s.22 [has] taken this matter seriously and sincerely intend[s] to rectify the situation. In light of these efforts, your period of suspension from DEAS will be 90 days. Therefore on Monday, August 17<sup>th</sup>, 2015 you may apply for a new password and your access to DEAS will be re-established, subject to our review of your application. Please be reminded that your use of DEAS will be monitored. In the event misuse is observed, your access to DEAS will be suspended indefinitely.

s.22 testified that a further condition of ICBC allowing s.22 to use DEAS again after the 90-day suspension was that the school provide ICBC with a maximum of three IP addresses it would use to access the DEAS. On July 26, 2015, s.22 provided Anthony Chiu with an IP address for s.22 s.22 and an IP address for s.22 Mr. Chiu testified that he was not aware of any other IP addresses for Hong's Driving School.

On August 20, 2015, Mr. Chiu wrote to s.22 and reminded s.22 and s.22 that "only you and s.22 are permit[ted] to access ICBC DEAS web by using the password provided to you or your password to do on-line road test booking." A copy of the "ICBC Access to Road Test Booking Services Terms and Conditions DTC206" and "Guidelines for Managing Authorized Access to ICBC Information" was attached. Mr. Chiu further noted in his letter, "Please note failure to comply [with] DTC206 in the future may result in [a] longer suspension to DEAS access".

### ***Mr. Bott's DEAS Audit and the 2016 Inspection of s.22***

In December 2015, another Driving School Inspector, Michael Bott, conducted a routine audit of the DEAS driving school portal. Mr. Bott was looking for driving schools with a high number of transactions in DEAS over a short period of time. Mr. Bott identified s.22 as one of the schools with a high number of transactions. For driving schools that had a high number of DEAS transactions, Mr.

Bott then determined whether individual driver's licence numbers were linked to a high number of transactions. This was particularly of concern if no road test was ever taken by the individual whose driver licence had a high number of transactions. Mr. Bott stated that, based on the audit, he felt he needed more information about what was happening at s.22 and thus the routine audit turned into an investigation.

On January 19, 2016, a letter written by Mike Bott, titled "Notice of Inspection", was delivered to s.22 s.22 This letter advised that the school was due for a follow up inspection and that driver training schools were subject to inspection by ICBC under s. 27.06(5) of the MVAR. In this letter, Mr. Bott requested s.22 provide a number of records and documents, including the following:

- All student records and related documents (i.e. DTC205 Student Consent and Release form and receipts) for the period June 1, 2015 through December 31, 2015.
- A complete list [of] and records [for] all instructors that are, or have been employed by your driver training school since June 1, 2015 including copies of:
  - Valid Instructor's licence
  - Current insurance [for] all training vehicles
  - Valid Commercial Vehicle Inspection Report [for] each training vehicle
- A current copy of your school policy

These documents comprised a six month period that included both a period of time during which s.22 s.22 access to the DEAS was suspended and a period of time after the DEAS suspension.

Mr. Chiu testified that on January 29, 2016, as Mr. Bott was not available, he met with s.22 to receive some of the requested documents. Mr. Chiu did not review the documents, but merely passed them on to Mr. Bott.

Driver training schools are required to renew their licence every year. As part of the renewal process, driving training schools must list the licenced instructors working for them. To confirm the number of instructors s.22 had between June 2015 and December 2015 and for which ICBC required records, Mr. Bott referred to the list of instructors that was attached to s.22 most recent renewal application. He also referred to additional faxed documentation that s.22 s.22 had sent to ICBC with any changes to its instructors. Using that information, Mr. Bott determined that, during this time period, s.22 had 54 driving school instructors. s.22 had only provided records for 23 instructors to Mr. Chiu. Subsequently, s.22 s.22 provided Mr. Bott with records for a few more instructors. The records were provided in gift bags and folders, and some of the records were in s.22

A list of s.22 instructors was provided to Mr. Bott by s.22 : that list had 54 names. This list, however, did not coincide with the records that Mr. Bott had received or with ICBC's records. Mr. Bott testified that some of the instructors' names were different, some were new, some were left off the list, and some names were simply crossed off or had handwritten notations next to them. Mr. Bott testified that, in the end, he received records for 30 instructors; the remaining 24 instructors' records were never provided. Mr. Bott testified that the records for those 30 instructors consisted of 488 student records; he also testified that his investigation revealed s.22 had 797 students during the relevant time period. The records for the remaining students were never provided to ICBC. One of the instructors whose student records were not provided was s.22 the



Vice President of s.22 s.22 objected to s.22 being asked about the missing records on cross-examination on the basis that the hearing was about the school and not its instructors. I allowed the questions by ICBC to proceed.

s.22 testified that he had repeatedly advised and reminded his driving school instructors of the requirements under Division 27. s.22 stated that if a driving school instructor did not follow those requirements – and s.22 was so advised by ICBC – s.22 would fire the instructor. s.22 also testified that it is the driving school's obligation under Division 27 to maintain records, but that the driving school instructors for s.22 keep their own records. s.22 testified that the reason some of the instructors did not provide their records after the January 19, 2016 ICBC request was that those instructors were out of the area. In s.22 testimony, s.22 explained that s.22 s.22 s.22 and that space was too limited for record retention. On cross-examination, s.22 also indicated that s.22 did not provide the outstanding records at a later time as in September 2016 s.22 had already been given notice that ICBC was proposing to cancel the school's licence.

Mr. Bott took the information and records he had received, catalogued them, and then entered relevant data into a number of spreadsheets. For the 488 student records, in one of the spreadsheets, Mr. Bott entered student record keeping information required under the MVAR such as class of licence for which the student was receiving training and the instructor's name. As well, Mr. Bott entered other relevant information such as whether a student took a road test; if the student did, whether he or she passed or failed; whether the student had cancelled a road test appointment; and if so, whether a late charge was incurred for that cancellation. Mr. Bott testified that he found contraventions of the record keeping requirements set by s. 27.06(4) of the MVAR in 385 of the 488 student records. Of those 385 student records, some had more than one contravention. He also testified that payment receipts for 81 students were missing, and consent forms were missing for numerous students for whom s.22 s.22 had booked a road test through the DEAS.

Mr. Bott also reviewed the provided records for other record keeping requirements set by s. 27.06(4)(b) and (c) of the MVAR. He found that he had not been provided with driver training instructor licences for 30 of s.22 instructors or registration and insurance documents for 42 of its vehicles.

Part of the reason ICBC obtained records from s.22 was to allow it to determine whether Hong's Driving School was still engaging in the practice of block booking in the DEAS. This resulted in the development of what was referred to in evidence as "Spreadsheet #3". With the agreement of all parties, the portion of the Show Cause Hearing in which Mr. Bott gave evidence related to ICBC's "confidential investigative techniques" was held *in camera*. I further ordered that Spreadsheet #3 would not be available to the public (unless a court order requires the Superintendent to produce it).

Mr. Bott's investigation into the issue of block booking showed that there was an unusually high number of transactions for some students on the DEAS driving school portal, including 51 transactions for one student, with none of those 51 transactions resulting in the student taking a road test. Information obtained during the investigation showed that between June and July 2015, while the school's access to DEAS was suspended, a number of driving instructors with s.22 engaged in a total of 1013 transactions on the public portal, contrary to the DEAS Terms and Conditions, and performed a total of 173 transactions using the login details for a number of other driving schools. The DEAS Terms and Conditions pertaining to the unacceptability of a driver training school using the public portal to book road tests for its students is #4:

4. When making appointments, the DTS [driver training school] must identify the driving school by name, driver training certification number (DTC#), telephone number and also must provide the student driver's licence number, student's last name, (spelled correctly), class of licence, the desired location and date and time required.

Information such as the driver training certification number cannot be entered through the public portal.

Mr. Bott testified that the conclusion he drew from this information was that some of s.22

s.22 instructors were using students' personal and confidential keywords to circumvent the suspension conditions. In other words, the instructors were not using s.22 name and certification number to book road tests, which is a violation of the DEAS Terms and Conditions. These personal and confidential keywords are the key to establishing an individual's personal identity with ICBC. Having the keyword would allow persons access to an individual's personal information and misuse of the keyword can lead to fraud.

Mr. Bott testified that he correlated students with instructors during his investigation using one of three ways. One method involved using the student records provided by the instructors. The other methods were considered to be "confidential investigative techniques". As such, these reasons will only discuss these methods in a more general manner that should not be taken to reflect the specific evidence given by Mr. Bott. This is being done so that these reasons can be made available to the public or shared by the parties as they think necessary. Another method used involved IP addresses. Mr. Bott testified that he was not an expert in this area, but he understood that IP addresses are unique addresses for the internet and that each router is assigned an IP address. s.22 testified that there are two types of IP addresses: dynamic IP addresses, which are assigned by the network and change over time, and static IP addresses, which do not change over time. s.22 testified that most IP addresses are dynamic IP addresses. ICBC objected to this evidence on the basis that s.22 was not an expert. I decided that the admissibility of this evidence would be determined later. This issue is addressed later in the decision.

During his investigation, Mr. Bott also looked at the information from September 1 to December 31, 2015 to determine if s.22 was following the terms it had agreed to in order to have its DEAS access reinstated after the DEAS suspension. For a total of 2814 transactions associated with s.22 during this time period, only 119 transactions were performed using one of the two IP addresses supplied by the school to ICBC for this purpose which was part of the agreement for having its DEAS suspension lifted.

Part of Mr. Bott's investigation also involved comparing the volume of road test booking transactions performed by s.22 to two other similarly-sized schools in the s.22 area during the period of June 1, 2015 to December 31, 2015. s.22 had transactions for 475 out of 487 students. The total number of DEAS transactions for these 475 students was 2192. The first school against which s.22 was compared had transactions for 842 out of 1654 students, with a total number of 1039 DEAS transactions. The second school had transactions for 1169 out of 1725 students, with a total number of 1841 DEAS transactions. The approximate ratio for these two other schools was just over one transaction per student; the approximate ratio for s.22 was five transactions per student. Mr. Bott testified that his conclusion from this analysis was that s.22

s.22 was excessively using the DEAS system because it was holding appointments for students (i.e. block booking).

s.22 cross-examination of Mr. Bott resulted in an admission by Mr. Bott that there were some errors in his spreadsheets and documents. For instance, in the document comparing schools there was an error in the number of students listed for s.22 it showed 487 students rather than 488 students. Errors in the spreadsheets included spelling mistakes in names, and some students that were in the spreadsheet indicating for which students s.22 had provided records, were listed in another spreadsheet as not having had their records provided.

### ***ICBC's Decision to Seek Cancellation***

Mr. Chiu knew s.22 and had met and interacted with s.22 a number of times. However, Mr. Bott never met with s.22 Mr. Bott testified that after his investigation he dealt with s.22 or Mr. Chiu but not s.22 due to s.22 often being out of the country and s.22 often speaking on s.22 behalf. Mr. Bott also testified that due to the long history of issues with s.22 s.22 he was of the opinion that there was no point in meeting with s.22 to review the investigation findings as the previous Action Plans had been met with non-compliance. Following his investigation, Mr. Bott put forth four possible sanctions for s.22 to ICBC Manager Ben Shotton, including licence cancellation.

Mr. Shotton chose the most severe sanction, licence cancellation, and on September 15, 2016, ICBC issued a letter to s.22 proposing to cancel its driver training school licence for the following reasons:

- Deficiencies found in s.22 record keeping as required by s. 27.06 of the MVAR found during compliance reviews over a number of years;
- Its failure to provide ICBC with access to records for inspection following ICBC's demand for records issued January 29, 2016; and
- Its misuse of the DEAS and students' confidential information in order to block book road test appointments for individuals who are not registered students.

Mr. Bott testified that ICBC's proposal was to cancel the school's licence as all historical attempts to gain compliance had failed, and s.22 was a risk to the driving school industry and public. Mr. Bott testified that the legislation pertaining to driving schools had a purpose of consumer protection. The legislation requires record keeping so that ICBC can monitor the business activities of driving schools. By "risk" Mr. Bott was referring to consumer protection and protection of privacy and confidentiality.

Mr. Chiu testified that he did not think it was necessary to provide s.22 with a warning that ICBC was going to propose to cancel its licence as in 2015 ICBC had indicated this could happen when the parties communicated about the DEAS system issues.

s.22 testified that s.22 thought the proposed cancellation was unfair because only one instructor had been involved in inappropriate DEAS conduct, this instructor had now left the school, and s.22 had done everything Mr. Chiu had asked him to do. s.22 later testified, though, that s.22 was aware some other instructors were block booking and that some of them charged a fee for providing their students with an earlier appointment.

The issue of a subsequent school licence granted to s.22 was raised by ICBC in cross-examination of s.22 however I did not find that evidence relevant to my decision.

### ***A Newspaper Article and Allegations of Bias***

s.22 testified that during the DEAS suspension process in May 2015, s.22 contacted ICBC management, members of Parliament, and newspapers about what he perceived as “unjustness” in s.22 losing its DEAS access. On s.22 the s.22 s.22

s.22 testified that s.22 believed the attitude of ICBC towards s.22 changed after the s.22 testified that ICBC stopped communicating with s.22 – that there were no more meetings, phone calls, emails or letters. s.22 testified that ICBC stopped telling s.22 about violations that s.22 and its instructors were committing, stopped treating it as a “partner” and never gave s.22 an opportunity to respond to the issues found in Mr. Bott’s subsequent investigation. s.22 view was that everything that happened to s.22 s.22 (essentially Mr. Bott’s investigation and the proposed cancellation) was ICBC acting in revenge s.22 s.22 s.22

During cross-examination by s.22 Mr. Chiu testified that a reporter s.22 s.22 may have contacted him for this article; however, as per normal ICBC procedure, he redirected the reporter to ICBC media relations. Mr. Chiu stated that he did not receive any specific instructions regarding how to investigate s.22

s.22 Mr. Bott s.22 s.22 He also testified that he did not receive any specific instructions regarding how to investigate s.22 s.22 s.22

## **Analysis**

ICBC's position is that s.22

licence must be cancelled for the following reasons:

1. It failed to keep the records it was required to maintain pursuant to s. 27.06(4) of the MVAR;
2. It failed to provide ICBC with access to its records for inspection pursuant to ICBC's January 2016 request, in breach of ss. 27. 06(5) and (10) of the MVAR; and
3. It misused the DEAS system and confidential student information over a period of several years.

I note that ICBC has not sought to cancel s.22 or s.22 driver training instructor licences and there is no allegation in this matter about their fitness as driver training instructors. This case is about the driving school and the issues pertaining to the matters noted above.

### ***Burden of Proof***

ICBC has argued that while ICBC has an obligation to put evidence in front of the Superintendent to make out a *prima facie* case for cancellation, once it has done so, the driving school bears the onus of showing cause as to why its licence should not be cancelled. ICBC relies on the wording of s. 118.4 of the MVA which states that the driving school is entitled to an "opportunity to show cause why" the cancellation of its licence proposed by ICBC "should not be taken".

s.22 disagrees with ICBC's position and relies on the Superintendent's Guidelines for a Show Cause Hearing which state that "the Superintendent must be satisfied on a balance of probabilities that the action proposed by ICBC is either warranted or not warranted based upon the evidence and submissions made by the parties". s.22 says the evidence and submissions do not support the relief sought by ICBC.

s.22 has slightly misinterpreted the concept of burden of proof. The school is correct that the "standard" is a balance of probabilities; however that is a different concept. I agree with the interpretation of the burden of proof set out in the MVA put forth by ICBC.

### ***The driving school's failure to maintain and allow ICBC to examine records***

Section 27.04(6) of the MVAR requires that the driver training school maintain the records set out in that section. The maintenance of the records protects students' privacy and confidentiality and allows ICBC to effectively regulate the driver training industry. This is an important obligation for a driver training school. ICBC argues that s.22 failure to maintain records is egregious in that the school did not even attempt to maintain the records, instead offloading that requirement onto the driving instructors. Furthermore, the records created by the instructors and produced by the school were grossly deficient, with Mr. Bott identifying 385 contraventions of s. 27.06(4) of the MVAR in the 488 student records produced, as well as missing receipts for 81 students and missing consent forms from numerous students for whom s.22 booked road tests.

With regard to the requirement under 27.06(5)(b) to allow ICBC to examine records, ICBC's position is that the failure to produce records to facilitate ICBC's examination is similarly egregious.

The evidence on which ICBC relies was that s.22

- Provided records for only 488 students of the 797 students Mr. Bott identified it had;
- Failed to provide any records for 24 of its instructors;
- Failed to provide copies of instructor licences for 30 of its instructors; and
- Failed to provide registration and insurance documents for 42 of the vehicles used by the driving school.

s.22 argues that the onsite maintenance of records for a driving school located in a small home office is not practical and that each instructor is a small business unto him or herself. s.22

s.22 admitted that its instructors keep their own records and that a number of them did not produce records between January 2016 and September 2016 as they were out of the area at the time. The argument that it is not practical for a driving school that is housed in a small home office to maintain records is not persuasive. The requirements under Division 27 are clear: s. 27.06(8) states that a driver training school must maintain a registered office in British Columbia at which all communications and notices may be served and at which records of the driver training school must be maintained. Individuals wanting to enter into the driving school business must consider the realities of meeting these requirements in their business planning. The fact that the instructors were out of the area when records were required to be produced and did not provide records in the eight months between January and September 2016 when the MVAR sets a timeframe of ten days, just adds credence to the importance that the school itself maintain the records.

s.22 further argues that there are numerous errors in the spreadsheets compiled by Mr. Bott which identified the record keeping deficiencies and that there may be more errors as they did not review all student records to match them to the spreadsheets. s.22 position is that I should, therefore, not find this evidence convincing. s.22 also argues that ICBC must prove the specific conduct identified in its September 15, 2016 letter as follows:

- That 297 student records were not provided; and
- That there were 861 violations of Division 27, s. 27.06

The premise behind this argument is that, due to the errors found and the possibility of other errors, ICBC cannot prove these exact numbers of student records and violations.

I do not find that ICBC is required to prove that exactly 297 student records were not provided and that there were precisely 861 violations of s. 27.06 of the MVAR. s.22 did effectively demonstrate that there were errors in the spreadsheets created and used by ICBC during its investigation. However, I do not find that these mistakes render the evidence on this issue to be unreliable as a whole. Mr. Bott's investigative techniques and his findings were generally sound. There is conclusive evidence that s.22 did not provide a substantial number of student records and there were a significant number of violations of s. 27.06 of the MVAR in the records it did provide.

### ***The driving school's misuse of the DEAS system and confidential student information***

Based on the evidence before me, I also find that Mr. Bott's investigation revealed that s.22 failed to obtain written authorization from several of its students prior to making road test

bookings on their behalf; made road test bookings on behalf of students through the public portal; used student drivers' license numbers and/or names to hold open appointments for other students; circumvented the terms of its DEAS suspension period by making road test bookings on behalf of its students using the public portal; failed to adhere to the conditions it proposed as a condition of ICBC's agreement to lift its DEAS suspension; and collected students' keyword and mothers' maiden names despite repeated warnings from ICBC that it cease doing so.

ICBC's position is that s.22 misuse of the DEAS system and confidential student information allows ICBC to cancel its driver training school's licence for engaging in "fraudulent, deceptive or unconscionable practices in the operation of a driver training school" pursuant to s. 27.03(3)(a) of the MVA.

ICBC does not allege that s.22 participated in "fraudulent practices", but rather that its conduct was deceptive or unconscionable. ICBC relies on two definitions of unconscionable, which is not a term defined in the MVAR:

Unconscionable: 1. Having no conscience, unscrupulous. 2. Showing no regard for conscience; affronting the sense of justice, decency, or reasonableness. 3. Much more than is acceptable or reasonable. 4. Shockingly unjust or unfair.

*Black Law Dictionary, 10<sup>th</sup> Edition*

Unconscionable: 1. Unscrupulous or unprincipled. 2. Immoderate or excessive.

*Collins English Dictionary*

For the definition of unconscionable conduct, s.22 relies on *Harry v. Kreutziger*, 1978 CanLII 393 (B.C.C.A.), which states that for conduct to be unconscionable "the conduct must be unfair, oppressive, or abusive" and "[t]here must be some form of unfair advantage being taken such that it would be unfair to allow one party's conduct to stand uncensored". This definition of "unconscionable" is, however, a definition limited to the context of contract law. Thus I do not find it to be directly applicable here. I accept the definitions submitted by ICBC.

The definition of deception upon which s.22 relies is as follows:

The act of deceiving; intentional misleading by falsehood spoken or acted. Synonymous with fraud. Knowingly and wilfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.

*Black's Law Dictionary, 6<sup>th</sup> edition*

s.22 also says that deception requires two parties: one making the false statement or representation, and one who is deceived by the false statement or representation.

To establish s.22 conduct was deceptive or unconscionable, ICBC relies on evidence of its activities during the time period of June 2015 to December 2015, after s.22 had received the letter of DEAS suspension from Ben Shotton. ICBC does not rely on the contents of the historical Action Plans from 2003 – 2013 as a basis for cancelling the driver training school licence; it does rely on them to show the history of inspections of and the non-compliance by s.22

s.22 I give very little weight to the evidence concerning the commencement of the series of inspections and Action Plans following a complaint by a student. How the audit and investigation history

of s.22 started is not an issue in this matter. The underlying documentation that led to the creation of the historical Action Plans was not submitted into evidence until requested during the first day of this Show Cause Hearing by s.22 ICBC provided these documents prior to the lunch break on the second day of the hearing and s.22 had time to review these documents. With regard to the weight of the Action Plans, I give them full weight for the limited purpose ICBC has indicated that it is relying on them.

s.22 gave evidence that he did not understand the contents of the Action Plans and only signed them out of respect for Mr. Chiu. I find that the likelihood of s.22 repeatedly signing Action Plans over an approximately 12-year period without understanding the contents not to be credible. However, whether s.22 thought the issues raised in the Action Plans were serious and whether anything would happen if they were not followed is another matter.

ICBC submits that, during the time period of June 2015 – December 2015, s.22 engaged in the following deceitful and unconscionable conduct:

- Intentionally engaging in block booking of road test appointments
- Knowingly breaching the DEAS terms and conditions it expressly agreed to by:
  - Failing to obtain written authorization from several of its students prior to making road test bookings on their behalf
  - Making road test bookings on behalf of students through the public portal
  - Using students' drivers licence numbers and/or names to hold open appointments for other students
- Intentionally circumventing the terms of its DEAS suspension period by making road test bookings on behalf of its students using the public portal
- Intentionally circumventing the terms of its DEAS suspension period by making road test bookings on behalf of its students using the login details for other driving schools to access the driving school portal
- Failing to adhere to the conditions it proposed as a condition of ICBC's agreement to lift its DEAS suspension
- Collecting students' keywords and mothers' maiden names despite repeated warnings from ICBC that it cease doing so

ICBC also alleges that much of s.22 conduct constitutes "deceptive practices" and that deception occurred as follows:

- By engaging in block booking, s.22 was aware that it was making fake road test appointments in order to gain a business advantage at the expense of the public who incurred longer wait times
- By failing to identify itself contrary to the DEAS terms and conditions in order to conceal its conduct
- By making road test bookings on behalf of students using the public portal contrary of the DEAS terms and conditions in order to conceal its conduct
- Attempting to deceive ICBC by circumventing the DEAS suspension

s.22 denies the alleged misuse of the DEAS booking system. It also argues that the conduct at issue is neither deceptive nor unconscionable. s.22 says its conduct was



not unconscionable because it was not unfair, oppressive or abusive. It argues that its conduct was not deceptive because it did not make a false statement or representation and no one was deceived by its conduct. As well, its position is that ICBC did not prove that any practice of block booking resulted in longer wait times. s.22 suggested that the DEAS system is flawed and ICBC should have taken steps to fix the system.

With respect to the portion of Mr. Bott's investigation that used IP addresses, s.22 questioned the investigative technique used by Mr. Bott. Based on s.22 testimony about dynamic versus static IP addresses, s.22 argues that Mr. Bott's evidence about linking students to instructors through IP addresses is suspect. While I find s.22 evidence on the limited issue of static versus dynamic IP addresses reliable and admissible, I do not find that it renders a different outcome; Mr. Bott clearly showed that there were a large number of IP addresses linked to s.22 being used to access the DEAS. This was in direct violation of the agreement entered into for lifting the DEAS suspension, namely that it would only use two IP addresses.

s.22 is correct in that ICBC did not support its claim that s.22 misuse of the DEAS resulted in longer wait times for road tests with factual evidence. Mr. Chiu did explain that the holding of times in order to slot other students in later would practically result in longer wait times for others who were not receiving the benefit of such actions. However, I cannot conclusively find as a fact that the practice of block booking results in longer wait times. Even without such a finding, however, I do find that s.22 engaged in the practice of block booking and that this was a direct violation of the DEAS terms and conditions.

With regard to s.22 argument that the DEAS system is flawed and ICBC should have fixed it, even if I were to find that the DEAS system is flawed, and I make no such finding, s.22 still did not follow the rules for using it.

s.22 has also argued that this conduct was not that of the school but that of individual instructors and that Mr. Chiu had advised that if it used a contract with its instructors it would guarantee that s.22 would not be closed. I have previously noted that no copy of this contract was submitted into evidence, nor was this version of events put to Mr. Chiu by s.22 This reduces significantly the weight that I give to this evidence. However, even if such a contract exists, I find s.22 statement that Mr. Chiu advised s.22 that this would guarantee ICBC would not close s.22 to not be credible.

Furthermore, witnesses for s.22 reiterated repeatedly that, when advised of such conduct by ICBC, Wei Hong would fire the errant instructor. I find this is not a defence for s.22 s.22 The DEAS Terms and Conditions are agreed to by a driver training school. s.22 indicated that s.2 was aware of at least some instances of misconduct by s.22 instructors with regard to the DEAS, showing that these actions were not completely unknown to s.22 However, simply firing an employee as s.22 testified s.2 would do if advised by ICBC of the misconduct of the instructor is not adequate. As documented in the Action Plans, s.22 had been advised of problems with respect to instructor conduct around driver test bookings for many years. It should not wait to be advised by ICBC of a specific instructor's conduct in these circumstances. Naturally, should ICBC advise a school of conduct of which the school is unaware, the school should act on the information. However, there is an obligation upon a driving school, as with any employer or business with regard to its staff or employees, to take reasonable steps to monitor and manage the

activities of its instructors. Even though a driving school cannot be aware of all activities of its instructors at all times, here s.22 knew of at least some specific circumstances of block booking and had been repeatedly warned by ICBC over the years of these actions and the need for them to stop. With this kind of knowledge, the responsibility on s.22 to monitor its instructors' activities with respect to the DEAS is higher. Furthermore, s.22 had some ways of controlling these issues as identified in the terms and conditions it put forward in order to have DEAS access reinstated, such as frequently changing the school's password and requiring bookings to go through a point person.

s.22 also argues that, in light of the fact the Superintendent has no statutory authority to determine if ICBC can cancel or suspend a driving school's DEAS access or order reinstatement of DEAS access, ICBC's claims about the school misusing the DEAS are only properly addressed by ICBC through the DEAS Terms and Conditions and a possible suspension or cancellation of DEAS access. s.22 says there is no legislated authority for its licence to be cancelled on the basis that the school breached the DEAS Terms and Conditions.

I note first that the misuse of the DEAS was not the only reason given by ICBC for seeking licence cancellation; the other reason was the issue of record keeping. I do agree with s.22 that there is an avenue for ICBC to address allegations of DEAS misuse through the DEAS Terms and Conditions and suspensions and cancellations of access to the DEAS; however, I do not find that this precludes ICBC from relying on the misuse of the DEAS as a reason for proposing licence cancellation if it can establish this conduct falls under s. 27.03(3)(a) of the MVAR.

The question is, then, if the conduct of s.22 was in fact a deceptive or unconscionable practice.

Using the definition provided by ICBC from Black's Law Dictionary, I find that the conduct of s.22 s.22 in block booking, having instructors collect students' keyword and mother's maiden names despite repeated warnings from ICBC not to do so, and, in particular, intentionally using the DEAS system during the DEAS suspension and then later contravening the conditions it proposed to have ICBC reinstate its DEAS access to be unscrupulous; to affront the sense of justice, decency, or reasonableness; and to be more than is acceptable or reasonable. In other words, the conduct was unconscionable. s.22 was not only repeatedly violating the DEAS Terms and Conditions, despite warnings, but was purposefully trying to hide its activities by using the public portal. Even with a DEAS suspension, s.22 managed to continue to book road tests for its students using the public portal, again in violation of the DEAS Terms and Conditions. Therefore, a DEAS suspension on its own was not enough of a hindrance to make s.22 conduct itself appropriately either during the suspension or afterwards.

In light of my finding that this conduct was unconscionable, I do not find it necessary to determine whether it was also deceitful.

s.22

I can understand from s.22 perspective why s.2 believes this to be the case. After many years of Action Plans with no sanctions (until the DEAS suspension) and good communication with Anthony Chiu, s.22

However, I heard evidence from both Mr. Chiu and Mr. Bott, which I find to be credible, that they were not instructed to change their approach to s.22 s.22

The situation was no more than one of timing. s.22 after the DEAS suspension, and this was followed by Mr. Bott's general audit of the DEAS which revealed a higher number of DEAS transactions by s.22 than was usual for driving schools. This in turn led to the follow-up investigation which revealed problems with s.22 It was this information that led to a change in approach with s.22

However, even if I did find that ICBC changed its approach to s.22 s.22  
s.22 this would not change the evidence that ICBC uncovered in its investigation. The facts would remain the same – s.22 failed to keep and provide required records under the MVAR, and misused the DEAS system and confidential student information over a period of several years. It also would not change my approach to determining whether cancellation on these facts is warranted.

### ***Possibility of Improvement***

One of the issues for me to consider is whether there is a likelihood that the conduct of s.22 s.22 will improve in the future. While this would not negate the findings I have made about the past conduct of the school, it would factor into whether I decide that the proposal to cancel the licence is warranted.

Throughout the hearing, s.22 repeatedly demonstrated a lack of understanding of the responsibilities of a driving school. While s.2 did state that the driving school has the responsibility for record keeping, s.2 placed the blame for missing and incomplete records squarely on the shoulders of the instructors. When discussing DEAS violations, s.2 repeatedly indicated that if ICBC advised s.22 of transgressions s.2 would fire the instructor. Again, s.22 was not taking direct responsibility for the actions of s.2 schools' instructors. Even when asked about improvements made by the school over the years, s.2 simply stated that the school has a regular annual general meeting at which the instructors are told to comply with Division 27 and that if they do not, they will be fired.

This lack of understanding of record keeping and DEAS requirements after so many years in the business, with years of inspections and action plans, as well as the lack of willingness to accept responsibility for this conduct, leads me to the conclusion that the conduct of s.22 would not improve in the future for either record keeping or the compliance with the DEAS Terms and Conditions. In the end, it appears that in the future s.22 would continue to deal with similar issues in the same manner, which is firing errant instructors if advised of their misconduct by ICBC.

### ***Enforcement History***

Although not expressly raised by s.22 I feel compelled to comment on the history of this matter and ICBC's monitoring and enforcement over the years. Much was made by ICBC of the long history of Action Plans and that s.22 did not take action on the action items. Certainly the plans reveal repeated stated requirements for s.22 to take action on certain items,

such as ensuring no instructors use one student's driver's licence number to hold open appointments for other students, ensuring all instructors only book road test appointments on behalf of students who are in an active training program with the school, and that all instructors issue receipts for every payment received. Many of the action items in the Action Plans are of a serious nature.

Evidence was provided that, for a long period of time, only six inspectors were responsible for the entire province. The focus of the work was more on education than enforcement. Anthony Chiu testified that there was no specific standard for when inspections would occur, but there was an internal decision to try to do audits every three years if the school was in compliance with statutory requirements. Here, the Action Plans seem indicative of a belief by ICBC that s.22 was not in compliance; however, despite this, there was a pattern of a long period of inactivity between audits. After the August 5, 2008 audit, no further audit was undertaken until June 25, 2013. This was the case despite the fact that the August 5, 2008 audit referenced that many of the items were under "second notice" and even "third notice".

Although these Action Plans started in 2003 and repeatedly referenced many of the same serious issues, there was no sanction of any sort for s.22 until 2015 when the DEAS suspension occurred. I believe this pattern led to a belief by s.22 that there would be no serious consequences for its conduct and its omissions. Generally, one would expect that ICBC, having responsibility for the monitoring of the driver training industry and repeatedly finding issues with one of its schools that required Action Plans, would take a series of escalated actions over the years, such as moving from Action Plans to suspension(s) and only then to cancellation. Yet, while s.22 s.22 may have had a false sense of security that they would not receive a licence cancellation, this does not negate its responsibilities under the MVAR and the DEAS Terms and Conditions.

Anthony Chiu testified that there has now been a restructuring at ICBC and that while education still occurs, which is necessary, there is more of a focus on enforcement. I commend ICBC for making these changes and hope that this will improve the monitoring of the driver training industry in the future with a greater focus on progressive disciplinary steps when there is repeated non-compliance on matters such as these.

### ***Procedural Fairness***

s.22 argues that the decision made by ICBC to take the most serious avenue in dealing with the school (i.e cancelling the school's licence) was procedurally unfair. s.22 alleges that, since it advised s.22 of the proposal to cancel its licence, ICBC has proceeded in a manner that suggests the result is a foregone conclusion and that there can be no question that ICBC is entitled to the result it seeks.

s.22 argument on this issue is not entirely clear but appears to be about the investigation process. It seems that the allegation that is being made is that ICBC treated s.22 in an unfair manner up to the Show Cause Hearing. However, the specific procedural fairness issues raised by s.22 only concern the period of time from Mr. Bott's investigation up to ICBC's decision to seek cancellation. As such, that is the time period I address here. It would appear that the allegation that is being made is that ICBC was treating s.22 in an unfair manner up to the Show Cause Hearing or, in other words, there was a lack of procedural fairness by ICBC in the investigative stage. s.22 position is that it should have been provided with ICBC's evidence and position that it was going to propose cancellation and then be given an

opportunity to make submissions directly to ICBC before ICBC formally proposed cancellation. A driving school already has an opportunity to know the case being made against it by ICBC and to respond to that case in front of an impartial decision-maker in the Show Cause Hearing process. The question then is if there is also a requirement for procedural fairness by ICBC in its investigative stage.

Justice L'Heureux-Dube wrote in *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653 at 670:

... not all administrative bodies are under a duty to act fairly ... The finality of the decision will also be a factor to consider. A decision of a preliminary nature will not in general trigger the duty to act fairly, whereas a decision of a more final nature may have such an effect (Dussault and Borgeat, op. cit., at p. 372).

In *Knight*, the Court found at 686-687 that the duty of fairness which applied to the decision of the School Board to dismiss a director of education had been met because Mr. Knight knew the reasons for his dismissal and had an opportunity to be heard by the Board.

A number of cases have considered whether, in the context of professional disciplinary proceedings, a duty of fairness arises at the investigative stage. In *George v. Canada (Attorney General)*, 2007 FC 564, a police officer argued that she was denied procedural fairness when she was not offered an opportunity to be heard before she was suspended. Justice Tremblay-Lamer wrote:

[87] ... the decisions to investigate allegations and to suspend an officer with pay pending that investigation are not final disciplinary decisions; rather they are essentially preliminary non-judicial decisions. Generally speaking, decisions of a preliminary nature will not trigger a fairness duty: *Knight v. Indian Head School* ... Even in cases where preliminary decisions do trigger a duty to act fairly, such as in formal inquiries where personal reputations are at stake, the individuals implicated will not be entitled to full trial-like procedural protections during this pre-trial fact finding stage. ... Procedural fairness requirements in the context of a suspension with pay pending an administrative investigation are necessarily lower than those triggered by disciplinary proceedings which would follow an adverse investigation ... the lower procedural fairness requirement at the preliminary stage is not a license to treat people unfairly; rather it is necessary to allow investigators the chance to do their job and it is a corollary to the higher standard to be applied to any subsequent proceedings ...

This matter is not a professional disciplinary proceeding; however the fact that the investigation and the final outcome can lead to a loss of income and profession puts situations such as this one into a similar category. The opportunity for s.22 to respond occurs at the Show Cause Hearing. The driving school is given an opportunity to know the case against it and to call its own evidence and make arguments to respond to that case. Here, s.22 was provided with ICBC's rationale for cancellation and the evidence being relied on by ICBC before the hearing so it could adequately respond to it. The actions of ICBC in conducting its investigation and proposing to cancel the school's licence are preliminary steps and decisions; the final decision regarding cancellation is for the Superintendent of Motor Vehicles (or his delegate) to make. No cancellation of a school's driver training school licence can occur without the Superintendent's approval. Even when a school does not seek a show cause hearing, under s. 118.5 of the MVA, the Superintendent still has discretion with respect to authorizing ICBC to proceed with a proposed cancellation.

Therefore, I reject the argument that ICBC had a duty of procedural fairness that it did not meet in its investigation process leading up to it proposing cancellation of s.22 licence and the Show Cause Hearing.

## Decision

The last issue for me to decide is whether, pursuant to s. 118.6 of the MVA, I should direct that ICBC take or refrain from taking the proposed action to cancel s.22 licence. I have set out my reasons above for finding that s.22 violated section 27.06(4) of the MVAR pertaining to the need to maintain and allow ICBC to examine records as well as my finding that the conduct of s.22 in its use of the DEAS in direct violation of the DEAS Terms and Conditions was unconscionable.

This conduct of s.22 occurred over a long period of time, involved many violations, was the subject of repeated warnings and was of a serious nature involving collection and use of student's confidential information, disregard of record keeping requirements, and blatant circumvention of the DEAS suspension and the conditions agreed to for lifting the suspension. Furthermore, there was no evidence provided that indicated that the situation would improve in the future. The evidence provided by ICBC is sufficient to convince me on a balance of probabilities that the proposed cancellation of the driver training school licence issued to s.22 should proceed. s.22 has not, in turn, established on a balance of probabilities that it should not proceed.

I authorize ICBC to proceed with the cancellation of the driver training school licence issued to s.22 DBA s.22



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Frances Sasvari  
Director, RoadSafetyBC

April 28, 2017

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Date

February 22, 2021

s.22  
c/o s.22  
s.22

Insurance Corporation of British Columbia  
c/o Lovett Westmacott  
Suite 12-2544 Dunlevy Street  
Victoria BC V8R 5Z2

**REASONS FOR JANUARY 12, 2021 APPEAL DECISION**  
**as clarified January 29, 2021**

**Appeal:** s.22 v. The Insurance Corporation of British Columbia –  
**Part 2.1 Motor Vehicle Act Appeal – No. A200825**

**Background**

On September 4, 2020, s.22, owner of s.22 submitted an appeal under section 118.7(d.2) of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 (“MVA”), of the decision of the Insurance Corporation of British Columbia (“ICBC”), dated August 25, 2020, to suspend s.22 driver training school’s licence (s.22 for 90 days, beginning on September 24, 2020. ICBC’s authority to make a decision to suspend is section 27.03 of the *Motor Vehicle Act Regulations*, B.C. Reg. 26/58 (“MVAR”). The Superintendent of Motor Vehicles (the “Superintendent”) referred this appeal to me for consideration and decision under section 118.2 of the MVA.

s.22 Notice of Appeal form (MV10001) and “Reasons for Appeal” written submission were attached to an Application to Waive Filing Fee (#RTB-17), Residential Tenancy Branch, Office of Housing and Construction Standards. The application package and fee were misdirected because of the use of form #RTB-17, causing a delay in receipt by the Superintendent. As set out in previous correspondence, s.22 did not qualify for an exemption to the appeal fee under the *Appeals and Show Cause Hearings Regulation*, B.C. Reg 414/97.

ICBC also cancelled s.22 access to the Drivers Examination Appointment System (DEAS), which allows driver training schools to book road tests for their students online. The Superintendent has no statutory authority to approve or set aside ICBC’s decision to cancel DEAS Access for s.22 and so that decision is not under appeal. However, because ICBC relied, in part, on s.22 use of DEAS as a basis for suspension, I will address s.22 submissions on this matter in my reasons for decision.

Pursuant to section 118.9(1), I ordered ICBC and s.22 to deliver written submissions to me. Both parties had opportunities to review the written submissions, including evidence, from the other party and opportunities to rebut the other party’s written submissions. After reviewing all of the materials before

me, I was satisfied that the matter could be disposed of on the basis of the written submissions that were delivered. There were no serious issues of credibility arising which would have benefitted from hearing viva voce evidence and having cross-examination nor any other reason that would have made it unfair in the circumstances not to hear oral submissions.

As such, I decided this appeal without a further hearing pursuant to section 118.9(4) and issued my decision on January 12, 2021 confirming ICBC's decision to suspend the driver training school licence for 90 days, with reasons to follow. These are those reasons. As there was some confusion over my January 12, 2021 decision, a clarification of that decision was issued on January 29, 2021, clarifying that the decision appealed from which was confirmed was the decision to suspend the driver training school licence for 90 days beginning on September 24, 2020. The reasons provided in that clarification are not repeated here.

Pursuant to section 118.9 of the MVA, on considering an appeal, the Superintendent may (a) confirm, vary or rescind the decision appealed from, (b) make any decision that ICBC could have made in the first instance, or (c) refer the matter back to ICBC with or without direction.

Section 27.03(3) of the MVAR provides that ICBC may suspend a driver training school licence for several reasons. The paragraphs of section 27.03(3) on which ICBC relies for its suspension of the licence of s.22 are as follows:

- (a) the licensee engages in fraudulent, deceptive, or unconscionable practices in the operation of a driver training school ...
- (c) the licensee fails to maintain or provide to [ICBC] the records required under this Division [Division 27 – Driver Training] ...
- (e) failure of the ... licensee to comply with any requirement of this Division ...

### **Burden of Proof**

On November 20, 2020, I sent a letter to ICBC's counsel asking for their submissions on various issues that had arisen. s.22 was copied and also invited to make submissions on these points. One question was "Who bears the onus on the appeal?"

In their response dated December 4, 2020, ICBC's counsel accepted that ICBC has the onus of establishing the alleged violations on a balance of probabilities. They submit that once those violations are established, the onus shifts to s.22 to lead evidence to the contrary.

s.22 did not address the issue of onus in s.2 submissions.

I agree that ICBC bears the burden of establishing alleged violations on a balance of probabilities. More importantly though, it bears the burden of establishing the grounds it relies on for the suspension. ICBC only has statutory authority to suspend under section 27.03(3) of the MVAR if one of the reasons listed exists. If ICBC cannot establish such a reason on a balance of probabilities, the appeal must be granted. I do not agree that there is any shifting of the burden on whether a reason for suspension is made out. However, where ICBC's evidence, on its own, is sufficient to establish this, then it would be necessary for an appellant to meet or negate the record that ICBC has put before the Superintendent.



If a reason for a suspension is established, then in light of the powers given under section 118.91 of the MVA, I need to determine what would be an appropriate sanction in the circumstances or whether the matter should be referred back to ICBC. The MVA does not require that the Superintendent show deference to ICBC's decision, but rather empowers them to make any decision that could have been made at first instance. Suspensions of a driver training school licence may be highly consequential to the school, its staff and its students; for the Superintendent to confirm ICBC's decision, ICBC should show that the length of suspension it imposed was an appropriate measure to address the actions or inactions of the licensee. I note that the MVA itself is not consistent with the appellant bearing the onus since if an appellant fails to deliver written submissions, the Superintendent *may* dismiss the appeal, but this does not automatically follow.

### **Evidentiary Overview**

On November 26, 2020, s.22 made a general denial of the allegations stemming from the April 2020 audit conducted by ICBC on the basis that s.2 had not seen "clear evidence". Similar sorts of general denials appear in other submissions from s.22 such as "Before August 25, 2020, the school has completed all the work in accordance with ICBC's regulations and requirements". However, s.22 offered no documentary evidence to contest what was submitted by ICBC or to support the submissions made on behalf of s.22. As well, the general denials are not consistent with earlier submissions made by s.22 that a thorough investigation conducted after ICBC issued the suspension letter demonstrated one instructor had repeatedly violated the regulations.

The evidence set out in these reasons is, unless otherwise noted, taken from:

- Affidavit of s.22 Driving School Investigator, sworn November 5, 2020;
- Affidavit #2 of Mr. Chan, sworn December 2, 2020; and
- Affidavit of Kimberley Ypenburg, Manager of Investigations and Compliance made on an unidentified date in December 2020.

s.22 is owned and operated by s.22 has held a driver training instructor's licence in British Columbia since 2012. s.22 obtained its driver training school licence in June 2017. For clarity, the only licence in issue on this appeal is s.22 driver training school licence and not s.22 instructor's licence.

ICBC is responsible for the licensing and oversight of driver training schools. ICBC Driving School Investigators ("DSI"s) conduct periodic compliance audits of driver training schools and driver training instructors to determine compliance with the requirements established in the MVAR, the Road Test Booking Service Terms and Conditions ("DEAS T&C"), and the Driver Training Industry Code of Conduct. If areas of concern are identified, they are discussed with the driver training school's operator and, if necessary, an action plan is developed to correct all non-compliance issues.

When a driver training school fails to take the steps necessary to correct areas of non-compliance, ICBC will typically engage in progressive sanctions. Sanctions can include compliance notices (written warnings), violation tickets, license suspension, suspension of access to the DEAS (for violations of the DEAS T&C), license cancellation, and cancellation of access to the DEAS.

### **Are There Grounds for Suspension: Records and MVAR Requirements?**

As noted above, two of the grounds ICBC relies on for the suspension are that s.22 failed to maintain or provide to ICBC the required records and ICBC failed to comply with the MVAR requirements.

Section 27.06 of the MVAR refers to a number of standards and obligations of a driver training school, including maintaining certain records for a period of three years and producing them to ICBC:

- (4) A driver training school must maintain records as required by [ICBC] for a period of 3 years, including but not limited to
  - (a) records of students trained, including student's name, driver's licence number, class of driver's licence, date, time and length of each lesson, name of instructor of each lesson, subject taught, type of training, and fee charged for each lesson, ...
- (5) A driver training school must, during regular business hours and all other reasonable times, permit [ICBC] or designate to ...
  - (b) examine all records ...
  - (d) copy records and other material pertaining to the operation of the driver training school.
- (10) A driver training school must, within 10 days of receipt of a request from [ICBC] and in the form requested, update or provide further details as specified in the request concerning ....
  - (b) records respecting the operation of the driver training school that the driver training school is required to maintain under this Division.

Another obligation set out in section 27.06 of the MVAR concerns receipts:

- (3) A driver training school must provide to each person to whom driver training is supplied a written itemized statement of services provided or rental charged and a receipt for each payment made.

### ***Evidence***

On April 14, 2020, DSI Chan contacted s.22 via email and requested s.22 records for the period of November 1, 2019 to March 31, 2020. Between April 15 and April 27, 2020, s.22 provided copies of s.22 license, policy and 325 student records. On April 28, 2020, DSI Chan notified s.22 via email that records in relation to 12 instructors were not included in the documents submitted.

On April 30, 2020, DSI Chan emailed s.22 requesting confirmation that all records had been submitted for the audit period of November 1, 2019 to March 31, 2020. DSI Chan gave s.22 until end of day May 8, 2020 to submit any additional records. On May 5, 2020, s.22 emailed DSI Chan copies of instructor licences associated with the School. No additional records were submitted for the audit period.

From the records provided, DSI Chan identified the following violations of section 27.06(3) of the MVAR:

- s.22 failed to provide 144 student receipts

- 141 of the 304 receipts provided were not itemized
- 19 receipts did not match student records

Based on a review of the DEAS booking and driver examination records, an estimated 483 student records should have been provided for this time period but only 325 records were produced and of those, 6 were not from the time period being audited and 13 were duplicates. 34 of the records produced were additional to the 483 student records ICBC was expecting based on its records. As such, s.22 failed to submit 211 of its records (or 43.7%).

Additionally, from the 325 student records that were provided, DSI Chan identified 575 violations of section 27.06(4), namely instances of incorrect or missing student names, driver's licence numbers, class of driver's licence, date, start time, length, name or initial of instructors, subject taught and fee charged for each lesson.

s.22 has not disputed the findings of DSI Chan. s.22 notes in the submission sent with the appeal that the incomplete collection of student records may have been due to circumstances arising as a result of the COVID pandemic, but it was not intentional.

### ***Parties' Positions***

In submissions made on November 23, 2020, s.22 submits that the role of the driver training school is to act as a communicator between ICBC and the individual instructors. A driver training school, in accordance with the regulations, formulates school policies and manages documents, but every instructor is required to abide by and implement all of the requirements. s.22 argues that a driver training school does not have any right or ability to supervise or enforce the law in relation to each instructor's daily work. The only power it says a school has would be to ask an instructor to leave the school.

In a submission made on December 10, 2020, s.22 indicates that it does not have the ability to verify any record; only ICBC has the ability, equipment, and authority to review. As such, s.22 argues that it is ICBC's role to inspect the records kept by instructors and report any errors to in order for the records to be corrected and resubmitted. s.22 further submits that spelling errors are inevitable and understandable.

In its November 6, 2020 submissions, ICBC states that the standards and obligations imposed by section 27.06 of the MVAR are mandatory and not onerous. They are for the benefit of students and necessary to ensure the integrity of the driver training school system.

In its December 4, 2020 submissions, ICBC stresses that under the MVAR, "ICBC has regulatory oversight of driver training *schools*, not driver training instructors." However, this statement is incorrect in law. ICBC is responsible for licensing and oversight of both driver training schools and driver training instructors, as there are specific obligations and requirements placed on instructors. From the rest of its submissions, though, I take ICBC's point to be that because the requirements under section 27.06 are placed on the driver training schools and not the driver training instructors, the responsibility rests with the driver training school and not ICBC to ensure that driver training instructors who are associated with the school take the steps necessary for the school to comply with its obligations under the MVAR.

### ***Analysis***

Section 27.06 of the MVAR establishes the standards for and obligations of driver training schools, not instructors. Those mandatory statutory obligations include the requirement to provide to each student a written itemized statement of services provided or rental charged, and a receipt for each payment made. They also include maintaining student records that contain specified information listed in section 27.06(4) of the MVAR.

The records produced by the school for the most recent audit period of November 1, 2019 to March 31, 2020 were grossly deficient, with DSI Chan identifying 575 errors in the 325 student records produced. As well, receipts for 144 students were missing and, of the 304 receipts provided, 141 were not properly itemized.

While s.22 noted that the incomplete collection of student records from a few instructors may have been due to circumstances arising as a result of the COVID pandemic, there is no indication that the only missing records were from a period close in time to the start of the pandemic (for instance only part of February and March 2020). Nor does it appear that these records have ever been produced, not even for the purposes of this appeal, despite submissions being made through December 2020 and despite a number of instructors backing the appeal. It appears s.22 did not maintain records from its instructors, and only when audited would it seek out the required records. COVID also is not an explanation for the numerous errors and inadequacies in the records and receipts that were produced.

The section 27.06(3) and (4) requirements are clear. Individuals who enter into the driver training school business must consider the realities of meeting these requirements in their business planning, their operational structures and processes, and in the hiring and management of their employees.

I find on a balance of probabilities that s.22 failed to maintain and provide to ICBC the required records and failed to comply with the requirement for receipts under section 27.06(3). Therefore, both section 27.03(c) and (e) can form the basis for a suspension of s.22 driver training school licence.

### **Are There Grounds for Suspension: Fraudulent, Deceptive or Unconscionable Practices?**

ICBC submits that the practices engaged in by s.22 in booking and holding road tests via the DEAS using a student's personal ICBC keyword is a deceptive or unconscionable practice and so section 27.03(3)(a) of the MVAR is engaged.

### ***Preliminary Issue***

In my November 24, 2020 letter, I raised as a question for ICBC whether sufficient notice had been provided to s.22 in the decision being appealed from that the suspension was based, in part, on allegations of fraudulent, deceptive or unconscionable practices, in particular because section 27.03(3)(a) is not referenced in the August 25, 2020 suspension letter.

In ICBC counsel's December 4, 2020 response, they noted that s.22 had not complained about a lack of sufficient notice in s.2 submissions and since s.2 has a right of reply to ICBC's submissions, s.2 has not been disadvantaged. Further, in a letter from October 2019 suspending DEAS access, and in the August

25, 2020 suspension letter, ICBC set out that asking for, recording, or using a student's personal keyword for fraudulent purposes can be interpreted as personation under the *Criminal Code*.

Generally, it is not proper to raise grounds that were not included in the decision being appealed. The fact that a party has a chance to respond to submissions does not give ICBC *carte blanche* to raise anything it chooses only after a person incurs the expense of filing an appeal. A person should be clearly informed of the statutory bases for the suspension at first instance rather than face a shifting target. However, as s.22 never took a position on this point and as there was at least a very minimal reference to "fraud", I have considered ICBC's reliance on section 27.03(3)(a) as a basis for suspension.

### ***Evidence***

DEAS is an online computer-based reservation system designed to allow clients to pre-book a time and date for their road test. An individual accesses DEAS through the ICBC webpage, and to book a road test, would enter their personal information, BC driver's licence number and their unique and confidential keyword. A driver training school accesses DEAS from the ICBC Partners webpage via a unique username and password. To book a road test for one of its students, a driver training school only needs to enter the student's BC driver's licence number. There is no need to enter a student's personal keyword.

The DEAS T&C [terms and conditions] apply to a driver training school's use of DEAS. A driver training school must read and sign a Letter of Acknowledgement and Understanding with respect to the DEAS T&C. s.22 signed such a document on s.22 behalf and on behalf of s.22 on January 22, 2018 indicating that s.22 would fully comply with the DEAS T&C. The terms and conditions relevant here are:

- The DTS [driver training school] must obtain written authorization, using an ICBC approved form, to disclose personal information to ICBC for the purpose of booking a road test, from each student for whom it will be booking an appointment. ...
- When making appointments, the DTS must identify the driving school by name, driver training certification number (DTC#), telephone number, driver licence number of the person booking the road test and also must provide the student driver's licence number, student's last name (spelled correctly), class of licence, the desired location, and date and time required.
- The DTS must not use one student driver's licence number and/or name to hold open appointments for other student(s). ...

In the audit started in April 2020, DSI Chan identified instances of non-compliance with the DEAS T&C:

- s.22 failed to provide signed student consent forms for 138 students whose road tests were booked by employees of s.22 using s.22 credentials or students' personal keywords
- In 296 transactions, students' personal keywords were used
- 136 of the bookings were made at a time when s.22 DEAS access was suspended
- On 45 occasions, student information was used to hold an appointment time and was later flipped to another student

As set out in further detail below, these audit findings followed on the heels of earlier problems identified by ICBC in Fall 2019 that resulted in two DEAS suspensions. DEAS suspension letters were personally delivered to s.22 on September 25, 2019 and October 28, 2019. Both letters indicated that "in the event of any future misuse of DEAS, ICBC will be proposing a suspension of your School licence." They also

set out the sections of the DEAS T&C that were in issue. As well, the Driver Training Action Plan provided to s.22 on October 28, 2019 provided details on the problems discovered in 2019.

### ***Parties' Positions***

s.22 submissions are generally similar to the submissions it provided in respect of the failures to comply with the MVAR requirements. In its December 10, 2020 submissions, s.22 argues that the School has no ability to check or monitor the illegal use of student information or illegal booking by individual instructors on DEAS. s.22 takes the position that it does not have any right or ability to supervise or enforce the law for each instructor's daily work and their only power is to ask an instructor to leave the school. It claims that it is ICBC who has the power and ability to supervise an instructor's use of DEAS and directly punish the individual instructors, rather than the entire school.

s.22 states that after learning generally of mistakes being made in September 2019, s.22 pointed out to the instructors things that were illegal, and asked them to pay attention in the future and not make the same mistakes again.

ICBC's position is that s.22 misused the DEAS system and confidential student information. This misuse reflects conduct or practices which *could* be considered deceptive or unconscionable practices for the purposes of section 27.03(3)(a) of the MVAR. It argues that these actions *could* constitute an offence under the *Criminal Code* because s.22 has been using student passwords and representing itself to ICBC as that student in order to give an advantage to another student and profit from providing that advantage.

### ***Analysis***

Based on the evidence before me, I find that driver training instructors employed by s.22 failed to obtain written consent forms from several students prior to making road test bookings on their behalf; made road test bookings on behalf of students through the public portal using students' confidential personal keywords, including during the time s.22 was suspended from using DEAS; and booked appointments on behalf of students in order to later flip these appointments to other students.

Even if s.22 was not the individual misusing DEAS or the misuse may not have been expressly sanctioned by s.22 by Fall 2019, s.22 was aware that a number of s.22 instructors had not been complying with the DEAS T&C. s.22 was put on notice that further misuse of DEAS could impact its licence. Even before Fall 2019, s.22 on behalf of s.22 attended information sessions and signed a Letter of Acknowledgement and Understanding regarding s.22 obligation to fully comply with the DEAS T&C. The responsibility of s.22 in relation to the use of the DEAS system and the information being collected from students would have been apparent by the time the circumstances relied on by ICBC for the suspension arose. While s.22 may have communicated the DEAS requirements to its instructors, it does not appear it took any follow up steps to actually ensure its instructors were fulfilling those requirements or to address any problems that could have been detected with adequate oversight.

However, unlike the issues relating to receipts and records, the MVAR does not expressly address the DEAS T&C or provide a clear basis for a suspension when a driver training school does not comply with the DEAS T&C. Section 27.03(3)(a) of the MVAR requires that s.22 actually engaged in fraudulent, deceptive or unconscionable practices in its operation of a driver training school (not simply practices that

*could have been* fraudulent, deceptive or unconscionable). Thus, before this behaviour can be a basis for a suspension, I must be satisfied that the facts as found meet the threshold set by section 27.03(3)(a).

To begin, I have considered definitions of those three terms as none are defined in the MVAR:

unconscionable: 1. (Of a person) having no conscience; unscrupulous. 2. (Of an act or transaction) showing no regard for conscience; affronting the sense of justice, decency, or reasonableness. 3. Much more than is acceptable or reasonable. 4. Shockingly unjust or unfair.

deception: 1. The act of deliberately causing someone to believe that something is true when the actor knows it to be false.

fraudulent act: 1. Conduct involving bad faith, dishonesty, a lack of integrity, or moral turpitude. 2. Conduct satisfying the elements of a claim for actual or constructive fraud.

*Black's Law Dictionary*, 11<sup>th</sup> edition

The conduct of s.22 driver training instructors, as described in my findings above, included conduct that, in my view, can be properly characterised as unscrupulous, and also as deliberately misleading or conduct that is dishonest: failing to obtain written consent forms from students, making bookings using students' confidential personal keywords (including while the School was suspended from using DEAS), and flipping appointments. s.22 on behalf of s.22 had been notified of s.22 instructors' non-compliance with the DEAS T&C. s.22 had signed documents confirming his understanding of the requirements and expressing his commitment to abide by those requirements both personally and on behalf of s.22 knew or ought to have known that the instructors' non-compliance with the DEAS T&C had continued. Turning a blind eye to unconscionable, deceptive and fraudulent behaviour, and allowing it to continue is itself an unconscionable practice. The failure to take meaningful steps to ensure compliance after expressing such a commitment and being warned may appropriately be characterized as lacking in conscience and affronting the sense of decency.

I find that those employed by s.22 engaged in repeated misuse of the DEAS and noncompliance with the DEAS T&C, despite prior warnings and sanctions. This occurred despite s.22 (or rather s.22 on its behalf) committing to the requirements for using the DEAS. I am satisfied that the facts as found establish that s.22 engaged in unconscionable practices in its operation of the driver training school and meet the threshold set by section 27.03(3)(a).

### **Is a 90-Day Suspension Appropriate?**

Having found that there were reasons under section 27.03(3) of the MVAR that would permit ICBC to suspend s.22 driver training school licence, I must still determine whether to confirm, vary or revoke the 90-day prohibition or make any other decision that ICBC could have made in the first instance, such as substituting something like a warning for a suspension.

### ***Parties' Positions***

Nothing in the August 25, 2020 suspension letter itself addressed how ICBC determined a 90-day suspension, rather than lesser discipline, was warranted.

In its submissions made on November 6, 2020, ICBC indicated that the only other option that had been considered was a 120-day prohibition and that 90-days was "seen to be sufficient to send a strong signal ... that continued non-compliance would not be tolerated." It notes the "consistent pattern of non-compliance" without explanation, the high number of violations and the egregious nature of some violations, despite progressive efforts and discipline to bring s.22 into compliance.

In follow-up, I asked ICBC's counsel why a suspension of 30 days or 60 days in addition to DEAS cancellation would have been insufficient to achieve the objective of sending a strong signal. In its December 4, 2020 response, ICBC again notes the numerous and serious failures to comply with mandatory protective regulatory requirements and the lack of any discernable improvement from earlier interventions. ICBC also stressed that s.22 appeal submissions demonstrated a profound and concerning lack of understanding of s.2 role and responsibilities as the operator and owner of a driver training school; they showed a "complete abdication" of s.22 regulatory responsibilities.

In addition to arguments relating to the financial hardship that a suspension would visit upon the instructors, s.22 submissions provide reasons why its driver training school licence should not be suspended despite the failures found during the audits. For instance, s.22 submits that ICBC failed to provide s.22 with enough documented evidence of the problems and enough subsequent time to correct them before suspending the license.

s.22 also notes steps it has taken since the suspension. s.22 indicates that s.2 conducted a thorough internal review and the one instructor who repeatedly violated the requirements was "expelled." Otherwise, s.22 investigation showed that many of the instructors had followed the requirements very well and they should not be penalized, which is the effect that suspending s.22 for 90 days will have. Additionally, all of the instructors have reflected on their own practices.

On August 28, 2020, s.22 held a meeting with the instructors where s.2 presented two options: s.22 continues s.22 with s.22 as the only instructor, or the instructors must accept s.2 previous methods of managing s.22 and be willing to abide by the rules and regulations that it has established. The view was that the second option required an appeal. Most instructors chose the second option.

s.22 also promised that s.22 would continue to improve on its management and training so that its instructors "can better follow all the regulations laid out by ICBC and by the law". The only concrete plan laid out was that prompt actions would be taken against instructors who violate the MVAR and the DEAS T&C including written warnings, probation periods or expulsion.

### ***ICBC's Evidence of Inspections, Sanctions and Action Plans from 2017 to 2020***

On August 22, 2017, ICBC conducted an information session with s.22 representing s.22. A DSI reviewed the requirements of section 27 of the MVAR, the Driver Training Industry Code of Conduct and the DEAS T&C.



On January 22, 2018, s.22 signed two Letters of Acknowledgement and Understanding in which he indicated s.2 had read and understood attached documents and agreed on s.22 own behalf and on behalf of s.22 that s.2 would fully comply with: (1) the requirements of Division 27 of the MVAR and (2) the DEAS T&C. Additionally, s.22 signed a third Letter of Acknowledgement and Understanding in which s.2 agreed on s.2 own behalf that s.2 read, understood and would fully comply with the requirements of the Code of Conduct, Driver Training Industry.

On February 6, 2018, another DSI conducted an information session with s.22 reminding s.22 that all instructors must fill out records in accordance with section 27 of the MVAR and must book road tests through ICBC's DEAS using the school's name.

In October 2018, s.22 was advised that s.22 was due for a routine inspection. s.22 provided ICBC with some of s.22 records in paper and electronic format. In January 2019, a DSI sent s.22 an email requesting all of s.22 training records from October 1, 2018 to December 31, 2018. In a follow up telephone conversation, documented in an email, s.22 agreed to notify all of s.22 instructors on February 28, 2019, that they needed to submit their completed records to ICBC before March 13, 2019.

DSI Chan investigated DEAS transactions entered by s.22 between February 2019 and September 2019. His investigation revealed 12 of s.22 driving instructors had violated the DEAS T&C by using students' personal keywords to book tests and then "flipping" road test bookings between students. As a result, s.22 DEAS access was suspended on September 25, 2019, until further notice.

The DEAS suspension notice that was personally served on s.22 on September 25, 2019 contained the following warning: "Please note that in the event of any future misuse of DEAS, ICBC will be proposing a suspension of your School licence."

From September 27, 2019 to November 19, 2019, DSI Chan issued Compliance Notices to ten of s.22 instructors for non-compliance with sections 4 and 5 of the DEAS T&C. There is evidence that Mr. Chan was present when some of the compliance notices were served on the driving instructors on September 27, 2019. s.22 says it was eight instructors and DSI Chan says it was nine. As nothing turns on whether it was eight or nine, I have not resolved this discrepancy in the evidence. I accept s.22 evidence that s.2 was not given copies of these notices and never saw the actual contents of the notices. However, the letter served on s.22 on September 25, 2019 did identify the general provisions of the DEAS T&C in issue, and s.2 would have been aware of which instructors' actions were problematic.

The audit of records that began in October 2018 concluded around October 2019. DSI Chan identified the following violations of requirements under section 27 of the MVAR:

Section 27.06(3)

- s.22 failed to provide receipts to students on 22 occasions
- 244 of 471 receipts provided were not itemized
- 18 receipts did not match student records

Section 27.06(4)

- Only 49.2% of expected student records were provided.

- Of the 471 records that were provided, there were 667 instances of incorrect or missing names, driver's license numbers, dates, start times, length of instruction, name or initial of instructors, subject taught and fees charged per lesson.

Additional non-compliance with the DEAS T&C was also identified:

- Missing consent forms for 88 students whose road tests were booked by s.22
- Students' personal keywords used in 1,554 DEAS transactions
- Student driver information used to hold a road test slot and then flipped to another student on 362 occasions

On October 28, 2019, ICBC suspended s.22 DEAS access from October 28, 2019 to January 25, 2020. The suspension letter again notified s.22 that any future misuse of DEAS would result in ICBC proposing a suspension of his driver training school licence.

As a result of the audit findings, a detailed Driver Training Action Plan was developed to address each of the DEAS non-compliance items and the MVAR violations identified. The Action Plan set a follow-up date of April 23, 2020.

DSI Chan personally delivered the DEAS suspension letter and Action Plan to s.22 on October 28, 2019.

The actions s.22 was required to take under the Action Plan included:

1. ... must provide to each person to whom driver training is supplied a written itemized statement of services provided or rental charged and a receipt for each payment made.
2. ... must maintain records as required by ICBC for a period of 3 years.
- ...
5. ... must obtain written authorization, using an ICBC approved form, to disclose personal information to ICBC for the purpose of booking a road test, from each student for whom it will be booking an appointment. ...
- ...
7. ... must not use one student driver's licence number and/or name to hold open appointments for other student(s).
- ...
9. .... must put forward no later than November 28, 2019 a business plan for ICBC approval outlining steps, procedures and policies to address [the above-mentioned concerns].

On November 27, 2019, s.22 submitted a copy of the s.22 Driving School Business Plan to DSI Chan. It was dated November 1, 2019, and was addressed to all of the driving instructors of s.22. The plan detailed eight key areas of compliance policy in response to ICBC's concerns and one statement regarding consequences for instructors if they violate provisions of the MVAR or the DEAS T&C. These consequences were premised on an instructor receiving a Compliance Notice or a violation ticket from ICBC. Both s.22 and instructors' signatures were required on the document.

## ***Analysis***

I have considered that the same problems identified after the earlier audit of s.22 which were clearly identified in the Action Plan provided to s.22 by ICBC, were not rectified in the roughly five months following (the period of the second audit). It does not appear that improvements were made despite being given the opportunity to do so. As well, these were not minor one-off errors that occurred for a handful of student records. The numbers were substantial. A warning had already been given in Fall 2019. I find that in the circumstances, a suspension was an appropriate next step.

I have also considered whether it is likely that the conduct of s.22 will improve in the future if a lesser sanction, such as a shorter suspension period, were imposed.

s.22 seems to insist the problem was with one bad instructor who they investigated and fired after receiving the suspension letter. It suggests most of its other instructors were complying with the requirements. The evidence submitted by ICBC does not bear this assertion out, and s.22 does not appear to acknowledge serious issues with any of these other instructors.

Throughout his submissions on the appeal, s.22 has repeatedly demonstrated a lack of understanding of the responsibilities of a driver training school. While s.2 did state that s.22 has a responsibility to manage the driver training school by setting rules and regulations and doing some record-keeping, s.2 places the blame for missing, incomplete or inaccurate records and improper DEAS use on the shoulders of the instructors, arguing s.2 has no ability to supervise whether an instructor's work is in compliance with legal requirements. s.22 indicated that ICBC should be the one to investigate and inform s.22 of problems, at which point s.2 would investigate and could fix problems with records and/or discipline the instructor. There was no indication that in the future s.22 would take responsibility or change s.22 methods for managing and overseeing the instructors that work for s.22. It appears that s.22 will continue to deal with similar issues in the same manner, which is potentially terminating errant instructors only after being advised of their misconduct by ICBC.

This lack of understanding of the requirements for operating a driver training school, as well as a lack of willingness to accept responsibility or propose any concrete plan that would prevent the same problems from occurring in the future leads me to the conclusion that the conduct of s.22 would not improve without the serious sanction imposed by ICBC.

## **Decision**

I have set out my reasons above for finding that s.22 violated section 27.06(3) and (4) of the MVAR and that its practices in the use of the DEAS were unconscionable, therefore triggering section 27.03(3)(a), (c) and (f) of the MVAR.

This conduct of s.22 occurred over a three-year period and involved many violations, including serious issues with the collection and use of students' confidential information, and a disregard for record-keeping and receipt requirements. It was the subject of warnings. Furthermore, nothing before me indicated that the situation would improve in the future without a suspension of s.22 driver training school licence.

I find that in all of the circumstances, a 90-day suspension of Driver Training School Licence (s.22  
issued to s.22 DBA s.22 was appropriate and I confirm the decision appealed from.

*SW Davies*

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Stacey Warren-Davies  
Director, RoadSafetyBC

February 22, 2021

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Date

**REASONS FOR DECISION**

**IN THE MATTER OF**

THE PROPOSED ACTION OF THE  
INSURANCE CORPORATION OF BRITISH COLUMBIA (ICBC)  
TO CANCEL THE DRIVER TRAINING INSTRUCTOR'S LICENCE  
OF s.22 (THE "APPLICANT")  
NO. A25-2021

PRELIMINARY MATTER:  
WHETHER TO PROCEED WITH  
A SHOW CAUSE HEARING

Adjudicator: Brent Morton, Appeals Officer, RoadSafetyBC

Reasons Issued: s.22

## INTRODUCTION

### Authority

Pursuant to section 118.2 of the *Motor Vehicle Act* (the “Act”), the Superintendent of Motor Vehicles has referred the above-noted matter to me to consider and decide. Pursuant to section 118.3(2) of the Act, I have the jurisdiction, and may exercise the powers and perform the duties of the Superintendent in relation to this matter. Pursuant to section 118.3(b) and (c), I may establish, subject to the regulations, my own practices and procedures for show cause hearings and am not bound by legal or technical rules of evidence or previous decisions made under s. 118.2. For the purposes of this preliminary matter, I am proceeding on the basis of written submissions from counsel for both parties.

### Purpose

The purpose of this decision is s.22  
s.22

s.22 I proceed with this decision on that basis and limited to the scope of that determination.

## BACKGROUND AND SUBMISSIONS

### ICBC’s Proposed Cancellation of Driver Training Instructor’s Licence – s.22

On s.22 ICBC sent notice of its intention to cancel the Applicant’s Driver Training Instructor’s Licence pursuant to section 27.03(3) of the *Motor Vehicle Act Regulations* (MVAR). Section 27.03(3) of the MVAR provides that ICBC may cancel a driver training instructor’s licence for several reasons. The section on which ICBC relied in its proposal to cancel the Applicant’s licence is as follows:

- (a) the licensee engages in fraudulent, deceptive or unconscionable practices in the operation of a driver training school, in the conduct of driver training or in applying for a licence

In its notice of intention to cancel the Applicant’s licence, ICBC indicated that the proposed cancellation s.22

s.22

### Applicant’s Notice of Intention to Show Cause . s.22

By way of a Notice of Intention to Show Cause (the "Notice") dated s.22 the Applicant exercised s.2 right under s. 118.4(a) of the Act to show cause why the proposed action should not be taken.

The Notice was accompanied by written submissions from the Applicant's counsel, s.22 s.22

s.22

#### Acknowledgement – s.22

s.22 wrote to the Superintendent of Motor Vehicles requesting acknowledgement of receipt of the Applicant's Notice of Intention to Show Cause. Further to this request, s.22 sought full disclosure of all evidence gathered by ICBC during the investigation process leading to the proposed cancellation of the Applicant's licence. s.22 also referred to the rules of procedure associated with show cause hearings, requesting if any procedures are published, to provide them.

s.22 went on to note that an administrative sanction affects the Applicant's employment, source of income, and livelihood, which requires a very high standard of procedural fairness.

On the same date, s.22 RoadSafetyBC (RSBC) provided a letter to s.22 acknowledging receipt of the Notice of Intention to Show Cause application and applicable fees. RSBC informed s.22 that the Superintendent of Motor Vehicles was in the process of assigning an Adjudicator to the case file who would conduct the show cause hearing under s. 118.5 and make a decision pursuant to s. 118.6 of the Act. RSBC informed s.22 that following delegation, the Adjudicator would be in contact with both s.22 and ICBC to provide information on the show cause procedures.

s.22

s.22

s.22

Factual Error Regarding Licence Expiry – s.22

In response to ICBC's position set out in their letter dated s.22 identified that it was a factual error for ICBC to state that the Applicant's driver training instructor's licence had expired s.22 By way of attachment, s.22 provided a copy of the Applicant's licence, which expires s.22 wished to give ICBC a fair opportunity to determine if their submissions would require amendment, given this error.

On the same date, s.22 ICBC responded to s.22 letter, conceding that there was an error in ICBC's internal database that indicated the Applicant's licence had expired s.22 and had not been renewed. Given the date of issuance, ICBC observed that there had been an error inputting the expiry date of the Applicant's driver training instructor's licence into ICBC's database, which would be corrected. Regardless of the error, however, s.22 s.22



On s.22 I wrote to s.22 reiterating ICBC's position and in light of correction of the factual error s.2 identified in previous correspondence, and provided an opportunity for s.22 to respond. I requested that s.22

s.22

s.22 responded, noting that s.2 is counsel for s.22 and the s.22  
s.22

s.22

s.22

Threshold Issue Related to Jurisdiction – s.22

s.22

**ANALYSIS**

The Act and MVAR

Section 27.03(3) of the MVAR provides that ICBC may cancel a driver training instructor licence for several reasons, of which ICBC relied on s. 27.03(3)(a):

**27.03 (3)** The Insurance Corporation of British Columbia may suspend, cancel or refuse to issue or renew a driver training school licence or driver training instructor's licence for any of the following reasons:

(a) the licensee engages in fraudulent, deceptive or unconscionable practices in the operation of a driver training school, in the conduct of driver training or in applying for a licence;

The Applicant's right to show cause is also described in s. 118.4 of the Act:

**118.4** A person affected by a proposed action of the Insurance Corporation of British Columbia, which action is described in paragraph (a) or (b), must be given an opportunity to show cause why the proposed action should not be taken: [...]

(b) the cancellation of the person's driver training instructor's licence.

s.22

Counsel for ICBC and the Applicant agreed that the relevant principles and analysis regarding s.22  
s.22

s.22

s.22

### Superintendent's Jurisdiction

It is not disputed that ICBC delivered notice to the Applicant regarding its proposed action pursuant to s. 118.5(1) of the Act, and that the Applicant filed a notice of intention to show cause before the expiry of the prescribed time limit pursuant to s. 118.5(2). s.22

s.22

s.22

Section 118.3(1)(a) of the Act sets out the Superintendent's jurisdiction to consider and decide show cause hearings. Section 118.4 ensures that a person affected by a proposed action of ICBC must be given an opportunity to show cause why the proposed action should not be taken. s.22

s.22

As noted earlier in this decision, s.22 by way of letter dated s.22 was provided opportunity to make additional submissions on the threshold issue related to jurisdiction. Neither counsel for ICBC nor counsel for the Applicant made submissions regarding s.22

s.22

s.22

The purpose of a show cause hearing is to provide an opportunity for the affected person to show why ICBC's proposed action should not be taken.s.22

s.22

s.22

Page 50 of 94 to/à Page 51 of 94

Withheld pursuant to/removed as

s.22

s.22

After considering all of the evidence and argument before me, for the reasons explained above and summarized here, s.22

s.22



B. Morton  
Appeals Officer  
RoadSafetyBC

Delivered by mail to:

s.22

Pc:

Alandra K. Harlinton  
Lovett Westmacott  
Suite 12 – 2544 Dunlevy St  
Victoria BC V7M 3H9

Rodney Franklin  
Insurance Corporation of British Columbia  
151 Esplanade West  
North Vancouver BC V7M 3H9

## DECISION AND REASONS

Of

Mark Medgyesi, Superintendent of Motor Vehicles

## IN THE MATTER OF

INSURANCE CORPORATION OF BRITISH COLUMBIA

v.

s.22

Concerning:

Insurance Corporation of British Columbia's Proposal  
To Suspend And To Refuse To Renew

The Practical Driver Training Instructor's Licence Issued To s.22

### Appearances

No appearances were made and no hearing was requested. This matter was conducted on the basis of ICBC's written submission.

### Summary

The decision relates to: Sections 118.4 and 118.5 of the *Motor Vehicle Act* Division 27, Sections 27.03 and, Section 27.08 of the *Motor Vehicle Act* Regulations.

ICBC's proposal to suspend and refuse to issue the driver training instructor's licence of s.22 is not authorized because the Corporation does not establish a connection between s.2 medical condition and the abilities needed to conduct practical driver training.



## Issue

ICBC holds that a <sup>s.22</sup> in <sup>s.22</sup> might affect <sup>s.22</sup> ability to drive, and therefore proposes to refuse to renew and to suspend <sup>s.22</sup> Practical Driver Training Instructor Licence pending improvement in <sup>s.22</sup> medical condition.

## Authority

On October 27, 2000, Donna Palamarek, Manager Driver Training and Certification, Insurance Corporation of British Columbia, wrote to <sup>s.22</sup> proposing the actions outlined above.

Division 27, Section 27.03 (3) of the Motor Vehicle Act Regulations says:

27.03 (3) The Insurance Corporation of British Columbia may suspend, cancel or refuse to issue or renew a driver training school licence or driver training instructor's licence for any of the following reasons:

- (e) failure of an applicant or licensee to comply with any requirement of this division

The Corporation holds that <sup>s.22</sup> has contravened the requirement under Section 27.08 (1) of the *Motor Vehicle Act* Regulations:

27.08 (1) A driver training instructor must:

- (c) provide on request, a medical report acceptable to the Insurance Corporation of British Columbia if the driver training instructor's licence permits the conduct of practical driver training.

Under Section 118.4 (b) of the *Motor Vehicle Act* (MVA), a person affected by the suspension or refusal to renew a driver trainer's instructor's licence has the right to a show cause hearing before me before a cancellation is imposed.

118.4 A person affected by a proposed action of the Insurance Corporation of British Columbia, which action is described in any of the following paragraphs (a) to (e), must be given the opportunity to show cause why the proposed action should not be taken: ...

(b) the suspension, refusal to renew or cancellation of the person's driver trainer's instructor's licence

As required by Section 118.5 (1) (b) of the MVA, the Insurance Corporation of British Columbia ("ICBC" or the "Corporation" hereafter) notified<sup>s.22</sup> of<sup>s.22</sup> right to a hearing,<sup>s.22</sup> did not apply to me for the hearing (Section 118.5 (2), MVA) within the prescribed 15 days (Section 2, B.C. Regulation 414/97). Under these circumstances, Section 118.5 (3) applies:

118.5 (3) If the person affected by the proposed action does not file a notice of intention to show cause within the time limit prescribed for the purpose of subsection (2), the superintendent may authorize the corporation to proceed with the proposed action.

I may, but am not compelled to, authorize ICBC to go ahead with its proposed actions. My decision and reasons follow.

### The Evidence

As part of an application to renew<sup>s.22</sup> driver training instructor's licence,<sup>s.22</sup> filled out a form providing general medical information.<sup>s.22</sup> indicated<sup>s.22</sup> had<sup>s.22</sup> and was taking<sup>s.22</sup>

<sup>s.22</sup> As the result of this information, ICBC asked<sup>s.22</sup> to submit a more detailed medical examination.

Having received the detailed medical exam, ICBC twice wrote to<sup>s.22</sup> physician,<sup>s.22</sup> asking for more information. The second follow-up asked specifically

whether s.22 condition would affect driving, to which s.22 replied that s.22 had a s.22 which "might" affect s.22 ability to drive "as of this day", but it is likely to improve.

Subsequent to the Corporation having received all of this information from s.22 ICBC's medical consultant, Dr. Donaldson, wrote on October 12, 2000, that s.22 symptoms should be resolved before the application to renew s.22 Driver Training Instructor Licence is considered.

### Analysis

Section 118.5 (3) of the *Motor Vehicle Act* says I may authorize ICBC to proceed with its proposed suspension and refusal to renew s.22 Driver Training Instructor Licence. The section is clear that the decision whether ICBC's proposals proceed is mine. If the legislature had intended ICBC to succeed automatically when the person affected by an ICBC proposal does not request a hearing, it would not have provided me this discretion.

s.22 is obligated by Section 27.08 (1) (c) of the *Motor Vehicle Act Regulations* to submit a medical examination acceptable to ICBC. However, ICBC has no authority to refuse or suspend s.22 Driver Training Instructor Licence pursuant to such a medical exam unless I authorize them to do so. If ICBC believes s.22 medical exam to be unacceptable and proposes a licensing action protected under Part 2.1 of the *Motor Vehicle Act*, I must then be convinced that the medical exam is unacceptable if I am to authorize the proposal.

Section 27.08 (1) (c) of the *Motor Vehicle Act Regulations* links the requirement for medical examinations to licences permitting the conduct of practical driver training. I find therefore that the acceptability of any such medical exam has to be considered in relation to the abilities needed to conduct practical driver training. If a licence is to be refused or suspended, ICBC has to show how the medical condition identified through

the examination process impairs the ability of the person affected to conduct practical driver training.

I accept s.22 physician's evidence that s.22 has a s.22  
s.22 s.22 occasionally takes s.22 and sometimes uses s.22  
mostly for s.22 takes s.22

In answer to the question "Are any driving restrictions medically indicated?" on  
s.22 March 2, 2000, detailed medical examination form, s.22 explicitly  
answered "No". Questioned on a second follow-up by ICBC whether s.22  
s.22 poses any difficulties with driving, s.22 said, "As of this day it  
*might...*" (italics mine). s.22 comments do not indicate to me a significant  
concern with s.22 ability to drive.

ICBC's advising physician, Dr. Donaldson, recommended that since the s.22  
s.22 in s.22 "might" pose difficulties when driving, s.22 should  
wait until s.22 symptoms resolve before s.22 application (to renew her Driver Training  
Instructor Licence) can be reconsidered. Dr. Donaldson's opinion merely echoes s.22  
s.22 wording. I have no other analysis of s.22 condition, its effects on  
driving or its effects on s.22 ability to carry out practical driver training.

ICBC proposes its refusal and suspension of s.22 Driver Training Instructor  
licence because, in the corporation's opinion, s.22 has a condition that might affect  
driving. The evidence is not sufficient to convince me that s.22 has difficulties  
driving.

I note it is not a foregone conclusion that ICBC's proposals would succeed even if I  
found that s.22 had significant driving problems. ICBC's submission does not  
connect s.22 medical condition, its ostensible effects on s.22 driving ability and  
the abilities required of a practical driver trainer. How does a s.22 in  
a s.22 ? What are the duties of a practical driver trainer? Why

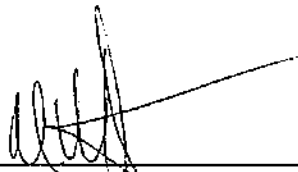
does a practical driving trainer have to be physically able to drive as opposed, say, to knowing how to drive and being licensed to do so?

The submissions required to clear up these issues may or may not be extensive or complex, but it is not my function to fill in the answers. ICBC must provide reasons supporting its proposed action (See section 118.5 (1) (a) of the *Motor Vehicle Act*).

I have considered that s.22 did not choose to exercise s.22 right to a hearing in this matter. However, Section 118.5 (3) is clear that ICBC does not succeed automatically even when there is no hearing requested. The Corporation requires my authorization to proceed, and thus, I must be convinced on balance of probability that the proposed actions are warranted. I am not so convinced in this case.

### **Decision**

I do not authorize the Corporation to proceed with its proposed suspension of and refusal to issue the Driver Training Instructor's Licence  
of s.22



Mark Medgyesi  
Superintendent of Motor Vehicles

00-12-18  
Decision Dated

DECISION AND REASONS

of

Mark Medgyesi, Superintendent of Motor Vehicles

In the Matter of

The Insurance Corporation of British Columbia

v.

s.22

Concerning

Proposal to Cancel the Driver Training Instructor's Licence  
Issued to<sup>s.22</sup>

Issuance of Decision

September 7, 2000

## ICBC'S PROPOSED ACTION

The Insurance Corporation of British Columbia has proposed to cancel the driver training instructor's licence of <sup>s.22</sup> because <sup>s.22</sup> was convicted <sup>s.22</sup> of the *Criminal Code of Canada* on January 10, 2000.

## AUTHORITY

On August 3, 2000, Donna Palamarek, Manager, Driver Training and Certification, Insurance Corporation of British Columbia, wrote to <sup>s.22</sup> proposing to cancel <sup>s.22</sup> driver training instructor's licence.

Division 27, Section 27.03(3) of the *Motor Vehicle Act* Regulations says:

27.03 (3) The Insurance Corporation of British Columbia may suspend, cancel or refuse to issue or renew a driver training school licence or driver training instructor's licence for any of the following reasons:

- (a) the licensee engages in fraudulent, deceptive or unconscionable practices in the operation of a driver training school, in the conduct of driver training or in applying for a licence;
- (b) the licensee aids, abets or counsels fraudulent practices by an applicant to obtain a driver's licence of any classification or driver training instructor's licence of any classification or to requalify for a driver's licence or driver training instructor's licence;
- (c) the licensee fails to maintain or provide to the corporation the records required under this division;
- (d) the licensee is convicted under the Criminal Code of an offence that is:
  - (i) punishable by imprisonment for 5 years or more
  - (ii) an offence that is sexual or indecent
  - (iii) an offence of violence; or
  - (iv) an offence of operating, care or control of a motor vehicle
- (e) failure of an applicant or licensee to comply with any requirement of this division
- (f) the licensee teaches, or permits to be taught, the knowledge tests administered by the Insurance Corporation of British Columbia, or possesses these tests.....

However, under Section 118.4(b) of the *Motor Vehicle Act* (MVA), a person affected by the cancellation of a driver training instructor's licence has the right to a show cause hearing before me before a cancellation is imposed.

Section 118.4 states:

118.4 A person affected by a proposed action of the Insurance Corporation of British Columbia, which action is described in any of the following paragraphs (a) to (e), must be given the opportunity to show cause why the proposed action should not be taken: ...

- (b) the suspension, refusal to renew or cancellation of the person's driver trainer's instructor's licence

As required by Section 118.5(1)(b) of the MVA, the Insurance Corporation of British Columbia ("ICBC" or the "Corporation" hereafter) notified <sup>s.22</sup> of <sup>s.22</sup> right to a hearing. <sup>s.22</sup> did not apply to me for a hearing (Section 118.5(2), MVA) within the prescribed 15 days (Section 2, BC Regulation 414/97).

Under these circumstances, Section 118.5(3) applies:

118.5 (3) If the person affected by the proposed action does not file a notice of intention to show cause within the time limit prescribed for the purpose of subsection (2), the superintendent may authorize the corporation to proceed with the proposed action.

I may, but am not compelled to, authorize ICBC to go ahead with its proposed cancellation. My decision and reasons follow.

## THE EVIDENCE

ICBC provides a Certificate of Conviction from the Provincial Court in Vernon, British Columbia, to show that <sup>s.22</sup> was convicted <sup>s.22</sup> of the *Criminal Code* on January 10, 2000.

A certified driver record extract dated July 24, 2000, shows <sup>s.22</sup> to be <sup>s.22</sup> <sup>s.22</sup> related *Criminal Code* convictions from 1975 and 1980.



A January 25, 2000, Driving Record Search shows <sup>s.22</sup>  
s.22

## ANALYSIS

s.22

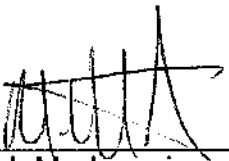
ICBC points out that under Section 27.08(1)(a) of the *Motor Vehicle Act* Regulations, a driver training instructor must not have more than 10 demerit points in the past two years and no driving related *Criminal Code* offences in the past three years. <sup>s.22</sup>

s.22

I have no argument from <sup>s.22</sup> to suggest why his licence should not be cancelled in the circumstances. <sup>s.22</sup>  
s.22

## DECISION

I authorize ICBC to proceed with the cancellation of the driver training instructor's licence of <sup>s.22</sup>

  
\_\_\_\_\_  
Mark Medgyesi  
Superintendent of Motor Vehicles

Decision Dated September 7, 2000.

**IN THE MATTER OF**

THE PROPOSED ACTION OF THE  
INSURANCE CORPORATION OF BRITISH COLUMBIA  
TO CANCEL THE  
DRIVER TRAINING INSTRUCTOR'S LICENCE  
ISSUED TO s.22

Heard by Paul E. Love

Decision Issued March 19, 2001

## JURISDICTION

The Insurance Corporation of British Columbia ("ICBC") proposes to cancel the Driver Training Instructor's Licence (the "licence") issued to s.22 Pursuant to Section 118.2 of the *Motor Vehicle Act* ("the Act"), the Superintendent of Motor Vehicles has referred this matter to me for consideration. s.22 has not applied for a show cause hearing, pursuant to Section 118.4(d) of the Act. This matter proceeded by way of written submissions received from ICBC.

Division 27, Part 2, Section 27.03 of the *Motor Vehicle Act Regulations* states:

The Insurance Corporation of British Columbia may suspend, cancel, or refuse to issue or renew a driver training school licence or driver training instructor's licence for any of the following reasons:

- (a) the licensee engages in fraudulent, deceptive or unconscionable practices in the operation of a driver training school, in the conduct of driver training or in applying for a licence;
- (b) the licensee aids, abets, counsels fraudulent practices by an applicant to obtain a driver's licence of any classification or driver training instructor's licence of any classification or to requalify for a driver's licence or driver training instructor's licence;
- (c) the licensee fails to maintain or provide to the Corporation the records required under this Division;
- (d) the licensee is convicted under the Criminal Code of an offence that is
  - (i) punishable by imprisonment for 5 years or more;
  - (ii) an offence that is sexual or indecent;
  - (iii) an offence of violence, or
  - (iv) an offence of operating, care or control of a motor vehicle, or in a jurisdiction outside of Canada, of an analogous offence;
- (e) the failure of the applicant or licensee to comply with any requirement of this Division;
- (f) the licensee teaches, or permits a student to be taught, the knowledge tests administered by the Insurance Corporation of British Columbia, or possesses the tests, without the consent of the superintendent.

Under Section 27.03(5) of the Regulations, the Insurance Corporation of British Columbia must not cancel a licence under this Division until the holder is first given an opportunity to show cause why cancellation is not warranted. Under Section 118.4(b) of the *Regulations*, the person affected by such a cancellation has the right to a show cause hearing, before me prior to the cancellation being imposed.

118.4 A person affected by a proposed action of the Insurance Corporation of British Columbia, which action is described in any of the following paragraphs (a) to (e), must be given the opportunity to show cause why the proposed action should not be taken ...

- (b) the suspension, refusal to renew or cancellation of the person's driving trainer's instructor's licence;

On December 7, 2000, the Insurance Corporation of British Columbia served s.22 with a December 4, 2000, letter and supporting documentation of its intention to cancel the licence and of s.22 right to request a show cause hearing. s.22 did not file a notice of intention to show cause. Under Section 118(5)(3) of the Act, if the affected person does not file a notice of intention to show cause, the Superintendent may authorize the Corporation to proceed with the proposed action. I am satisfied that s.22 has been given an opportunity to show cause as to why s.22 licence should not be cancelled.

In my view, the clear import of these sections is that ICBC bears the onus of showing that the cancellation of the licence is justified. It is the Superintendent who is charged with making the decision, and it is ICBC who initiates the request for cancellation. Since there is no material from s.22 it is my task to review the material provided by ICBC, to determine whether the material is sufficient, on a balance of probabilities, to establish that s.22 licence should be cancelled.

## **ISSUE**

Is it in the interest of road safety to cancel the Driver Training Instructor's Licence issued to s.22

## **PROCEDURE AND EVIDENCE**

This matter proceeded by way of written submission. ICBC submitted an evidence binder, which in addition to its written argument, contained statements from s.22 s.22 and a letter from s.22 The binder also contained a report prepared by an inspector, Tom Corsie entitled "Driver School Inspector Request for Decision".

## FACTS

As a result of receiving a complaint from s.22 s.22 s.22, Tom Corsie, an ICBC Driving School Inspector for Vancouver Island and Powell River, conducted an investigation concerning s.22 During the course of the investigation, Mr. Corsie obtained written statements and correspondence from a number of persons.

At all material times, s.22 held a Driver Training Instructor's Licence ("licence"). s.22 was in the employment of s.22, which provided driver training in the s.22 s.22 is the principal of s.22 s.22 terminated the employment of s.22 on or about September 7, 2000, because s.22 had instructed a number of lessons to students in a vehicle that was not properly equipped, and s.22 did not remit the lesson fees received from the students to s.22 s.22 had also requested and obtained loans from students. Most of s.22 activities were conducted without the knowledge or consent of s.22

ICBC proposes to cancel the licence of s.22 on the basis of contraventions of a number of sections within Division 27 of *Regulations*:

27.03(3) The Insurance Corporation of British Columbia may suspend, cancel or refuse to issue or renew a driver training school licence or driver training instructor's licence for any of the following reasons:

- (a) the licensee engages in fraudulent, deceptive or unconscionable practices in the operation of driver training school, in the conduct of driver training or in applying for a licence;

27.06(4) A driver training school must maintain records as required by the Insurance Corporation of British Columbia for a period of 3 years, including but not limited to

- (a) records of students trained, including student's name, date of birth, address, driver's licence number, class of driver's licence, test grades, date, time and length of each lesson, name of instructor of each lesson, subject taught, type of training, and fee charged for each lesson

27.08(4) A driver training instructor must not provide driver training to an individual who is not enrolled at the driver training school at which the driver training instructor is employed.

27.08(7) A driver training instructor must use driver training course curriculum acceptable to the Insurance Corporation of British Columbia.

27.09(1) Vehicles used by a driver training school or driver training instructor for the training of persons who wish to obtain a class 5 or 7 driver's licence must have

- (a) dual brake pedals;
- (b) dual clutch pedals for manual transmission vehicles,
- (c) a rear mirror firmly mounted so as to give the instructor a clear and unobstructed view of the highway to the rear of the vehicle and separate from mirrors that the vehicle was originally equipped with when manufactured,
- (d) the words "student driver" in legible printed upper case letters not less than 50 mm high with the lettering and background colours in contrasting shades displayed on the top or rear of the vehicle and visible to the rear, and
- (e) the name of the driver training school in legible printed upper case letters no less than 50 mm high with the lettering and background colours in contrasting shades displayed in a conspicuous place on both the left and right sides of the vehicle

27.09(6) Vehicles used for driver training must meet inspection standards in Division 35.

27.10 A driver training school, its operators, agents, or employees, or a driver training instructor, must not engage in false, deceptive or misleading advertising or make a false, deceptive or misleading statement.

s.22

s.22 contacted the office of s.22 in early June of 2000 to obtain driving lessons.

s.22 assigned s.22 as the instructor. Between June 2 and 9, 2000, s.22 provided about six lessons in a vehicle provided by s.22 which was equipped with dual controls. Between June 12 and September 6, 2000, s.22 provided s.22 with an additional 62 lessons using s.22 vehicle. s.22 vehicle was not equipped with dual controls, and was not signed indicating it as being operated by a driving school.

s.22 received \$40 from s.22 for each lesson. s.22 told s.22 that s.22 wanted to be paid "under the table". s.22 did not issue any receipts for the additional lessons. s.22 did not remit the funds to s.22 employer, s.22 The lessons were supposed to be 45 minutes in duration, but s.22 regularly arrived late so that the lessons were not as contracted. s.22 was required to prepay for the lessons. At the end of the relationship, s.22 owed s.22 money, which has not been repaid.

s.22 supplied six cheques between June 17 to August 18, 2000, each in the amount of \$200, and each payable to s.22 This would constitute payment for 30 lessons.

s.22 also indicated that she was phoned on two occasions "after midnight" by s.22 asking for money that was not related to lessons. She gave s.22 \$200 in cash. She made the last \$100 cash payment on September 4, 2000.

There is some suggestion in the materials that s.22 was an elderly person, however, I cannot conclude anything about her age from her statement.

s.22

s.22 began receiving driver lessons with s.22 during the second week of June, 2000. She received approximately 20 to 24 lessons. All but two of the lessons were provided in a vehicle provided by s.22 charged \$45 for the initial lesson, and then charged for lessons at "a special rate between me and s.22" at five lessons for \$200. She paid \$60 in cash for lessons that were not provided. On September 6, 2000, at approximately 10:00 p.m., s.22 contacted s.22 by telephone indicating that s.22 needed money for s.22 s.22 asked for "as much as you can manage". s.22 explained that s.22 would provide future driver instruction in exchange for the money (\$60) advanced by s.22 supplied certified copies of four cheques, payable to s.22 in the total amount of \$800.

s.22

s.22 arranged for driver training lessons for his granddaughter. s.22 says that arrangements were made for two lessons, his granddaughter took the lessons, and s.22 was paid \$50 cash for each one. The granddaughter apparently took and passed the driver's test after two lessons from s.22

On July 1, 2000, s.22 received a phone call from s.22 requesting a loan of \$400 s.22 s.22 and his wife agreed to loan s.22 \$300 for repayment by July 21, 2000. The loan was not repaid.

s.22

s.22 indicated in his statement that s.22 received \$3,920 of company funds for driving lessons that s.22 provided to students without remitting the funds to s.22 In response to a complaint from s.22 concerning lessons provided to his daughter s.22 s.22 met with s.22 and s.22 admitted to teaching s.22 two lessons without notifying the company and without remitting the funds to s.22 When pressed for an explanation, s.22 said that s.22 did it because s.22 needed the money. s.22 indicated that s.22 was only aware of one lesson given by s.22 to s.22 indicated that the company was not aware of any lessons given by s.22 to s.22 or s.22

s.22 was concerned that s.22 had "fraudulently taken a considerable amount of money, that s.22 is preying on Seniors under the guise of helping them obtain a driver's licence, and that s.22 is tarnishing the integrity and our corporate image in a small, close-knit community."

s.22

The statement of s.22 (September 8, 2000) confirms that s.22 was with s.22 20 to 27 times, and that s.22 borrowed money from s.22 to help out s.22 s.22 and to assist s.22 with the cost of repairing a motor vehicle. s.22 did not repay the money, but s.22 did repairs to s.22 car. s.22 claims that s.22 went with s.22 as a "friend" with a licence, not as a driver instructor on approximately eight occasions.



## Findings of Fact

On the basis of the evidence before me, I have no hesitation in concluding the following:

- (a) s.22 gave numerous driving lessons to members of the public including s.22 s.22 and s.22 s. while holding herself out to be a driving instructor with s.22 s.22
- (b) s.22 received money by way of cash or cheque for lessons given and s.22 did not remit to s.22 employer, s.22 any fees, receipts or records concerning the lessons given;
- (c) s.22 requested and received "loans" from students and from a grandparent of a student;
- (d) s.22 used a vehicle to give lessons that was not properly equipped, signed, or inspected for the purpose of giving lessons;
- (e) s.22 provided driver training to persons who were not enrolled in a driver training school;
- (f) s.22 practised a deception on s.22 employer by keeping payments for lessons given to students;
- (g) s.22 facilitated a breach of the Regulations by failing to inform s.22 employer of information about the students that s.22 taught including the fee charged.

A theme repeated in the statements of s.22 and s.22 is that contact with s.22 was initially through s.22 It is apparent that most of the contact between s.22 and the students was through s.22. The information before me does not indicate whether s.22 was a licensed driving school, whether s.22 was in fact s.22 or whether s.22 was a business name used by s.22 to carry on business.

Given that s.22 was introduced to s.22 by s.22 yet s.22 refers to s.22  
s.22 as s.22 and it is clear from s.22 statement that the referral came through  
s.22 I have assumed the most favourable finding to s.22 which is that the  
witnesses were mistaken concerning the name of the driving school. While I am suspicious that  
s.22 may have held s.22 out as s.22 for the purpose of doing  
business, I am not satisfied by the evidence before me, on a balance of probabilities, that this is  
so. I am satisfied that s.22 held s.22 out as an instructor for s.22 a licensed driving  
school.

### Analysis

In a hearing pursuant to Section 118.4 of the *Regulations*, the burden rests with ICBC to demonstrate, on a balance of probabilities, that the Superintendent should direct ICBC to proceed with its proposed action to cancel the driving instructor's licence. While the language is cast in "show cause" language, it is clear that even if the appellant does not file an application for a show cause hearing, the Superintendent is not bound to approve ICBC's proposal. It is not open to me to attach restrictions to the licence or to propose any intermediate plan of action. I must simply determine whether the proposed action is justified or unjustified on the basis of the evidence before me.

I note that there is no evidence before me from which I can conclude that cancellation of the licence is justified pursuant to Sections 27.08 (curriculum), 27.10(2) (advertising or statements of a false, misleading or deceptive nature). There is, however, evidence before me of a number of breaches of the *Regulations*.

It is apparent that instructors who charge fees for instruction must be licensed and employed by a driver training school. The *Regulations* provide for security for the protection of contractual rights of students and the honest conduct of the training school and its employees by cash deposits, bonding and other means.

It appears that the Insurance Corporation of British Columbia is involved in the regulation of driver's training to ensure that the quality of drivers is improved and that the public is protected from those persons who charge a fee and hold themselves out as qualified to instruct persons who seek to become licensed drivers. ICBC is able to provide some measure of public protection and road safety with respect to new drivers because of its ability to regulate driver training instructors and driver training schools.

On the evidence before me, it is apparent that s.22 conducted business on s.22 own account, rather than on the account of s.22. This is a breach of the *Regulations*, because a driving instructor must transact business on behalf of a school. It is a breach of Section 27.08 of the *Regulations* for a driver training instructor to provide driver training to an individual who is not enrolled at a school. In my view, the regulation or control of schools and instructors is an important feature of road safety. By failing to disclose the identity of students and fees charged, s.22 has made it more difficult for ICBC to monitor or regulate the driver's training industry.

s.22 further breached a fiduciary duty to s.22 in that s.22 did not remit the funds received from students to s.22 employer. While this may not be conduct which is "false, fraudulent, misleading or deceptive" with regard to s.22 dealings with individual students, it certainly is inappropriate conduct in an employment relationship, and s.22 did have ample grounds to terminate s.22 employment. It appears that s.22 caused s.22 to breach its record keeping responsibilities under Section 27.06(4) of the *Regulations*, because of s.22 breach of duty in failing to report information concerning students to s.22.

s.22 exhibited a lack of candour in failing to disclose to s.22 employer the identity of students, the fees charged, and the number of lessons given. It was conduct calculated by s.22 to deceive the employer concerning its revenue entitlement. It is a "fraudulent, deceptive or unconscionable practice in the conduct of driver training".

In my view, the words “conduct of driver training” means more than just the giving of lessons. It includes the dealing with fees and paper work that is necessary and ancillary to the instruction. If the legislation intended to regulate only practices with regard to student instruction, it would have said so. I note in this case, there is no complaint with regard to the quality of the instruction given, however, that is not the end of the inquiry. I find that s.22 breached Section 27.03(3)(a) of the *Regulations* by engaging in fraudulent, deceptive or unconscionable practices in the conduct of driver training.

s.22 also breached Section 27.09(1) of *Regulations* by providing lessons in a vehicle which was not equipped properly with dual controls, or posted with a sign indicating the name of the school (Section 27.09(1)(e)). It is apparent that s.22 used a vehicle that was not equipped with dual brakes when s.22 instructed s.22 provided lessons in a vehicle that was not approved, and not inspected for use as a driver-training vehicle when s.22 instructed s.22 s.22 therefore breached Section 27.09(6) of the *Regulations*. The use of an improperly equipped and unidentified vehicle poses a risk to other members of the public. Part of the rationale for identifying student drivers by labelling vehicles is to ensure that other drivers or highway users are aware that they are in the immediate vicinity of an inexperienced operator.

In my view, there is ample evidence here to support a finding that the licence should be cancelled because s.22 breached the *Regulations*. I am concerned because there were several breaches that relate to public safety, e.g., using an unlabelled and improperly equipped vehicle, which have potential safety concerns. I am also concerned because s.22 appears to have taken monies which should have been paid to s.22 employer. s.22 took business on s.22 own account, from “introductions” made to s.22 during the course of her employment. There is no information before me setting out how s.22 was paid for her work, whether it was hourly or commission. There is an assertion from s.22 employer that the sum of \$3,920.00 was directed to s.22, when it should have been directed to s.22

It is not necessary for me to find the amount by which s.22 has defrauded s.22 employer, and I decline to do so, as there is no information available to me concerning what monetary claim, if any, s.22 has with regard to the lessons given.

The soliciting of loans from students is a disconcerting and unusual feature of this case. It is my view that the soliciting of loans from students could be considered to be an unconscionable practice in the operation of driver education training. There may be a power imbalance between the students and the instructor. Typically, one might expect students to consist of either very young persons seeking a first driver's licence or elderly persons who require re-testing for a licence. An instructor has some control or authority over the student, and it is possible that a student may consider that the giving of a loan might assist the student in the securing of lessons or a licence. There is no suggestion in this case that there was a connection between the loans solicited and the obtaining of a driving licence. There is insufficient evidence from which I can consider that the conduct is unconscionable, as there is no evidence concerning the age of the person making the loan, and any connection of the loan to driver education. I am not satisfied, however, in this case that there is sufficient evidence that the students who responded to the loan solicitation did so in order to secure some benefit in driver training or that s.22 held out to the students that the giving of a loan would benefit the student in obtaining a driver's licence. The students appear to have given s.22 loans because they "felt sorry for s.22 .

There was, however, a connection between the loans and the students. s.22 could not have had access to the persons s.22 solicited but for s.22 licensing as a driving instructor. One would hope that the students were not being "strung along" for more lessons merely because s.22 had a financial need to perform work. Sixty lessons for s.22 seems to me to be an extraordinary number of lessons to obtain a driver's licence. There is no information before me, however, which would allow me to conclude that the number of lessons taken or the quality of instruction was such that there was any actual fraud of the students by s.22

A second concern is in the cases where the “loan” was given in return for lessons, and it appears that s.22 and s.22 did not get all the lessons that they paid for in advance. It is unfortunate that the students and a grandparent of a student now find themselves in the position of creditors of a driving instructor who cannot give lessons to repay the loans because s.22 will no longer have the licence or association with a driving school to give lessons. I am not satisfied on the evidence before me that the conduct of s.22 toward the public can be characterized as “fraudulent”. The evidence in this case is simply not sufficient for a finding of fraud.


The legislation has provided for the monitoring of driver schools and driving instructors. By performing services “under the table”, s.22 has evaded the record keeping provisions of the *Regulations* which are essential for the monitoring of the quality of education given. While there was no “fraud” of the students, s.22 did deprive s.22 employer of revenue, and conducted her activities in breach of the *Regulations* by failing to keep records of students taught, fees charged, and vehicles used for driver education. s.22 has also conducted lessons in an unsafe manner by using a vehicle which was not “properly labelled” or equipped as a driving school vehicle.

ICBC believes that there would be a risk to the public and other potential employers if s.22 were to remain licensed as a driver training instructor. On the basis of the evidence, presented, I conclude that there is a risk to the public and other employers if s.22 were to remain licensed. I am particularly concerned that in deceiving s.22 employer concerning revenue generated, s.22 also violated sections of the *Regulations* dealing with road safety and with record keeping. Record keeping is an essential part of the regulatory scheme in order for ICBC to determine whether there is compliance with the *Regulations*, and in order to exercise “quality control” over instructors, schools and drivers.

**Order**

Pursuant to Section 118.6 of the *Motor Vehicle Act*, I authorize the Insurance Corporation of British Columbia to proceed with its proposed action to cancel the driver training instructor's license issued to s.22

Dated March 19, 2001



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Paul E. Love

DECISION AND REASONS

of

Mark Medgyesi, Superintendent of Motor Vehicles

In the Matter of

The Insurance Corporation of British Columbia

v.

s.22

Concerning

Proposal to Suspend the Driver Training Instructor's Licence  
Issued to<sup>s.22</sup>

Issuance of Decision

October 30, 2000



## ICBC'S PROPOSED ACTION

The Insurance Corporation of British Columbia (ICBC) has proposed to suspend the driver training instructor's licence of <sup>s.22</sup> because <sup>s.22</sup> driver's licence has been cancelled. ICBC proposes that this suspension continue until <sup>s.22</sup> driver's licence has been reinstated and renewed.

ICBC states that <sup>s.22</sup> is in violation of Division 27.08 of the *Motor Vehicle Act Regulations*, which states that a driver training instructor conducting practical training must hold a valid current British Columbia driver's licence of the appropriate classification.

## AUTHORITY

On September 26, 2000, Donna Palamarek, Manager, Driver Training and Certification, Insurance Corporation of British Columbia, wrote to <sup>s.22</sup> proposing to suspend <sup>s.22</sup> driver training instructor's licence.

Division 27, Section 27.03(3) of the *Motor Vehicle Act Regulations* says:

27.03 (3) The Insurance Corporation of British Columbia may suspend, cancel or refuse to issue or renew a driver training school licence or driver training instructor's licence for any of the following reasons:

- (a) the licensee engages in fraudulent, deceptive or unconscionable practices in the operation of a driver training school, in the conduct of driver training or in applying for a licence;
- (b) the licensee aids, abets or counsels fraudulent practices by an applicant to obtain a driver's licence of any classification or driver training instructor's licence of any classification or to requalify for a driver's licence or driver training instructor's licence;
- (c) the licensee fails to maintain or provide to the corporation the records required under this division;
- (d) the licensee is convicted under the Criminal Code of an offence that is:
  - (i) punishable by imprisonment for 5 years or more
  - (ii) an offence that is sexual or indecent
  - (iii) an offence of violence; or
  - (iv) an offence of operating, care or control of a motor vehicle
- (e) failure of an applicant or licensee to comply with any requirement of this division
- (f) the licensee teaches, or permits to be taught, the knowledge tests administered by the Insurance Corporation of British Columbia, or possesses these tests.....

However, under Section 118.4(b) of the *Motor Vehicle Act* (MVA), a person affected by the cancellation of a driver training instructor's licence has the right to a show cause hearing before me before a cancellation is imposed.

Section 118.4 states:

118.4 A person affected by a proposed action of the Insurance Corporation of British Columbia, which action is described in any of the following paragraphs (a) to (e), must be given the opportunity to show cause why the proposed action should not be taken: ...

(b) the suspension, refusal to renew or cancellation of the person's driver trainer's instructor's licence

As required by Section 118.5(1)(b) of the MVA, the Insurance Corporation of British Columbia ("ICBC" or the "Corporation" hereafter) notified<sup>s.22</sup> of<sup>s.22</sup> right to a hearing. <sup>s.22</sup> did not apply to me for a hearing (Section 118.5(2), MVA) within the prescribed 15 days (Section 2, BC Regulation 414/97).

Under these circumstances, Section 118.5(3) applies:

118.5 (3) If the person affected by the proposed action does not file a notice of intention to show cause within the time limit prescribed for the purpose of subsection (2), the superintendent may authorize the corporation to proceed with the proposed action.

I may, but am not compelled to, authorize ICBC to go ahead with its proposed cancellation. My decision and reasons follow.

## THE EVIDENCE

ICBC provides a Notice of Driving Prohibition dated August 11, 2000, indicating that effective September 2, 2000,<sup>s.22</sup> <sup>s.22</sup>

s.22

s.22

The extract shows that the licence is cancelled.

## ANALYSIS

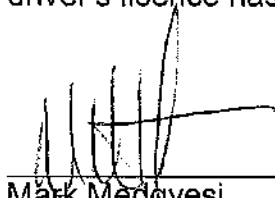
s.22 clearly does not hold a valid current British Columbia driver's licence at this time.

ICBC points out that under Section 27.08(6) of the *Motor Vehicle Act* Regulations, a driver training instructor must hold a valid current British Columbia driver's licence of the appropriate classification.

I have no argument from s.22 to suggest why s.22 driver training instructor's licence should not be suspended in the circumstances.

## DECISION

I authorize ICBC to proceed with the suspension of the driver training instructor's licence of s.22, to be in effect until such a time as s.22 British Columbia driver's licence has been reinstated and renewed.



Mark Medgyesi  
Superintendent of Motor Vehicles

Dated 20-10-30



May 27, 2002

s.22

DONNA PALAMAREK  
MANAGER  
DRIVER TRAINING & CERTIFICATION  
INSURANCE CORPORATION OF  
BRITISH COLUMBIA  
PO Box 3750  
VICTORIA BC V8W 3Y5

Dear <sup>s.22</sup> and Donna Palamarek:

I have reviewed the April 11, 2002 letter and attachments sent to <sup>s.22</sup> from Donna Palamarek, Manager, Driver Training and Certification, Insurance Corporation of British Columbia (ICBC).

Section 118.4(b) of the *Motor Vehicle Act* entitles <sup>s.22</sup> to a hearing before me before ICBC may proceed with its proposal to suspend your Driver Training Instructor's Licence. <sup>s.22</sup> did not apply for this hearing within the requisite fifteen days. Hence, I have decided this matter under section 118.5(3) of the *Motor Vehicle Act*.

For the reasons stated in Ms. Palamarek's letter (copy attached for ease of reference), I authorize ICBC to proceed with the suspension of <sup>s.22</sup> Driver Training Instructor's Licence until he again holds a valid British Columbia drivers licence.

Yours truly,

Mark Medgyesi  
Superintendent of Motor Vehicles

Attachment

**Decision and Reasons**  
of  
Mark Medgyesi, Superintendent of Motor Vehicles

**In the Matter of**

ICBC

v.

s.22

**Concerning**

Proposed Cancellation of the <sup>s.22</sup>  
Driver Training School Licence  
and the Driver Training Instructor's Licence  
Currently Held by <sup>s.22</sup>

**Issuance of Decision:**

July 28, 2000

The Insurance Corporation of British Columbia (ICBC) holds that s.22

s.22 has contravened several sections of the regulations governing driving schools in a manner that warrants the cancellation of the school's driver training school licence. ICBC alleges further that because of s.22 role in the school's bad practices, the driver training instructor's licence of s.22 should also be cancelled. This is my decision in the matter.

### Authority

On February 24, 2000, Rod Davey, Manager Provincial Licensing, Insurance Corporation of British Columbia wrote to s.22 of s.22

proposing to cancel the school's licence. The same day, s.22 wrote to s.22

s.22 proposing to cancel s.22 driver training instructor licence. Both of these notices were served personally to the recipients.

Division 27 section 27.03 (3) of the Motor Vehicle Act Regulations (MVAR) says:

27.03 (3) The Insurance Corporation of British Columbia may suspend, cancel or refuse to issue or renew a driver training school licence or driver training instructor's licence for any of the following reasons:

- (a) the licensee engages in fraudulent, deceptive or unconscionable practices in the operation of a driver training school, in the conduct of driver training or in applying for a licence;
- (b) the licensee aids, abets or counsels fraudulent practices by an applicant to obtain a driver's licence of any classification or driver training instructor's licence of any classification or to requalify for a driver's licence or driver training instructor's licence;
- (c) the licensee fails to maintain or provide to the corporation the records required under this division;
- (d) the licensee is convicted under the Criminal Code of an offence that is:
  - (i) punishable by imprisonment for 5 years or more
  - (ii) an offence that is sexual or indecent
  - (iii) an offence of violence; or
  - (iv) an offence of operating, care or control of a motor vehicle
- (e) failure of an applicant or licensee to comply with any requirement of this division
- (f) the licensee teaches, or permits to be taught, the knowledge tests administered by the Insurance Corporation of British Columbia, or possesses these tests.....

However, under section 118.4 (a) of the Motor Vehicle Act (MVA), a person affected by the cancellation of a driver training school licence, or, under section 118.4 (b), a person affected by the cancellation of a driver trainer's instructor's licence, has the right to a show cause hearing before me before a cancellation is imposed.

118.4 A person affected by a proposed action of the Insurance Corporation of British Columbia, which action is described in any of the following paragraphs (a) to (e), must be given the opportunity to show cause why the proposed action should not be taken: ...

- (a) the suspension, refusal to renew or cancellation of the person's driving school licence;
- (b) the suspension, refusal to renew or cancellation of the person's driver trainer's instructor's licence

As required by section 118.5 (1) (b) of the MVA, the Insurance Corporation of British Columbia ("ICBC" or the "corporation" hereafter) notified<sup>s.22</sup> as the operator of record of<sup>s.22</sup> or the school hereafter) and<sup>s.22</sup>

<sup>s.22</sup> of their right to a hearing. Neither applied to me for a hearing (section 118.5 (2), MVA) within the prescribed 15 days (section 2, B.C. Regulation 414/97).

Under these circumstances, section 118.5 (3) applies:

118.5 (3) If the person affected by the proposed action does not file a notice of intention to show cause within the time limit prescribed for the purpose of subsection (2), the superintendent may authorize the corporation to proceed with the proposed action.

I may, but am not compelled to authorize ICBC to go ahead with its proposed cancellations.

As neither of the<sup>s.22</sup> requested a Show Cause hearing or otherwise respond to ICBC's notices, the evidence I have in these matters is the book attached by ICBC to its letters of February 24, 2000.

My decision and reasons follow.

### The Evidence

s.22                      says that s.22                      owns s.22                      , but s.22  
helps out as s.22                      s.22

ICBC has submitted a written statement from Donna Palamarek, Manager of Driver Training & Certification Unit, ICBC, who says she has reviewed s.22

s.22                      records kept by ICBC. According to her statement, the school was first licensed May 29, 1996. The school was licensed to teach class 1, 2, 3, 4 and 5 drivers from its inception until May 14, 1997 and from February 5, 1999 until the present. Between May 14, 1997 and February 5, 1999 the school was authorized to teach only class 5 (private passenger car) driving. The school was not at any time certified by ICBC to teach airbrake courses.

Until December 31, 1998, some driver training schools were certified by ICBC to train and test drivers for commercial class 1, 2, 3 or 4 driver's licences. Students could exchange a "MV2067" form issued by a certified school for a driver's licence. s.22 has never been so certified.

ICBC also submits reports of interviews conducted by ICBC investigative staff with several former clients of s.22

s.22                      says that s.22                      took him to the s.22                      Motor Vehicle office and provided him with walkie-talkie equipment that s.22                      meant to use to provide advice to s.22 as he took a learner's test exam. The equipment was faulty, and when office staff observed s.22 trying to adjust it he referred the staff member to s.22                      who was sitting outside the office in a car. According to the staff member, s.22                      , the event took place March 2, 1998. After approaching s.22                      s.22 observed three gentlemen sitting in a



van in the office parking lot. One had a professional driving guide and another was adjusting a device they were using. s.22 does not say s.22 identified the men in the van. s.22 left the office in the same van as the three men. s.22 says s.22 attempted to help him pass the learner's test via the walkie-talkie setup in one instance and by sitting beside him during an exam in another. s.22 says s.22 never coached him or taught him anything and refused to refund the \$300 s.22 paid to s.22 s.22 says that at a later time s.22 offered to get someone else to take the air brake test for him.

s.22 says that in October 1998 s.22 offered him driving lessons, including a driving test for \$700. s.22 received receipts for all but \$65 of his fees. s.22 says his examiner was s.22 who came to s.22 to test him. s.22 received an ICBC Driver Training Certification (form MV2067), numbered s.22 purporting to certify he had qualified for a class 1 driver's licence with airbrakes. Both the airbrake and class 1 portions of the certification were signed in the name of s.22 as was the portion naming s.22 as the issuing driving school. As s.22 says he got the document from s.22 I take it that the signature s.22 is s.22

s.22 purchased driver training from s.22 for \$700. s.22 failed on several occasions to keep training appointments. s.22 received a photocopy of Driver Training Certification numbered s.22 purporting to certify him for a class 1 driver's licence with airbrakes. s.22 had signed the airbrake and class 1 portions as was the portion naming s.22 as the driving school. As s.22 says he got the document from s.22 I take it that the signature s.22 is s.22 ICBC refused to issue s.22 a driver's licence on the basis of the photocopied certificate. s.22 subsequently assured s.22 that s.22 s.22 was registered and authorized to certify drivers but was having problems because of complaints from other driving schools. s.22 did not comply with s.22 requests to have his money refunded but gave assurances that s.22 could fix the problem with s.22 certification.

s.22 took lessons to drive a large truck from s.22 in October 1998. s.22 says he went to s.22 and took a road test from someone called s.22 says that he received a Driver Certification Document numbered s.22 The airbrake portion of this certificate is not signed. The class 1 certification portion of this certificate is signed by s.22 The Driver Training Facility portion is signed s.22 and names s.22 Surrey B.C. The Driver Training Facility number repeats the document number s.22 s.22 says the certificate was handed to him by s.22

Dick Kalmbach, Supervisor of ICBC's Abbotsford Driver Service Center says that on November 26, 1998 a client named s.22 gave him a photocopy of a manually prepared Certification for a class 1 licence. s.22 was refused a licence because the certificate was not in order. s.22 was upset saying he made several attempts to obtain his certification from s.22 who only met him a few days before s.22 saw Kalmbach. The certificate was numbered s.22 is signed s.22 under the class 1 certification and driving school facility portions and shows s.22 s.22 in s.22 as the driving school.

I have copies of the MV2067 Driver Certification Documents issued to s.22 s.22 and s.22

Donna Palamarek says that the Driver Training Certification forms were given only to schools that were authorized to certify drivers. As s.22 was never so certified, it never received forms from ICBC. s.22 denies ever having conducted certification exams on behalf of s.22 or s.22 or issuing certificates to s.22 or s.22 He does admit giving exactly two certification forms to s.22 in the fall of 1998 as s.22 said s.22 was waiting on s.22 own supply from Victoria.

ICBC argues that s.22 was engaged by s.22 to test s.22 and s.22 for class 1 licenses in spite of s.22 not being authorized to so certify. s.22 and s.22 say

as much. s.22 says he was tested by someone named s.22 at s.22. I reject s.22 claim that s.22 did not test these s.22 drivers. It remains, however, that the Driver Certification Documents were handed over to s.22 and s.22 and in the cases of s.22 and s.22 signed, by s.22

s.22 says that he took an airbrake course from s.22 about 4 months before he was interviewed on March 1, 1999. s.22 says he did not ever take the airbrake knowledge test. He says he obtained his learner's licence by paying s.22 s.22 \$1100 and providing s.22 with his passport. s.22 provided the licence about a month later.

s.22 says he was told by s.22 that s.22 could get him a truck licence for \$415. s.22 gave s.22 his passport and social insurance number as well as the money. s.22 later returned s.22 identification together with an interim class 1 driver's licence in s.22 name issued at 100 Mile House. s.22 says he has never been to 100 Mile House.

s.22

s.22 and s.22 all say said they had taken Airbrake courses from s.22 in October or November 1998. I have copies of several airbrake course cards and airbrake Driver Training Certifications issued by s.22 and dated in October and November 1998.

ICBC provides translated copies of s.22 advertisements ranging from October 1998 to May 1999, that say the school teaches airbrake courses and will help clients obtain any class of driver's licence. An undated s.22 pamphlet says the school teaches airbrake courses as well as class 1 through 5 driving lessons. According to Donna Palmarek, after February 5, 1999 Newton was authorized by ICBC to teach all classes of driving lessons, so the absence of the date leads me not to impugn the school for publishing a pamphlet saying they teach these courses. However, s.22 has never been authorized to teach airbrake courses.

s.22 says s.22 taught several airbrake courses at s.22 in November and December 1998. ICBC says s.22 was not actually licensed to do so until December 1998. s.22 and s.22 say that s.22 taught the airbrake course to them in October 1998. ICBC says s.22 was never licensed to teach airbrakes.

Many clients report that s.22 failed to keep appointments, failed to provide lessons as promised and failed or refused to refund money for invalid courses (e.g., airbrake training) or services not provided.

s.22 and s.22 report taking course from s.22 in October and November 1998, but do not appear on s.22 course lists from the relevant time periods.

s.22 reports teaching several courses for s.22 in October and November of 1998. s.22 was also an instructor for s.22 at the time. ICBC says that s.22 had posted only half the required \$4000 bond required to cover the activities of the two instructors. s.22 says s.22 thought the bond was not needed as s.22 was only giving s.22 a trial to see how he would work out. However, s.22 told s.22 s.22 taught four weekend courses for s.22 in October and November 1998.

There are several reports from s.22 students that they were refused or not given receipts for payments (see for example s.22 s.22 and s.22 ).

ICBC seeks to establish other misconduct by s.22 that is less clear on the evidence.

It says that ICBC investigators Forbes and Greenhaulgh did not observe posted a schedule of training services, the school's licence and the s.22 ; instructor licence. Forbes and Greenhaulgh do not say this in their records of visits to s.22

Referring to statements by s.22

s.22 and s.22 ICBC says that s.22 failed to provide written statements of services to be provided before training was provided and fees were paid. These client statements do not say one way or the other whether written statements of services were provided.

### **Analysis**

The bulk of the evidence I have in this matter comes in the form of written statements taken from ICBC employees and s.22 clients. Most of the statements say that the person has read the statement, agrees to its truth and does not wish to add anything. Not all of the statements are signed. With particular regard to the client statements, while the name of the client is type written at the bottom of the statement, none of the statements are signed. If they were signed, I would have no way to verify the signature. I have thus considered the weight that I can accord the statements.

In the absence of oral testimony, I can only regard these statements as a record taken by ICBC investigators of conversations that occurred during the course of the investigation. The evidence is thus hearsay and comes to me indirectly and untested by cross-examination.

As an administrative adjudicator I am entitled to consider hearsay. Moreover, in cases like this one, when the person affected by a proposed action does not request a show cause hearing, all that I have are ICBC's written reasons and summary of the evidence as provided to the person. ICBC does not have the opportunity to produce witnesses to voice the material in such statements as might be included. As importantly, the person affected has not taken advantage of the opportunity to refute such statements or any other aspect of the reasons. In the case at hand, for, example, neither s.22 nor s.22 s.22 provide reason to refute or call into question the authenticity or accuracy of what ICBC presents.

That does not mean that ICBC succeeds automatically. Its reasons must be sufficient to convince me on balance of probability that the proposed cancellations should proceed. At the same time, it would be an odd interpretation of Part 2.1 that allowed the person affected to negate the weight of ICBC's evidence by rejecting the opportunity to question it.

I have concluded that, although the written witness statements in this case are a lesser quality of evidence than direct oral testimony, they come to me uncontested, and, even though they are hearsay, I can give them weight.

My question then becomes whether the weight of ICBC's evidence is sufficient to warrant the cancellation of s.22 and s.22 training licenses.

ICBC's allegations virtually all impugn the conduct of s.22 acting on behalf of s.22 is owned and, nominally, operated, by s.22. However, I accept s.22 evidence that s.22 was running s.22 on behalf of s.22. Therefore, any misconduct by s.22 during s.22 tenure running s.22 is also misconduct by the school. Put another way, s.22 is responsible for the business of s.22 driving school and the school does not escape the consequences of its conduct because s.22 has handed control of matters over to s.22.

Section 27.03 (3) (a) of the MVAR says that ICBC may cancel a driver training school or driver instructor training instructor licence if the licensee engages in fraudulent, deceptive or unconscionable practices in the operation of a driver training school or in the conduct of driver training, s.22, staff of s.22 and thereby the school itself has issued and signed airbrake course certificates and class 1 certification documents when they were not authorized by ICBC to do so. s.22 misled students into believing that s.22 school was authorized to issue such documents. s.22 issued original copies of Driver Training Certification documents and altered photocopied versions of the same originals representing these to clients as valid when

they were not. s.22 advertised airbrake classes when not licensed to teach them and s.22 represented to the school's clients that such classes were valid. s.22 advertised it could help students obtain all classes of driver's licence when it was licensed only to teach class 5. s.22 stood up clients for training appointments and failed to refund money paid for services that were not delivered or proved not to be acceptable as represented for licensing purposes.

I find that s.22 and s.22 engaged in fraudulent, deceptive and unconscionable practices the operation of the school and the conduct of driver training.

Paragraph (b) of section 27.03 (3) says cancellation may happen if the licensee aids, abets or counsels fraudulent practices by an applicant to obtain a driver's licence of any classification. s.22 aided s.22 to cheat on a learner's licence test. s.22 continued to counsel and abet cheating by s.22 even after the failure of the hidden radio scheme. s.22 obtained a class 1 learners licence from s.22 in return for cash. s.22 obtained a class 1 learner's licence from s.22 by providing his identification to and some cash to s.22

I find s.22 while operating s.22 for s.22 aided, abetted and counseled fraudulent practices by s.22 students to obtain driver's licences.

I cannot imagine a more serious breach of the safety intent of the MVAR governing driver training than to fraudulently aid an unqualified driver to get behind the wheel of a commercial truck. These are the most complex vehicles there are to drive, and, because of their size, result in the direst consequences when they are involved in an accident. To my mind, even a single such incident may warrant serious consideration of cancellation.

I find that s.22 and s.22 misconduct under sections 27.03 (3) (a) and (b) is sufficient to convince me to authorize the cancellation of both licences. Unfortunately the list of problems goes on.

Both §.22 and §.22 taught airbrake courses for §.22 when they were not licensed to do so, contrary to section 27.06 (6) of the MVAR.

The deceptive claims in §.22 advertising are contrary to section 27.10 (2) (c) of the MVAR.

The failure to maintain an adequate bond to cover §.22 teaching activity in late 1998 is contrary to section 27.05 of the MVAR. I reject §.22 claim that §.22 was just on a trial with §.22. By his own account, §.22 taught four 16-hour weekend airbrake courses for §.22 in this period. This breach is particularly serious in light of §.22 failure to repay the students who took these invalid courses.

§.22 and §.22 were §.22 students but do not show up on §.22 student lists, contrary to section 27.06 (4) of the MVAR which requires schools to keep adequate records. For purposes of this decision, I take no notice of additional claims of §.22 and §.22 malfeasance, which are less clear on the evidence.

Paragraph (e) of section 27.03 (3) says that a driver training school or instructor licence may be cancelled for failure of the licensee to comply with any requirement of this division. Clearly this section cannot mean that cancellation is warranted for few or minor infractions. However, §.22 and §.22 ; failures to comply with Division 27 of the MVAR are many and varied. Many of them are tied to more serious misconduct. For example, the failure to post adequate bond for §.22 teaching airbrake courses may simply reflect a reluctance to disclose the activity of an unlicensed instructor. §.22 and §.22 who were not on record with §.22 were two students who §.22 helped fraudulently.

I find that §.22 and §.22 further misconduct under Division 27 adds weight to the decision already fully supported by their misconduct with respect to sections 27.03 (3) (a) and (b).



I have considered that some time has passed since the events recorded in ICBC's book of evidence. However, against the delay I note that it takes some time to summarize such an investigation and decide how to proceed. The show cause process once initiated requires time. I note that s.22 and s.22 chose not to make arguments respecting delay or any other aspect of ICBC's proposal. Most importantly I note the breadth and seriousness of s.22 and s.22 misconduct.

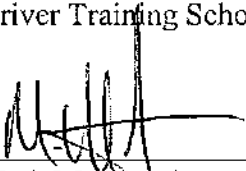
I have considered that people rely on s.22 to make a living as does s.22 on s.22 driver training licence. These considerations are far outweighed by the seriousness of their misconduct

I have also considered whether full cancellation of both s.22 and s.22 licences is needed to manage the risk posed by their misconduct. s.22 and s.22 conduct as described in the evidence before me creates a significant safety risk to BC road users who are exposed to drivers trained by s.22 and s.22. I find that nothing short of cancellation of both licences will do.

### Decision

Under section 118.5 (3) of the MVAR I may but am not compelled to authorize ICBC to proceed with its proposed action.

My decision in this case is to authorize the corporation to proceed both with the cancellation of s.22 Driver Training Instructor licence and with the Driver Training School licence of s.22

  
\_\_\_\_\_  
Mark Medgyesi  
Superintendent of Motor Vehicles

00 - 07 - 28  
Date