

In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141
(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

KELSIE DAWN LANG
(the “Former Licensee”)

ORDER

As Council made an intended decision on January 25, 2022, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated February 16, 2022; and

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

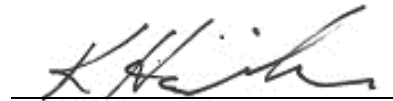
Under authority of sections 231, 236, and 241.1 of the Act, Council orders that:

1. Council will not consider an application for any insurance licence from the Former Licensee for a period of two years, commencing on March 15, 2022 and ending at midnight on March 15, 2024;
2. The Former Licensee is required to complete the following courses, or equivalent courses as acceptable to Council, prior to being licensed in the future:
 - a) the Insurance Institute’s “Ethics and the Insurance Professional” course;
 - b) the Council Rules Course, currently available through the Insurance Brokers Association of British Columbia; and
 - c) the Autoplan Basics program; and

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3. The Former Licensee is assessed Council's investigation costs of \$1,687.50, to be paid by June 13, 2022, and which must be paid in full prior to the Former Licensee being licensed in the future.

This order takes effect on the **15th day of March, 2022.**



*For Janet Sinclair, Executive Director
Insurance Council of British Columbia*

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")
respecting
KELSIE DAWN LANG
(the "Former Licensee")

1. Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Former Licensee breached the Council Rules and/or the Code of Conduct (the "Code") when she misappropriated a cancelled Insurance Corporation of British Columbia ("ICBC") licence decal and attached it to the licence plate of her personal vehicle.
2. On November 30, 2021, as part of Council's investigation, a Review Committee (the "Committee") comprised of Council members met virtually to discuss the investigation. A copy of the investigation report was forwarded to the Former Licensee and the Former Licensee was given an opportunity to make submissions and provide further information. Despite being given advance notice, the Former Licensee did not attend the meeting.
3. Having reviewed the investigation materials and having discussed the matter at the November 30, 2021 meeting, the Committee prepared a report for Council which was reviewed by Council at its January 25, 2022 meeting. Council determined that the matter should be disposed of in the manner set out below.

PROCESS

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

FACTS

Background

5. The Former Licensee became licensed with Council as a Level 1 Salesperson on March 16, 2017. Her licence was terminated on August 4, 2021.

6. On February 23, 2021, Council received an email from an agency where she previously had authority to represent (the “Agency”), advising that ICBC had suspended the Former Licensee for misappropriating a cancelled decal. The Agency became aware of the matter in December 2019 after a staff member at the Agency discovered that the Former Licensee had attached a cancelled decal to the licence plate of her personal vehicle. The Former Licensee’s primary job at the Agency was to process ICBC-related transactions.
7. In the Agency’s submissions, it explained that a staff member at the Agency was searching for a missing licence plate decal but could not locate it. The staff member suspected that the Former Licensee might have taken the decal for personal use. Subsequently, the staff member located the Former Licensee’s vehicle at a public parking lot and took a photo of the Former Licensee’s licence plate. An internal inventory search connected the decal on the Former Licensee’s licence plate to a cancelled plate. The transaction was processed by the Former Licensee before she resigned from the Agency and the plate was returned to ICBC without the decal attached to it. The Agency provided a copy of the photo of the Former Licensee’s licence plate to Council staff.
8. The Agency reported the matter to ICBC for further investigation. By February 2021, ICBC had concluded its investigation and ordered a one-year suspension against the Former Licensee, which prohibited her from conducting ICBC Autoplan transactions.
9. The Former Licensee has two previous disciplinary records with Council. On July 11, 2019, Council issued an order against the Former Licensee for failing to complete the Council Rules Course before completing her 2018 annual filing. Council determined that the Former Licensee was aware of the requirement prior to filing, as multiple reminders were sent out. As a result, the Former Licensee was fined \$500. On October 4, 2019, Council issued an order reprimanding the Former Licensee for failing to disclose a conviction of a *Criminal Code* offence. In June 2018, the Former Licensee was charged with committing theft under \$5,000; she was convicted in August 2018 and ordered to pay a victim surcharge of \$100 and complete community service and counselling as per her probation officer.

The Former Licensee’s Submissions

10. The Former Licensee admitted to printing a copy of the decal and attaching it to her vehicle and expressed remorse for her actions. She explained that, at the time, she was going through personal and financial difficulties.
11. ICBC provided its investigation file to Council staff. The investigation file indicates that ICBC conducted an interview with the Former Licensee. According to the interview

transcript, the Former Licensee maintained that she did not take the original decal and did not know its whereabouts. She claimed that she took a photo of the decal, printed it, and attached the printed version to her licence plate. The Former Licensee acknowledged that she made a poor judgment call and that she did not disclose this activity to her previous and current employers.

12. The Former Licensee advised Council staff that she would be moving back to Alberta and would no longer be practicing in the insurance industry. She again expressed remorse and regret for her actions.

ANALYSIS

13. Council considered the investigation report, the Committee's report to Council, and the Former Licensee's submissions and determined that the Former Licensee's conduct regarding the misappropriation of the ICBC licence decal amounted to clear breaches of section 3 ("Trustworthiness"), section 4 ("Good Faith"), section 5 ("Competence"), section 6 ("Financial Reliability"), section 8 ("Usual Practice: Dealing with Insurers") and section 10 ("Usual Practice: Dealing with the Public") of the Code.
14. In respect of the Council Rules, Council determined that the Former Licensee breached Council Rule 7(3) as she did not notify Council of her ICBC suspension. The Agency reported the ICBC suspension to Council. Further, former licensees are required by Council Rule 7(8) to comply with the Code.
15. Council found that the Former Licensee's decision to drive her vehicle without insurance was a contravention of the competent conduct that was required under the Code. The Former Licensee failed to handle and account for the licence decal when it was her responsibility to return the decal to ICBC. In addition, the Former Licensee claimed that she was not familiar with the Code, which Council attributed to an overall lack of competence.
16. Council found that the Former Licensee's conduct did not promote integrity and confidence in the insurance industry. She placed the public at risk by driving an uninsured vehicle and would have inflicted harm should she be involved in a car accident.
17. The Former Licensee chose not to attend the Review Committee meeting and therefore Council was unable to further hear from the Former Licensee with respect to the issues facing her. While Council noted that it was not drawing an adverse inference for the Former Licensee's failure to attend, it would have preferred to have heard from the Former Licensee as to why she acted in the way she did. Council encourages licensees to

play an active part in Council's investigation by cooperating with Council staff and attending Review Committee meetings.

18. Council took several aggravating factors into consideration. For instance, Council was troubled that the Former Licensee has a history of disciplinary action. In particular, Council was concerned that this is the Former Licensee's second incident of theft and that she may repeat her misconduct. Council found that the Former Licensee's misconduct illustrated a flagrant disregard for the laws governing the conduct required of a licensee and that she demonstrated a clear intention to misappropriate and attach the licence decal to the licence plate of her vehicle. In addition, Council was perplexed that the Former Licensee continued to claim that the subject decal was a photocopy, in the presence of overwhelming evidence proving the contrary.
19. Council noted that the Former Licensee did not demonstrate a clear ability to self-correct as the matter was brought forward by the Agency. Also, since she was driving uninsured, she derived a financial benefit by not paying premiums to ICBC. Lastly, Council considered the public harm she would have inflicted had she been involved in a car accident while driving uninsured.
20. In terms of mitigating factors, Council accepted that the Former Licensee acknowledged her misconduct and expressed remorse. Council also noted that ICBC had suspended the Former Licensee. In addition, Council considered that the Former Licensee may not have received adequate supervision from her employers.
21. Council is not bound by precedent to follow the outcomes from prior decisions, but similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case.
22. With respect to the Former Licensee's misconduct, Council considered the cases of *Ping Hong (Gary) Chow* (October 2020), *April Dawn Fraser* (October 2011) and *Jian Bo Yang* (October 2010).
23. *Ping Hong (Gary) Chow* (October 2020) concerned a former Level 1 Salesperson who removed a set of cancelled licence plates from the office of the agency he was authorized to represent and affixed them to a motor vehicle he had recently purchased. The former licensee accessed his own account to process a change of the vehicle's rate class, removed optional coverages, signed the Owner's Certificate of Insurance and Vehicle Registration as both customer and agent, using different signatures in each instance. He also entered another licensee's surname as his producer code prior to processing this transaction. ICBC prohibited the former licensee from conducting Autoplan business for at least one year. The former licensee was forthright about having committed

misconduct. Council also considered that the former licensee did not drive the vehicle, but instead left it parked on a public street for the duration of the material time. However, Council noted that the former licensee had a prior discipline history with Council and that the former licensee was relatively experienced at the time of misconduct, having been licensed for over twenty years. The former licensee was prohibited from being licensed for a period of two years and assessed investigation costs of \$1,662.50. In addition, the former licensee was required to complete the Council Rules Course, Autoplan Basics for Brokers Course, and an ethics course approved by Council prior to being licensed in the future.

24. *April Dawn Fraser* (October 2011) concerned a former Level 1 Salesperson who had a significant outstanding debt that she was required to pay ICBC before renewing her Autoplan insurance, but she lacked the funds to pay. The former licensee drove her vehicle on several occasions after her insurance expired in early June 2009. In August 2009, she took an insurance decal from her agency's office and affixed it to her vehicle, without registering the decal or renewing her insurance. She was pulled over by the police five days later and ticketed \$598 for driving without insurance. At the time of misconduct, the former licensee had approximately three years of licensed experience. Council determined that the former licensee had abused her position as a licensee by misusing an ICBC decal for personal benefit, describing her conduct as "fundamentally contrary to the principles of trustworthiness and good faith." Council also noted that the former licensee's use of the decal was "akin to theft," and that her actions had put the public at risk. In addition, there was no evidence to suggest that the former licensee intended to rehabilitate and reform her conduct. The former licensee was prohibited from being licensed for a minimum period of two years and assessed investigation costs of \$1,237.50.
25. *Jian Bo Yang* (October 2010) concerned a licensee with both a Level 2 general insurance agent ("Level 2 Agent") licence and a life and accident and sickness insurance agent ("Life Agent") licence who, after completing a licence plate substitution transaction for a customer, misused the customer's surrendered insurance decal by affixing it to the licence plate of one of his own vehicles. At the time of misconduct, the licensee had approximately four years of licensed experience. The licensee proceeded to drive the vehicle for approximately seven months without valid insurance before being pulled over by the police. Council found that the licensee had failed to act in a trustworthy manner and in good faith by misusing an ICBC decal that was obtained during his insurance business to conceal that he was driving a personal vehicle without valid insurance. Council stated that the licensee had demonstrated a lack of appreciation for the severity of the potential consequences, and had placed the public at risk; however, Council appreciated the licensee's intention to learn from his experience and remain in the

industry, and that the licensee was not subject to any discipline by Council in the past. Further, the licensee had already received a one-month suspension without pay from the agency and a \$600 violation ticket from the police. The licensee had both his Level 2 Agent and Life Agent licences suspended for six months, with a stipulation that he must be a Level 1 Salesperson for a twelve-month period after having his general licence restored. He was also fined \$1,000, assessed investigation costs of \$1,237.50, and required to complete the Autoplan Basics for Brokers Course.

26. Council determined that *Fraser* was more instructive as the facts were similar to the subject case. However, as opposed to *Fraser*, the Former Licensee has a previous record of discipline with Council. Further, the Former Licensee drove her vehicle with the misappropriated decal for several months. In *Fraser*, the former licensee drove her vehicle for five days before being apprehended by the police.
27. Council has determined that investigation costs should be assessed against the Former Licensee. As a self-funding regulator, the cost to investigate the misconduct of a licensee or former licensee should not be borne by members of the insurance industry unaffiliated with the investigation. This is particularly true when the evidence is clear that the actions of a licensee or former licensee have amounted to misconduct.

INTENDED DECISION

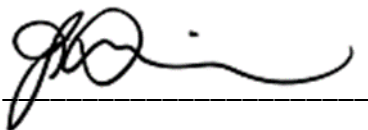
28. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:
- (a) Not consider an application for any insurance licence from the Former Licensee for a period of two years, commencing on the date of Council's order;
 - (b) Require the Former Licensee to complete the following courses, or equivalent courses as acceptable to Council, prior to being licensed in the future:
 - (i) the Insurance Institute's "Ethics and the Insurance Professional" course;
 - (ii) the Council Rules Course, currently available through the Insurance Brokers Association of British Columbia; and
 - (iii) the Autoplan Basics program; and
 - (c) Assess the Former Licensee Council's investigation costs of \$1,687.50, to be paid within 90 days of the date of Council's order, and which must be paid in full prior to the Former Licensee being licensed in the future.

RIGHT TO A HEARING

29. If the Former Licensee wishes to dispute Council’s findings or its intended decision, the Former Licensee may have legal representation and present a case at a hearing before Council. **Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Former Licensee must give notice to Council by delivering to its office written notice of this intention within 14 days of receiving this intended decision.** A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director. **If the Former Licensee does not request a hearing within 14 days of receiving the intended decision, the intended decision of Council will take effect.**
30. Even if this decision is accepted by the Former Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority (“BCFSA”) still has a right to appeal to the Financial Services Tribunal (“FST”). The BCFSA has 30 days to file a Notice of Appeal, once Council’s decision takes effect. For more information respecting appeals to the FST, please visit their website at www.fst.gov.bc.ca or visit the guide to appeals published on their website at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

Dated in Vancouver, British Columbia, on the 16th day of February, 2022.

For the Insurance Council of British Columbia

A handwritten signature in black ink, appearing to read 'Janet Sinclair', written over a horizontal line.

Janet Sinclair
Executive Director