COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***ICBC v. Lo,***
2006 BCCA 584

Date: 20061221
Docket: CA33177

Between:

Insurance Corporation of British Columbia

Appellant
(Plaintiff)

And

Fung Kwan (Tammy) Lo, Foon-Wai (David) Chiu and Dragon Driving School Canada Ltd.

Respondents
(Defendants)

And

Crispine Argana Diaz, also known as Crispina Argana Diaz, Zi Shan Guo, Li De Mai, Ze Yu Luo, Mao Hai Li, Mei Qiong Li, Xi Sen Lin, Bao Kang Huang, Yu Fei Zhang, Yi Liu, Jie Fang Cai, So Kum Chu, Yong Qiang Li, Zhuo Wen Li, Gui Qing Zhang, Yu Xiong Zhang, Yam Hau Chan, Qing Guang Zeng, Jian Ping Zeng

Defendants

Before: The Honourable Madam Justice Rowles
The Honourable Madam Justice Ryan
The Honourable Mr. Justice Mackenzie

B. Martyniuk and F. Potts	Counsel for the Appellant
	Counsel for the Respondent, Lo
W. Ryan Foon-Wai (David) Chiu	Appearing for the Respondents, Chiu and Dragon Driving School Canada Ltd.
Place and Date of Hearing:	Vancouver, British Columbia 25 April 2006
Place and Date of Judgment:	Vancouver, British Columbia 21 December 2006

Written Reasons by:
The Honourable Madam Justice Rowles

Concurred in by:
The Honourable Madam Justice Ryan
The Honourable Mr. Justice Mackenzie

I. Introduction

[1] The main issue on this appeal is whether a restitutionary remedy lies against a defendant for the profit he made on a bribery scheme he participated in with an employee of the plaintiff which enabled clients of the defendant's driving school to obtain British Columbia driver's licences even though they were not properly tested or qualified to drive.

[2] While the bribery scheme was in operation the defendant, Ms. Crispine Argana Diaz, was a driving examiner in the province's licensing agency and an employee of the plaintiff, now appellant, the Insurance Corporation of British Columbia ("ICBC"). The other principal defendants involved in the bribery scheme were Foon-Wai (David) Chiu and Mr. Chiu's company, Dragon Driving School Canada Ltd. ("Dragon").

[3] ICBC is a public corporation that under a statutory regime provides compulsory automobile insurance in British Columbia. ICBC is also the public agency charged with licensing drivers under s. 25 of the ***Motor Vehicle Act***, R.S.B.C. 1996, c. 318. Section 25 is attached as an appendix to these reasons.

[4] In the action, it was admitted that in exchange for payments from Mr. Chiu, Ms. Diaz fraudulently recorded that Dragon's clients had passed knowledge and road tests and that she fraudulently issued driver's licences to them.

[5] There was evidence that Mr. Chui was paid between $2,000.00 and $8,000.00 per fraudulent transaction by clients of Dragon and that he paid Ms. Diaz $500.00 per transaction. There were at least 158 such transactions.

[6] The action was tried before a judge and jury. Before instructing the jury on the assessment of damages, the trial judge heard argument on the question of the alternative remedies ICBC had sought. ICBC argued that it was entitled to elect to recover, as an alternative remedy to compensatory damages, all of the amounts paid to Mr. Chiu, Dragon and Ms. Diaz in furtherance of the fraudulent scheme. ICBC contended that the funds received by Mr. Chiu were impressed with a trust and that it was entitled to accounting and tracing remedies allowing it to recover from the defendant, Ms. Fung Kwan (Tammy) Lo, the common law wife of Mr. Chiu, any of the funds that found their way into assets in her name.

[7] In his ruling directed to the question of how the jury should be instructed, the trial judge held that ICBC could elect to claim, as an alternative to compensatory damages, an equitable remedy against Mr. Chiu, Ms. Diaz, and Dragon in the amount of the bribes paid to Ms. Diaz. The trial judge held that Ms. Diaz, as a licence examiner, was in a position of trust and that by accepting bribes to issue licences for persons who had not been tested or qualified to drive, she had breached her fiduciary duty to her employer ICBC, the public agency charged with licensing drivers.

[8] The judge rejected ICBC's argument that it was entitled to an equitable remedy by way of a constructive trust with respect to the funds Mr. Chiu received from clients of Dragon over and above the sums he paid to Ms. Diaz in exchange for arranging with Ms. Diaz to have driver's licences issued to clients of his driving school. The trial judge held that there was no basis upon which equity could grant ICBC a proprietary or trust remedy that "would capture Mr. Chiu's profits" and that "[w]ithout such a remedy, the plaintiff's claims to trace funds into the hands of Ms. Lo must fail": para. 23. As a consequence of the judge's ruling, ICBC's action against Ms. Lo was dismissed. The judge's ruling dated 14 September 2005 may be found at 2005 BCSC 1093.

[9] The appeal from the dismissal of the action against Ms. Lo turns on the question of whether an equitable remedy lies against Mr. Chiu for all of the money he received from clients of Dragon in furtherance of the bribery scheme rather than being limited to the amount of the bribes he paid to Ms. Diaz. ICBC argues that the reasoning found in ***MacMillan Bloedel Ltd. v. Binstead*** (1983), 22 B.L.R. 255 (B.C.S.C.) and ***Soulos v. Korkontzilas***, [1997] 2 S.C.R. 217 provides the foundation, by way of analogy, for restitutionary remedies to be pursued with respect to all of the money received by Mr. Chiu and Dragon as part of the bribery scheme.

[10] For the reasons which follow, I am of the view that ICBC is entitled to restitutionary remedies in respect of all of the money Mr. Chiu received in furtherance of the bribery scheme. I would allow the appeal, set aside the dismissal of the action against Ms. Lo and remit the case to the trial court for determination of the issues that would

ground the extent of the constructive trust remedies available to ICBC as an alternative to compensatory damages.

II. The pleadings and proceedings, the evidence, and the trial judge's ruling on ICBC's alternative claim for restitutionary relief

[11] ICBC's action was commenced in March 2004 against 18 defendants. The principal defendants were Mr. Chiu, a driving school instructor, Dragon, a company controlled by Mr. Chiu, and Ms. Diaz, a driver's licence examiner formerly in the employ of ICBC. The rest of the defendants were individuals who had purchased fraudulent British Columbia Driver's licences ("DLs") and who had been, for the most part, in "at fault" accidents.

[12] It was alleged that the three principal defendants had conspired together to defraud ICBC by soliciting others to pay them a fee in return for which they would arrange for the issuance of DLs regardless of whether the person had passed or taken the necessary written examination (the knowledge test) or the practical examination (the road test).

[13] ICBC alleged that it had suffered damages as a result of the fraudulent scheme operated by Dragon, Mr. Chiu and Ms. Diaz. ICBC's claims for compensatory damages were of two types. It first sought to be reimbursed for amounts it paid out as a result of accidents caused by persons who operated vehicles under fraudulently obtained driver's licences. ICBC asserted that the drivers who drove under fraudulent licences were, from a legal standpoint, unlicensed and therefore in breach of conditions of insurance. ICBC claimed that as a consequence, its liability ought to have been limited to third party claims under s. 21 of the ***Insurance (Motor Vehicle) Act***, R.S.B.C. 1996, c. 231 and it ought to have had the right to recover money paid for such claims from the unlicensed driver. ICBC alleged that the defendants, Chiu and Diaz, concealed the fact that drivers were not properly licensed and thereby prevented it from asserting its rights under s. 21. ICBC also sought to recover from the defendants Bao Kang Huang, Yam Hau Chan and Yi Liu the amounts it had paid out in respect of at-fault accidents in which they were involved. ICBC sought to have Mr. Chiu and Ms. Diaz declared jointly and severally liable with Mr. Chan and Mr. Liu in respect of first party payments arising out of their accidents.

[14] The second type of compensatory claim made by ICBC was a claim to be reimbursed for the costs of investigating the fraudulent licensing scheme. Based on ***ICBC v. Sanghera*** (1991), 55 B.C.L.R. (2d) 125 (C.A.) and ***ICBC v. Eurosport Auto Co. Ltd. & Others*** (2004), 8 C.C.L.I. (4th) 236, 2004 BCSC 164, the trial judge was satisfied that the reasonable costs of investigating such a fraudulent scheme were recoverable by ICBC as the victim of the fraud.

[15] ICBC advanced, as an alternative to its claim for compensatory damages, a claim for equitable relief, and took the position that it was entitled to elect the remedy it considered most advantageous after the jury verdict was known.

[16] In January 2005, an application was granted adding Ms. Lo as a defendant and in June 2005, the statement of claim was further amended. In the final amended pleadings, it was alleged, among other things, that to the extent Mr. Chiu, Dragon and Ms. Diaz possessed assets for which they could not account, such assets were obtained by fraud and conspiracy and that the defendants had been unjustly enriched thereby. The amended pleadings also alleged that Mr. Chiu or Dragon or both had provided monies or assets obtained as a result of the fraudulent scheme to Ms. Lo and that Ms. Lo knew, or ought to have known, or was wilfully blind to the fact that such monies or assets were derived from the bribery scheme and that Ms. Lo was liable to account for such monies. Included in the assets alleged to have been acquired with funds derived from the bribery scheme was a residential property located in Richmond, British Columbia, registered in the name of Mr. Chiu and Ms. Lo.

[17] ICBC obtained interlocutory judgment against the principal defendants because their defences were struck out by court order, with leave to ICBC to proceed as if no appearance had been filed. Interlocutory judgment was also taken against Ms. Lo because she failed to file an appearance. Under Rule 19(19) of the ***Rules of Court***, those defendants were deemed to have admitted the allegations of fact in the statement of claim. Those deemed admissions included the participation of Mr. Chiu and Ms. Diaz in the fraudulent scheme, that Mr. Chiu had been paid between $2,000.00 and $8,000.00 per transaction, that there were at least 158 such transactions and that Ms.

Diaz had been paid at least $500.00 per transaction.

[18] The trial commenced before a judge and jury in June 2005. The principal defendants and Ms. Lo were permitted to defend the actions against them as to compensatory damages and the restitutionary remedies claimed by ICBC in the alternative.

[19] ICBC called Constable Li, an undercover RCMP officer, who testified about his undercover dealings with Mr. Chiu. Constable Li testified that Mr. Chiu had told him that he had been "doing business since 1998" which he took to mean the business of fraudulently providing DLs. Mr. Chiu told Constable Li that for $5,000.00 he could get him a DL without Constable Li taking a road test or for $4,200.00 he could guarantee him a pass on the road test and for an additional $1,500.00, he could provide him with a Chinese driver's licence which would allow him to get a full DL without the usual two year restrictions. Constable Li was later told by Mr. Chiu that for a "few hundred more dollars" it would not be necessary for him to take the knowledge test.

[20] In total, Constable Li paid Mr. Chiu $6,500.00 in cash in return for which he received a receipt for $1,500.00, a forged Chinese driver's licence and, without taking either a written test or a road test, an unrestricted DL in his undercover name.

[21] Constable Li also arranged with Mr. Chiu to obtain another fraudulent DL and a forged Chinese driver's licence for Constable Poon, another undercover RCMP officer, who had not taken either the written or road test. Mr. Chiu was paid $8,000.00 in cash for those services.

[22] Evidence was called from two luxury car dealerships concerning the purchase of automobiles, one by Ms. Lo and the other by Mr. Chiu. In each case, third party cheques were used as part of the purchase price. Other evidence linked the third party cheques with persons who had obtained DLs without taking the required tests.

[23] Discovery evidence combined with other evidence showed that Ms. Lo had received, among others, cheques for $3000.00 and $5,800.00 from individuals who had obtained DLs without taking road tests.

[24] ICBC called witnesses to show, among other things, how the ICBC computer system worked, the costs incurred in investigating the civil aspects of the claim, and the damages suffered by reason of the purchase of the fraudulent DLs by other defendants in the action.

[25] Ms. Diaz and Mr. Chiu elected to call evidence and each testified. Ms. Diaz admitted her involvement in the conspiracy and that she had taken bribes from Mr. Chiu. She said there had been at least 250 such fraudulent transactions. Ms. Diaz gave conflicting evidence about the amounts she had received from Mr. Chiu. She said she had been paid $200.00 for each transaction, that she received at least $50,000.00 from Mr. Chiu and that it was all cash. Documents in her handwriting were put to Ms. Diaz which showed numbers of fraudulent DLs and payments of $500.00 for certain of the transactions. She denied receiving those amounts and said she had written the figure $500.00 on the note only because that is what Mr. Chiu had told her she would receive for her services in making false entries in the ICBC computers. Ms. Diaz acknowledged that she had told the RCMP that Mr. Chiu had paid her $500.00 for each road test not taken and $500.00 for each written test not taken.

[26] Mr. Chiu's testimony about the number of fraudulent DLs obtained and what he received in payment for his services was also inconsistent. He said that purchasers of DLs normally paid him in cash and that he charged between $2,000.00 and $3,000.00 for his services, sometimes between $2,500.00 and $3,500.00, and would ask $4,500.00 for both a fraudulent road and knowledge test. He acknowledged getting $6,500.00 from Constable Li and was going to charge Constable Poon $8,000.00. He said that except for the undercover operators, there was never a charge over $5,000.00. Mr. Chiu said he paid Ms. Diaz $500.00 per transaction.

[27] In her direct examination, Ms. Diaz recounted how the relationship with Mr. Chiu began. Ms. Diaz said that Mr. Chiu had first asked her to help a good friend of his who had failed his road test. Ms. Diaz testified that she re-tested the person and that she passed him because he was "borderline", but that no money had been exchanged for this favour. She said it was at the second meeting that Mr. Chiu offered to pay her $200.00 to take people for a road test and pass them regardless of whether they would have actually passed. Ms. Diaz also testified that Mr.

Chiu threatened to report her to the ICBC head office if she decided to quit her job, and that he threatened to make violent threats against her family. Ms. Diaz said she was unaware of any money being received by Mr. Chiu or Dragon over and above the money she received and believed that the money she received was the only money paid by those to whom licences were improperly issued.

[28] On direct examination, Mr. Chiu's evidence was to the effect that Ms. Diaz was the one who approached him about engaging in the scheme rather than the other way around. Mr. Chiu acknowledged, however, that one of the reasons he ran ads in Chinese language newspapers for driving lesson students was to find persons to get involved in the fraudulent scheme. He agreed that he was targeting the Chinese community and that his language skills were an important part of the scheme. He agreed that the scheme only worked with those who spoke Mandarin or Cantonese.

[29] Mr. Chiu said that without Ms. Diaz he would not have had anything to sell in relation to the scheme and that, without her, the scheme would not work. Mr. Chiu said he considered himself the middleman between Ms. Diaz and the purchasers of fraudulent DLs and was responsible for negotiating with clients to cut the best deal he could and to collect the money. Mr. Chiu testified that after reaching an agreement with a client, he would give the information to Ms. Diaz and would reserve her portion of the money he received for her. Mr. Chiu agreed he made it clear to his clients that he had a connection at ICBC. He also agreed that clients were told that for the right dollar amount, he would use his connection to get DLs without the need to take a knowledge or road test. Mr. Chiu acknowledged that he believed the persons buying "special services" from him were aware of what he was doing because they were paying several thousand dollars to him for driving lessons they were not getting. As well, those clients were told they had to go to a particular Driver's Services Centre and deal only with Ms. Diaz, of whom they were given a description or photo.

[30] Mr. Chiu was arrested in March 2004 but was later released from custody. He acknowledged that three days after his release, he transferred US$86,000.00 from his Canadian bank to an account in the name of Law Yeung at the Wing Lung Bank in Hong Kong.

[31] With respect to the residential property in Richmond, Mr. Chiu agreed that all of the money, after taking into account the mortgage proceeds, had come from him to complete the purchase. However, he said that as far as he was concerned, Ms. Lo was a half-owner.

[32] After the parties had closed their cases, the judge asked for legal argument on aspects of the charge including the question of what foundation there was for ICBC's claim against Ms. Lo. As noted earlier, ICBC claimed in the alternative that it was entitled to recover from Mr. Chiu and Ms. Diaz all the money that had been received as a result of the bribery scheme on the footing that those funds were impressed with a constructive trust and, further, that ICBC was entitled to tracing remedies allowing it to recover from Ms. Lo, Mr. Chiu's common law wife, any of the bribe monies that found their way into the assets held in her name.

[33] In his ruling the judge held that ICBC was entitled to claim, as an alternative to its claim for compensatory damages, that amount which had been received as bribes by Ms. Diaz and that Mr. Chiu and Dragon were jointly and severally liable with Ms. Dias for that amount. In that regard, the trial judge said:

> [13] The remedy of disgorgement is a restitutionary one rather than one based on compensation. It is not necessary for the plaintiff to demonstrate that it has suffered actual harm as a result of Ms. Diaz's conduct. Equity considers it improper for a person occupying a position of trust to exploit that position for his or her own gain. Where a person does so, that person will be liable to account to his or her principal for any gains made in breach of the relationship of trust. This will be so even if the gain results from an opportunity which the principal did not wish to take or, indeed, could not legally have taken: *Attorney General v. Goddard* (1929), 98 L.J.K.B. 743; *Warman International Limited v. Dwyer* (1995), 182 C.L.R. 544 (HC Aust). Further, it is now established that equity imposes a constructive trust on the money in the hand of the person who is in breach of the trust relationship: *Attorney General for Hong Kong v. Reid*, [1994] 1 A.C. 324 (P.C.(N.Z.)).
>
> [14] I am satisfied, as well, that a person who pays a bribe in order to convince a fiduciary to

> breach a trust will also be liable in the amount of the bribes to the person whose trust is breached. There is a long line of cases standing for this proposition. They are well-summarized in Paul M. Perell, *Remedies for the Victims of a Bribe*, (2000), 22 LQR 198.
>
> [15] I accept, then, that it is well-established that where one person bribes another to violate his or her duty, both the briber and bribee will be liable in the amount of the bribe to the person to whom the bribee owes duties of good faith, a person often referred to as the "victim" of the bribe.
>
> [16] In the case at bar, therefore, the plaintiff is entitled to claim as an alternative to the claim for compensatory damages the amounts of the bribes received by Ms. Diaz. The remedy is available as a joint and several remedy against Dragon Driving School, Mr. Chiu and Ms. Diaz.

[34] ICBC does not take issue with the foregoing portion of the judge's reasons but argues that the trial judge was in error in not extending the restitutionary remedy to capture the amounts Mr. Chiu had received, over and above that paid to Ms. Diaz. The trial judge gave the following reasons for concluding that ICBC was not entitled to a similar remedy with respect to amounts received by Mr. Chiu from his clients in exchange for him arranging for Ms. Diaz to issue driver's licences:

> [20] There is no doubt that Mr. Chiu and Ms. Diaz acted, to a degree, in concert. Nonetheless, I can find no doctrinal basis for the application of the equitable principles that apply to Ms. Diaz's position to that of Mr. Chiu. Unlike Ms. Diaz, Mr. Chiu did not owe duties of utmost good faith to the plaintiff. The theory upon which money paid as bribes to Ms. Diaz would be held in a constructive trust is simply not applicable to Mr. Chiu.
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> [21] No authority has been cited to me in which a court has imposed a trust obligation in a bribery case on a person who is not in a relationship of good faith with the victim. Indeed, both *Warman International v. Dwyer*, *supra* and *Fyffes Group v. Templeman*, [2000] 2 Lloyds Rep 643 (Eng. Comm. Ct.), which break new ground in terms of fixing bribers with a duty to account for their profits, fall short of recognizing any proprietary or trust remedy against them. The existence of such a remedy is expressly rejected in the *Fyffes* case.
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> [22] . . . My decision today is confined to the issue of whether the money paid to Mr. Chiu is, because he was involved in a bribery scheme, impressed automatically with a trust in favour of the plaintiff. I find that it is not.
>
> [23] In the result, I find there is no basis upon which equity can grant the plaintiff a proprietary or trust remedy that would capture Mr. Chiu's profits. Without such a remedy, the plaintiff's claims to trace funds into the hands of Ms. Lo must fail.

[35] The trial judge also rejected ICBC's argument that it was entitled to an equitable remedy against Mr. Chui, based on unjust enrichment. In that respect, the trial judge said:

> Unjust Enrichment Claim Against Mr. Chiu
>
> [24] The plaintiff argues that even if the money paid by clients to Mr. Chiu is not subject to a trust claim, it should be able to recover damages against him in an amount equal to the amount he received. Such a non-proprietary remedy would be based on unjust enrichment.
>
> [25] *Warman International v. Dwyer* and *Fyffes Group v. Templeman* hold that where a fiduciary breaches his or her fiduciary duties to his or her principal, the principal can claim against third parties who knowingly profit as a result of the breach of duty. While I accept that in recent years, courts in England and Australia have accepted the existence of such a remedy, I am not aware of any Canadian case that takes a similar approach. Indeed, Canadian authorities, admittedly pre-dating the new approach of other commonwealth courts, do not support the existence of such a claim; see, for example, *Kranz Investments Ltd. v. S. & D. Investments Ltd.* (1984), 60 B.C.L.R. 21 (C.A.).

> [26] The rationale for the remedy given in *Warman* and *Fyffes* cases is that it would be inequitable for a person involved in a bribery scheme who thereby profits to keep those profits. Those cases consider that the doctrine of unjust enrichment is sufficiently broad to allow a plaintiff to claim the profits.
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> [27] It is impossible to quarrel with the idea that a person who participates in a bribery scheme and thereby profits should not be able to keep the profits. I have some difficulty, however, accepting that the doctrine of "unjust enrichment", as it has developed in Canada, provides a jurisprudential basis for the plaintiff's claim to Mr. Chiu's profits.
>
> [28] As discussed in *Pettkus v. Becker*, [1980] 2 S.C.R. 834, a claim in unjust enrichment is founded on one party having been enriched, without juridical reason, at the expense of the other. The enrichment of one party must be matched by a corresponding deprivation of the other. That corresponding deprivation is lacking in cases such as the present. While Mr. Chiu has been enriched without juridical reason, I.C.B.C. has not suffered any corresponding deprivation.

[36] Although he held that ICBC was not entitled to any restitutionary remedies over and above the amount of the brides received by Ms. Dias, the trial judge decided that Mr. Chiu's profit in the scheme could properly be considered by the jury in assessing punitive damages. In that regard, the trial judge said:

> [29] The courts in *Warman* and *Fyffes* were concerned to ensure that people should be deterred from involvement in bribery schemes. They wished to eliminate the possibility that, even after being sued, the third party could walk away with a profit. Those concerns, I think, fit well within the current law relating to exemplary or punitive damages in Canada as discussed in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595, particularly at paragraph 124. It seems to me that the profit made by Mr. Chiu ought to be a very important, perhaps even overriding, concern of the jury in assessing punitive damages.
>
> [30] Given the flexibility of the remedy of punitive or exemplary damages in Canadian law, there is no need to break new ground in this case by accepting the existence of the remedy discussed in *Warman* and *Fyffes*. It would not be appropriate, in my respectful opinion, to bend the doctrine of unjust enrichment to deal with the problem that is adequately dealt with through exemplary or punitive damages in Canadian law.
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> [31] In the result, I will not instruct the jury that the plaintiff has a remedy of disgorgement with respect to Mr. Chiu's profits. I will, however, instruct the jury that any profits made by Mr. Chiu ought to be a consideration for them in deciding whether or not to award punitive damages against him, and, if they decide punitive damages ought to be awarded, in determining the amount of such damages.

[37] Based on his ruling that no equitable remedy could be claimed against Mr. Chiu for his profits in the bribery scheme, the judge held that there was no foundation for any claim against Ms. Lo and dismissed the action against her.

[38] In his charge, the judge instructed the jury that any profits made by Mr. Chiu and Dragon could be taken into account in the assessment of punitive damages. The judge also instructed the jury that they ought to assume that ICBC would elect to take the higher of general damages or equitable damages.

[39] The jury's verdict was taken on 18 July 2005. The jury found the principal defendants liable for ordinary damages of $482,038.06 and assessed punitive damages against Mr. Chiu of $950,000.00, against Dragon, $500,000.00 and against Ms. Diaz, $350,000.00.

[40] On ICBC's alternative claim, the jury found that Mr. Chiu had paid Ms. Diaz $175,000.00 in bribes. As a result of the judge's ruling, no other questions concerning ICBC's alternative claim for restitutionary remedies were

put to the jury.

III. Is there a doctrinal foundation for a restitutionary remedy against Mr. Chiu for the profit he made in the bribery scheme?

[41] The trial judge found that Ms. Diaz occupied a position of trust in her employment with the statutory licensing authority ICBC. Ms. Diaz was responsible for ensuring, through a testing process, that those to whom DLs were issued were properly qualified to drive. In determining whether the qualifications were met, Ms. Diaz exercised some discretion. She had access to and could make changes in the records kept electronically in the computer system. The nature of her responsibilities in her employment made the corruption that occurred possible. By accepting bribes to issue licences without regard for proper qualification, she breached her position of trust. Based on ***Attorney General for Hong Kong v. Reid***, [1994] 1 A.C. 324 (P.C.), the trial judge held that Ms. Diaz was liable to account for the monies she received as bribes.

[42] In ***Attorney General for Hong Kong v. Reid*** a solicitor from New Zealand named Reid joined the legal service of the Government of Hong Kong and became successively Crown counsel, Deputy Crown Prosecutor and ultimately acting Director of Public Prosecutions. In breach of the fiduciary duty he owed as a servant of the Crown, Reid accepted bribes as an inducement to him to exploit his official position by obstructing the prosecution of certain criminals. He was arrested and pleaded guilty to offences under a Prevention of Bribery Ordinance and was sentenced to eight years imprisonment. He was also ordered to pay the sum of HK$12.4m, the equivalent of NZ$2.5m, being the value of assets then controlled by Reid which could only have been derived from the bribes. Among Reid's assets were three freehold properties in New Zealand; two of the properties had been conveyed into the names of Reid and his wife and the third into the name of Reid's solicitor. The Attorney General of Hong Kong lodged caveats against the New Zealand properties to prevent any dealings with them pending the hearing of proceedings that had been initiated for the purpose of claiming the properties on a constructive trust. When the Attorney General moved to renew the caveats, the judge refused, holding that the Crown had no equitable interest in the properties. The judgment was sustained on appeal to the New Zealand Court of Appeal but was reversed on further appeal to the Privy Council. The Privy Council overruled ***Lister & Co. v. Stubbs*** (1890), 45 Ch.D. 1 (C.A.), which had denied a proprietary remedy to a victim of a bribe. In that regard, Lord Templeman said, at 336:

> The decision in *Lister & Co. v. Stubbs* is not consistent with the principles that a fiduciary must not be allowed to benefit from his own breach of duty, that the fiduciary should account for the bribe as soon as he receives it and that equity regards as done that which ought to be done. From these principles it would appear to follow that the bribe and the property from time to time representing the bribe are held on a constructive trust for the person injured. . . .

[43] The trial judge went on to hold that Mr. Chiu and Dragon were, together with Ms. Diaz, jointly and severally liable to ICBC for the amount of the bribes paid to Ms. Diaz. The liability of Mr. Chiu and Dragon was based on the proposition that a person who pays a bribe in order to convince a fiduciary to breach a trust will also be liable in the amount of the bribes to the person whose trust is breached. ***Grant v. The Gold Exploration and Development Syndicate. Ltd.***, [1900] 1 Q.B. 233 (C.A.), among others, supports that proposition.

[44] The contentious question on the appeal is whether ICBC can properly claim a restitutionary remedy against Mr. Chiu for the monies he received over and above those funds he paid to Ms. Diaz. The trial judge concluded that there was "no doctrinal basis for the application of the equitable principles that apply to Ms. Diaz's position to that of Mr. Chiu" because "[u]nlike Ms. Diaz, Mr. Chiu did not owe duties of utmost good faith to the plaintiff": para. 20. It was the judge's view that "[t]he theory upon which money paid as bribes to Ms. Diaz would be held in a constructive trust is simply not applicable to Mr. Chiu": para. 20. As to the argument that ICBC could succeed in its alternative claim on the basis of unjust enrichment, the trial judge held that "[w]hile Mr. Chiu has been enriched without juridical reason, I.C.B.C. has not suffered any corresponding deprivation" and therefore no unjust enrichment could be shown: para. 28.

[45] ICBC submits that, contrary to the judge's ruling, the case authorities do support remedies in equity against Mr. Chiu, based on his knowing participation in the bribery scheme. ICBC argues that, given the trial judge's finding

that Ms. Diaz occupied a position of trust and exploited that position for her own gain, Mr. Chiu, as a knowing participant in the bribery scheme, ought to have been held accountable for all of the funds he received in furtherance of the scheme.

[46] ICBC's argument proceeds by way of analogy to those cases in which a knowing accomplice or assistant to a corrupt fiduciary has been held accountable to the same standards as the corrupt fiduciary and required to disgorge any benefits from the scheme regardless of whether the victim was or could be out of pocket. One of the authorities on which ICBC relied is ***MacMillan Bloedel Ltd. v. Binstead***. In that case Binstead, a senior employee of MacMillan Bloedel, used his position as manager of log trading to sell and trade logs to the defendant company Andersen-MacKinnon Log Sales Ltd., in which Binstead held a secret one-third interest. Dohm J., as he then was, held that the shareholders of the Log Sales company, as well as Binstead, were constructive trustees of MacMillan Bloedel and had to account for their profits, regardless of the fact that MacMillan Bloedel had not suffered any damage. Dohm J.'s reasons for so holding were founded on the fiduciary relationship Binstead had with MacMillan Bloedel. He said (at 282):

> Liability in the case is determined by examining the law with respect to fiduciary duty. It would be too simplistic an approach to view this case as either one for money had and received (bribery) or as a case in tort for conspiracy or for fraud. To resolve the issues here, one must follow the classic cases in fiduciary duty.

[47] After finding that Binstead was in the fiduciary position with MacMillan Bloedel, due to "the unique position which he held in the company, including the control he exercised in the acquisition and disposition of MB's property", Dohm J. discussed the participation of the other defendants in Binstead's breach (at 286):

> The defendants Andersen and MacKinnon and their companies knowingly participated in Binstead's breach of fiduciary duty and received profits derived as a result. In law they are therefore constructive trustees. In *Barnes v. Addy* [(1874), 9 Chan. App. 244 (C.A.),] the classic case in this aspect of the law, Lord Selborne, L.C. divides constructive trustees into two classes:
>
> > 1) Those who receive trust property with knowledge of the trust or who are otherwise chargeable with some party of the trust property.
> >
> > 2) Those who actually participate in any fraudulent conduct of the trustee or those who assist with knowledge in a dishonest and fraudulent design on the part of the trustee. In either of the latter possession of the trust property is irrelevant.
>
> These defendants can be placed into either classification. The point is stated even more clearly by Sheppard J.A. in the *Morrison v. Coast Finance* case, *supra* [p. 270]:
>
> > "When a third person knowingly participates with a trustee in the breach of trust, such third person becomes subject to the same liability as the trustee, including the liability to account."
>
> This, of course, must also apply to a breach of a fiduciary duty.

[48] Relying on ***Binstead***, ICBC further argues that when a restitutionary claim is made on the basis of the defendant's wrongdoing, a plaintiff need not necessarily show that the wrongdoing caused him a loss. Both Binstead and the corporate defendants were held liable to account for the benefit they received even though MacMillan Bloedel could not have used the information used by Binstead for its own benefit.

[49] ICBC submits that the Supreme Court of Canada's decision in ***Soulos v. Korkontzilas*** provides strong support for its argument that a constructive trust remedy can properly be advanced against Mr. Chiu for the profit he made in the bribery scheme. The background in ***Soulos*** is set out in the case summary found in the Supreme Court Reports (at 217):

> K, a real estate broker, entered into negotiations to purchase a commercial building on behalf of S,

> his client. The vendor rejected the offer made and tendered a counteroffer. K rejected the counteroffer but "signed it back". The vendor advised K of the amount it would accept, but instead of conveying this information to S, K arranged for his wife to purchase to property, which was then transferred to K and his wife as joint tenants. S brought an action against K to have the property conveyed to him, alleging breach of fiduciary duty giving rise to a constructive trust. He asserted that the property held special value to him because its tenant was his banker, and being one's banker's landlord was a source of prestige in his community. He abandoned his claim for damages because the market value of the property had decreased from the time of the purchase by K. The trial judge found that K had breached a duty of loyalty to S, but held that a constructive trust was not an appropriate remedy because K had not been "enriched". The Court of Appeal, in a majority decision, reversed the judgment and ordered that the property be conveyed to S subject to appropriate adjustments.

[50] The Supreme Court of Canada dismissed the appeal. McLachlin J., as she then was, giving the judgment for the majority in ***Soulos***, framed the issue this way:

> 1 This appeal requires this Court to determine whether a real estate agent who buys for himself property for which he has been negotiating on behalf of a client may be required to return the property to his client despite the fact that the client can show no loss. This raises the legal issue of whether a constructive trust over property may be imposed in the absence of enrichment of the defendant and corresponding deprivation of the plaintiff. In my view, this question should be answered in the affirmative.

[51] The difference in approach of the trial judge and of the appeal court in ***Soulos*** is illustrative of the differing views of the foundation for a constructive trust. In that regard McLachlin J. said:

> 13 The difference between the trial judge and the majority in the Court of Appeal may be summarized as follows. The trial judge took the view that in the absence of established loss, Mr. Soulos had no action. To grant the remedy of constructive trust in the absence of loss would be "simply disproportionate and inappropriate", in his view. The majority in the Court of Appeal, by contrast, took a broader view of when a constructive trust could apply. It held that a constructive trust requiring reconveyance of the property could arise in the absence of an established loss in order to condemn the agent's improper act and maintain the bond of trust underlying the real estate industry and hence the "integrity of the laws" which a court of equity supervises.
>
> 14 The appeal thus presents two different views of the function and ambit of the constructive trust. One view sees the constructive trust exclusively as a remedy for clearly established loss. On this view, a constructive trust can arise only where there has been "enrichment" of the defendant and corresponding "deprivation" of the plaintiff. The other view, while not denying that the constructive trust may appropriately apply to prevent unjust enrichment, does not confine it to that role. On this view, the constructive trust may apply absent an established loss to condemn a wrongful act and maintain the integrity of the relationships of trust which underlie many of our industries and institutions.
>
> 15 It is my view that the second, broader approach to constructive trust should prevail. This approach best accords with the history of the doctrine of constructive trust, the theory underlying the constructive trust, and the purposes which the constructive trust serves in our legal system.

[52] In ***Soulos***, McLachlin J. considered the availability of constructive trust as a remedy and rejected the view that constructive trust was based exclusively on unjust enrichment in cases such as ***Pettkus v. Becker***, [1980] 2 S.C.R. 834.

> 16 The appellants argue that this Court has adopted a view of constructive trust based exclusively on unjust enrichment in cases such as *Pettkus v. Becker*, [1980] 2 S.C.R. 834. Therefore, they argue, a constructive trust cannot be imposed in cases like this where the plaintiff

can demonstrate no deprivation and corresponding enrichment of the defendant.

17 The history of the law of constructive trust does not support this view. Rather, it suggests that the constructive trust is an ancient and eclectic institution imposed by law not only to remedy unjust enrichment, but to hold persons in different situations to high standards of trust and probity and prevent them from retaining property which in "good conscience" they should not be permitted to retain. This served the end, not only of doing justice in the case before the court, but of protecting relationships of trust and the institutions that depend on these relationships. These goals were accomplished by treating the person holding the property as a trustee of it for the wronged person's benefit, even though there was no true trust created by intention. In England, the trust thus created was thought of as a real or "institutional" trust. In the United States and recently in Canada, jurisprudence speaks of the availability of the constructive trust as a remedy; hence the remedial constructive trust.

* * *

20 Canadian courts have never abandoned the principles of constructive trust developed in England. They have, however, modified them. Most notably, Canadian courts in recent decades have developed the constructive trust as a remedy for unjust enrichment. It is now established that a constructive trust may be imposed in the absence of wrongful conduct like breach of fiduciary duty, where three elements are present: (1) the enrichment of the defendant; (2) the corresponding deprivation of the plaintiff; and (3) the absence of a juristic reason for the enrichment: *Pettkus v. Becker*, *supra*.

21 This Court's assertion that a remedial constructive trust lies to prevent unjust enrichment in cases such as *Pettkus v. Becker* should not be taken as expunging from Canadian law the constructive trust in other circumstances where its availability has long been recognized. The language used makes no such claim. A. J. McClean, "Constructive and Resulting Trusts -- Unjust Enrichment in a Common Law Relationship -- *Pettkus v. Becker*" (1982), 16 *U.B.C. L. Rev.* 155, at p. 170, describes the ratio of *Pettkus v. Becker* as "a modest enough proposition". He goes on: "It would be wrong . . . to read it as one would read the language of a statute and limit further development of the law".

22 Other scholars agree that the constructive trust as a remedy for unjust enrichment does not negate a finding of a constructive trust in other situations. D. M. Paciocco, "The Remedial Constructive Trust: A Principled Basis for Priorities over Creditors" (1989), 68 *Can. Bar Rev.* 315, at p. 318, states: "the constructive trust that is used to remedy unjust enrichment must be distinguished from the other types of constructive trusts known to Canadian law prior to 1980". Paciocco asserts that unjust enrichment is not a necessary condition of a constructive trust (at p. 320):

> . . . in the largest traditional category, the fiduciary constructive trust, there need be no deprivation experienced by the particular plaintiff. The constructive trust is imposed to raise the morality of the marketplace generally, with the beneficiaries of some of these trusts receiving what can only be described as a windfall.

23 Dewar, *supra*, holds a similar view (at p. 332):

> While it is unlikely that Canadian courts will abandon the learning and the classifications which have grown up in connection with the English constructive trust, it is submitted that the adoption of the American style constructive trust by the Supreme Court of Canada in *Pettkus v. Becker* will profoundly influence the future development of Canadian trust law.

Dewar, *supra*, at pp. 332-33, goes on to state: "In English and Canadian law there is no general agreement as to precisely which situations give rise to a constructive trust, though there are certain general categories of cases in which it is agreed that a constructive trust does arise". One of these

is to correct fraudulent or disloyal conduct.

24 M.M. Litman, “The Emergence of Unjust Enrichment as a Cause of Action and the Remedy of Constructive Trust” (1988), 26 *Alta. L. Rev.* 407, at p. 414, sees unjust enrichment as a useful tool in rationalizing the traditional categories of constructive trust. Nevertheless he opines that it would be a “significant error” to simply ignore the traditional principles of constructive trust. He cites a number of Canadian cases subsequent to *Pettkus v. Becker*, *supra*, which impose constructive trusts for wrongful acquisition of property, even in the absence of unjust enrichment and correlative deprivation, and concludes that the constructive trust “cannot always be explained by the unjust enrichment model of constructive trust” (p. 416). In sum, the old English law remains part of contemporary Canadian law and guides its development. As La Forest J.A. (as he then was) states in *White v. Central Trust Co.* (1984), 17 E.T.R. 78 (N.B.C.A.), at p. 90, cited by Litman, *supra*, the courts “will not venture far onto an uncharted sea when they can administer justice from a safe berth”.

25 I conclude that the law of constructive trust in the common law provinces of Canada embraces the situations in which English courts of equity traditionally found a constructive trust as well as the situations of unjust enrichment recognized in recent Canadian jurisprudence.

[53] McLachlin J. then reviewed, by way of reference to case authorities and learned articles and texts on the subject, the various principles that have been proposed to unify the situations in which the English law has found a constructive trust. Based on her review, McLachlin J. said:

34 It thus emerges that a constructive trust may be imposed where good conscience so requires. The inquiry into good conscience is informed by the situations where constructive trusts have been recognized in the past. It is also informed by the dual reasons for which constructive trusts have traditionally been imposed: to do justice between the parties and to maintain the integrity of institutions dependent on trust-like relationships. Finally, it is informed by the absence of an indication that a constructive trust would have an unfair or unjust effect on the defendant or third parties, matters which equity has always taken into account. Equitable remedies are flexible; their award is based on what is just in all the circumstances of the case.

[54] It is clear that McLachlin J. considered good conscience to be the common unifying concept in which a constructive trust may be found. In that regard, she said:

35 Good conscience as a common concept unifying the various instances in which a constructive trust may be found has the disadvantage of being very general. But any concept capable of embracing the diverse circumstances in which a constructive trust may be imposed must, of necessity, be general. Particularity is found in the situations in which judges in the past have found constructive trusts. A judge faced with a claim for a constructive trust will have regard not merely to what might seem “fair” in a general sense, but to other situations where courts have found a constructive trust. The goal is but a reasoned, incremental development of the law on a case-by-case basis.

[55] As to whether good conscience requires the imposition of a constructive trust, McLachlin J. stated:

36 The situations which the judge may consider in deciding whether good conscience requires imposition of a constructive trust may be seen as falling into two general categories. The first category concerns property obtained by a wrongful act of the defendant, notably breach of fiduciary obligation or breach of duty of loyalty. The traditional English institutional trusts largely fall under but may not exhaust (at least in Canada) this category. The second category concerns situations where the defendant has not acted wrongfully in obtaining the property, but where he would be unjustly enriched to the plaintiff's detriment by being permitted to keep the property for himself. The two categories are not mutually exclusive. Often wrongful acquisition of property will be associated with unjust enrichment, and vice versa. However, either situation alone may be sufficient to justify imposition of a constructive trust.

[56] Although the Supreme Court did not have to determine in ***Soulos*** whether a restitutionary remedy would lie against a person who is a stranger to the trust relationship but who knowingly participated in the perpetration of the fraud, McLachlin J. did refer to ***Binstead*** as an example of the application of the unifying concept of good conscience:

> 42 Again, in *MacMillan Bloedel Ltd. v. Binstead* (1983), 14 E.T.R. 269 (B.C.S.C.), a constructive trust was imposed on individuals who knowingly participated in a breach of fiduciary duty despite a finding that unjust enrichment would not warrant the imposition of a trust because the plaintiff company could not be said to have suffered a loss or deprivation since its own policy precluded it from receiving the profits. Dohm J. (as he then was) stated that the constructive trust was required "not to balance the equities but to ensure that trustees and fiduciaries remain faithful and that those who assist them in the breaches of their duty are called to account" (p. 302).

[57] In the concluding portion of her analysis, McLachlin J. stated:

> 43 I conclude that in Canada, under the broad umbrella of good conscience, constructive trusts are recognized both for wrongful acts like fraud and breach of duty of loyalty, as well as to remedy unjust enrichment and corresponding deprivation. While cases often involve both a wrongful act and unjust enrichment, constructive trusts may be imposed on either ground: where there is a wrongful act but no unjust enrichment and corresponding deprivation; or where there is an unconscionable unjust enrichment in the absence of a wrongful act, as in *Pettkus v. Becker*, *supra*. Within these two broad categories, there is room for the law of constructive trust to develop and for greater precision to be attained, as time and experience may dictate.
>
> 44 The process suggested is aptly summarized by McClean, *supra*, at pp. 169-70*:*
>
> > The law [of constructive trust] may now be at a stage where it can distill from the specific examples a few general principles, and then, by analogy to the specific examples and within the ambit of the general principle, create new heads of liability. That, it is suggested, is not asking the courts to embark on too dangerous a task, or indeed on a novel task. In large measure it is the way that the common law has always developed.

[58] In the case before us, the learned trial judge did not refer in his reasons to either ***Soulos*** or ***Binstead*** and it appears that those authorities were not drawn to his attention.

[59] In my opinion, the judge's conclusion that a constructive trust claim could not be maintained with respect to Mr. Chiu's profit on the bribery scheme does not accord with the broader approach to constructive trust that McLachlin J. explored in ***Soulos*** or the reasons of Dohm J. for granting the remedies he did against those who benefited from their knowing participation in the breach of trust in ***Binstead***. The evidence is clear that Mr. Chiu knowingly assisted Ms. Diaz's breach of trust. Throughout the period when bribes were being taken by Ms. Diaz in breach of her duty to ICBC, Mr. Chiu solicited persons who were prepared to engage in bribery to fraudulently obtain DLs. Mr. Chiu collected and set aside the bribe money for Ms. Diaz. Mr. Chiu was the one who provided instructions to his driving school "clients" about which licensing office to go to and described Ms. Diaz or provided a picture of her to ensure that "for the right money", his clients could obtain fraudulent DLs. The participation of both Mr. Chiu and Ms. Diaz was essential to the successful operation of the bribery scheme.

[60] In this case, there is a clear causal connection between the wrongdoing to ICBC, the public licensing agency and public liability insurer, and the benefits gained in the bribery scheme by Mr. Chiu and Ms. Diaz. There is no issue that equity forbids Ms. Diaz from profiting from her breach of public duty as an ICBC employee responsible for issuing DLs. The need to maintain a high standard of conduct in relation to the duties of such employees is obvious.

[61] Just as it would be inequitable to permit Ms. Diaz to retain the benefits she derived from her breach of trust, I am of the view that it would be equally inequitable for Mr. Chiu, who knowingly took part in the breach, to be able retain the benefits he derived from his participation in the fraudulent scheme. If deterrence is one of the purposes

of the rule of equity that forbids profiting from a breach of trust, then those who knowingly assist in the bribery must also be deterred by removing any profit they derive as a result of their knowing participation. It therefore seems to me that, in principle, Mr. Chiu's knowing participation in Ms. Diaz's breach of trust provides the foundation for the constructive trust remedies ICBC seeks in relation to all of the funds Mr. Chiu and Dragon received in furtherance of the bribery scheme.

[62] In ***Soulos***, the Supreme Court expressly rejected the proposition that constructive trusts are based exclusively on unjust enrichment as articulated in ***Pettkus v. Becker***, at para. 17, quoted above. In this case, the trial judge rejected the constructive trust remedy on the ground that ICBC had no "corresponding deprivation" to Mr. Chiu's unjust enrichment.

[63] In my opinion, the trial judge erred in law in rejecting ICBC's argument that the monies paid to Mr. Chui as part of the bribery scheme did not provide a foundation for a claim in unjust enrichment against him. While Mr. Chui did not stand in a trust relationship with ICBC, he knowingly participated in and benefited from the bribery scheme, the effect of which was to undermine the provisions of s. 25 of the ***Motor Vehicle Act*** which provides for licensing of applicants for drivers' licences in this province. His participation in the bribery scheme not only exposed the public to danger but also exposed ICBC to a substantial risk of loss through accidents caused by unqualified drivers.

IV. Conclusion

[64] In summary, ICBC wishes to have the opportunity to advance, as an alternative to compensatory damages, its alternative claim in equity and to elect the one it finds the more advantageous once the jury verdict is known. The impetus for wishing that choice, which has also prompted this appeal, is that ICBC fears that, absent constructive trust, it will be without any effective remedy. For the reasons given, I am of the view that there is a proper foundation for a constructive trust to be advanced in this case.

[65] Accordingly, I would allow the appeal, set aside the order dismissing the action as against Ms. Lo and remit the issues not decided by the jury to the trial court for determination. ICBC is entitled to its costs of the appeal against Ms. Lo.

"The Honourable Madam Justice Rowles"

I agree:

"The Honourable Madam Justice Ryan"

I agree:

"The Honourable Mr. Justice Mackenzie"

Appendix

25 (1) The applicant for a driver's licence and for a driver's certificate must sign an application in the form

required by the Insurance Corporation of British Columbia, complete an evaluation in the form required by the superintendent and deliver the application and the completed evaluation form to

(a) the corporation,

(b) a government agent, or

(c) a person authorized in writing by the corporation for the purposes of this section,

accompanied by the payment of the prescribed fee and insurance premium for the driver's certificate.

(1.1) For the purposes of subsection (1), an applicant must provide the following:

(a) a residential address;

(b) documentary proof satisfactory to the Insurance Corporation of British Columbia of the applicant's identity.

(2) For the purposes of subsection (1) the Insurance Corporation of British Columbia and its employees are authorized to receive the evaluations and deal with them in accordance with the superintendent's instructions.

(2.1) For the purposes of making an application for a driver's licence under subsection (1), the Insurance Corporation of British Columbia may require the applicant for a driver's licence and for a driver's certificate to provide information and a signature in person, and in that event

(a) the corporation must enter the information electronically into a database for storage,

(b) the corporation must reproduce the information that has been stored in the database in a record that is in paper format and must give that paper record to the applicant to verify the accuracy of the entered information,

(c) if the applicant is satisfied that the information in the record is accurate, the applicant must

(i) sign the paper record, and

(ii) supply a signature by a means required by the corporation that allows the corporation to store the signature electronically in a database,

(d) a signature provided under paragraph (c) is evidence that the applicant who provided the signature also provided the information that is stored under paragraph (a), and

(e) a signature stored under this section may be used only

(i) as evidence under paragraph (d),

(ii) for the purpose of applying it to the driver's licence of the applicant, and

(iii) to compare signatures under sections 90.4 (3) and 95 (3).

(3) For the purpose of determining an applicant's driving experience, driving skills, qualifications, fitness and ability to drive and operate any category of motor vehicle designated for that class of driver's licence for which the application is made, the applicant must

(a) submit to one or more, as the Insurance Corporation of British Columbia may specify, of the following: a knowledge test; a road test; a road signs and signals test,

(b) submit to one or more, as the superintendent may specify, of the following: a vision test; medical examinations; other examinations or tests, other than as set out in paragraph (a),

(b.1) provide the corporation with information required to measure the applicant's driving experience, driving skills and qualifications,

(c) provide the superintendent with other information he or she considers necessary to allow the superintendent to carry out his or her powers, duties and functions,

(d) submit to having his or her picture taken, and

(e) if required by or on behalf of the corporation, identify himself or herself to the corporation's satisfaction.

(4) If the applicant for a driver's licence has at any time before making the application held a driver's licence issued under this Act or in another jurisdiction, the applicant must with the application surrender the last driver's licence or duplicate of it held by him or her, unless the Insurance Corporation of British Columbia on cause shown to the corporation's satisfaction dispenses with its production.

(5) At the same time that he or she has a driver's licence issued under this Act, a person must not have a driver's licence issued by another jurisdiction or have another driver's licence previously issued under this Act.

(6) An applicant for a driver's licence who when requested to do so fails to demonstrate his or her ability to read and understand warning and other road signs and signals in use on a highway to the satisfaction of the Insurance Corporation of British Columbia must not be granted a licence under this Act.

(7) On receipt, in the respective forms required under subsection (1), of the application and the evaluation, and on being satisfied of the truth of the facts stated in the application, and that the prescribed fees and insurance premium have been paid, and, subject to subsection (9), on being satisfied as to the driving experience, driving skills, qualifications, fitness and ability of the applicant to drive and operate motor vehicles of the relevant category, the corporation must cause to be issued to the applicant a numbered driver's licence in the form established by the corporation authorizing the applicant to drive or operate a motor vehicle of the category designated for the class of licence applied for and a certificate of insurance.

(8) The Lieutenant Governor in Council may make regulations respecting the issuance of a driver's licence to a person who is learning to drive one or more categories of motor vehicles, prescribing

(a) the circumstances in which the corporation may exercise the corporation's discretion to issue the licence,

(b) the duration of the licence,

(c) requirements additional to any restriction to which the licence is subject under subsection (10), and

(d) a minimum waiting period before holders of those licences may submit themselves to examinations under this section with respect to their ability to drive or operate a motor vehicle.

(8.1) For the purposes of subsection (8) (d), the Insurance Corporation of British Columbia may

(a) approve driver education courses given by a driver training school licensed under the regulations, and

(b) reduce the minimum waiting period prescribed under that subsection for persons who have successfully completed a driver education course approved under paragraph (a).

(9) In issuing any driver's licence or driver's certificate, the corporation, for those aspects of fitness and ability examined, tested or reviewed by the superintendent, must abide by the superintendent's instructions.

(10) For a driver's licence of any class of persons, the Lieutenant Governor in Council, by regulation with respect to a class of persons, may

(a) restrict the hours of the day and the days of the week during which a class of persons may drive a motor vehicle,

(b) restrict the area in which a class of persons may drive a motor vehicle,

(c) restrict the motor vehicle or class of motor vehicle that a class of persons may drive,

(d) restrict the number of passengers that the person may carry in a motor vehicle driven by the person,

(e) impose other restrictions on or add any conditions to the driver's licence of a class of persons that the Lieutenant Governor in Council considers necessary for the operation of a motor vehicle by a member of that class,

(f) establish the length of time or the method of determining the length of time during which a restriction imposed on or a condition added to the driver's licence under this subsection is to apply, and

(g) empower the superintendent or the Insurance Corporation of British Columbia, in prescribed circumstances or for prescribed purposes, to exempt unconditionally or on conditions the superintendent or the corporation, as the case may be, considers desirable, a member of the class of persons from any restriction imposed on or condition added to the driver's licence of that class of persons.

(10.1) Without limiting subsection (10), the Lieutenant Governor in Council may, by regulation, impose a condition on a class of driver's licence, or on the drivers' licences of persons who hold a licence to drive a motor vehicle of a specified category, that the holder of the licence must not operate a motor vehicle, or category of motor vehicle, while having alcohol in his or her body.

(10.2) The condition imposed by a regulation under subsection (10.1) is applicable to and conclusively deemed to be part of the driver's licence of the person on whom the condition is imposed, whether the licence is issued before or after the coming into force of the regulation.

(11) Requirements, conditions or restrictions that the Lieutenant Governor in Council prescribes under subsection (8) or (10) for a driver's licence are applicable to and are conclusively deemed to be part of the driver's licence, whether issued before or after the coming into force of the regulation prescribing the requirements, conditions or restrictions.

(12) Despite the regulations, the superintendent may require a statement in, endorsement on, or attachment to any person's driver's licence

(a) restricting the hours of the day and the days of the week during which the person may drive a motor vehicle,

(b) restricting the area in which the person may drive a motor vehicle,

(c) restricting the motor vehicle or class of motor vehicle that the person may drive,

(d) restricting the number of passengers that the person may carry in a motor vehicle driven by the person, and

(e) imposing other restrictions on or adding any conditions to the driver's licence of the person that the superintendent considers necessary for the operation of a motor vehicle by the person.

(13) The Insurance Corporation of British Columbia must ensure that a person's driver's licence reflects any restrictions and conditions imposed in respect of that licence by means of the appropriate statement in,

endorsement on or attachment to that licence, in accordance with the requirements of the superintendent.

(14) Despite the regulations, the Insurance Corporation of British Columbia, by statement in, endorsement on, or attachment to any person's driver's licence, may, as a result of a knowledge test, a road test or a road signs and signals test,

(a) restrict the area in which the person may drive a motor vehicle,

(b) restrict the motor vehicle or class of motor vehicle that the person may drive,

(c) restrict the number of passengers that the person may carry in a motor vehicle driven by the person, and

(d) impose other restrictions on the driver's licence of the person that the corporation considers necessary for the operation of a motor vehicle by the person.

(15) A person who violates a requirement, restriction or condition prescribed under this section in respect of the person's driver's licence or who violates a restriction or condition stated in, endorsed on or attached to a driver's licence issued to the person under this section commits an offence.