

In the Matter of the

**FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141**

(the “Act”)

and the

**INSURANCE COUNCIL OF BRITISH COLUMBIA**

(“Council”)

and

**KELEY LOW**

(the “Former Licensee”)

**ORDER**

As Council made an intended decision on October 31, 2023, 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 December 6, 2023 and as the Former Licensee cancelled their Accident and Sickness agent licence with Council on December 8, 2023; and

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

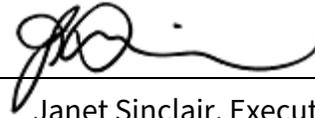
Under authority of sections 231, 236, and 241.1 of the Act, Council orders that:

- 1) The Former Licensee is fined \$3,000, to be paid by May 6, 2024, and which must be paid in full prior to the Former Licensee being licensed in the future;
- 2) The Former Licensee is required to complete the Council Rules Course for life and/or accident and sickness insurance or equivalent course, as acceptable to Council by May 6, 2024 and which must be completed prior to being licensed in the future;

Order  
Keley Low  
COM-2021-00543 / LIC-2016-0000874-R01  
February 6, 2024  
Page 2 of 2

- 3) The Former Licensee is assessed Council investigation costs of \$625, to be paid by May 6, 2024, and which must be paid prior to being licensed in the future.

This order takes effect on the **6<sup>th</sup> day of February, 2024**



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Janet Sinclair, Executive Director  
Insurance Council of British Columbia

## **INTENDED DECISION**

of the

### **INSURANCE COUNCIL OF BRITISH COLUMBIA**

(“Council”)

respecting

### **KELEY LOW**

(the “Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee had acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct.
2. An investigation report prepared by Council staff (the “Investigation Report”) indicated the Licensee failed to complete required continuing education credits (“CE”) for the 2018/2019, 2019/2020, and 2020/2021 licence periods (the “Licence Periods”).
3. On September 27, 2023, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with the Licensee via video conference to discuss the investigation. The Investigation Report was distributed to the Committee and the Licensee prior to the meeting. A discussion of the Investigation Report took place at the meeting, and the Licensee was given an opportunity to make submissions and provide further information.
4. Having reviewed the investigation materials, the Committee prepared a report for Council. The Committee’s report, along with the Investigation Report, were reviewed by Council at its October 31, 2023, meeting, where it was determined the matter should be disposed of in the manner set out below.

## **PROCESS**

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

## **FACTS**

6. The Licensee first became licensed with Council as an Accident and Sickness agent (“A&S Agent”) on September 16, 2016. At the time, the Licensee held an authority to represent (“ATR”) one agency (the “Agency”), which she held until November 17, 2017. The Licensee’s A&S Agent licence was inactive until February 2, 2022. The Licensee’s A&S Agent licence was active at the time of the Committee meeting and Council’s meeting.
7. At the time of the Committee meeting, the Licensee was under the supervision of one supervisor (the “Supervisor”) and held an ATR with a different agency (the “Second Agency”).
8. During the 2021 annual licence renewal, the Licensee left the mandatory disclosures and continuing education (“CE”) blank. The Licensee was then provided with an opportunity to resubmit her annual practice declaration when the Licensee disclosed that she had not met her CE requirements.
9. The Licensee was subsequently audited for the Licence Periods. Council’s investigation initially indicated the Licensee completed 2 of the 45 CE total credits required for the Licence Periods.
10. During Council’s investigation, the Licensee provided Council staff with further CE certificates. While at the time of the audit, the Licensee had a total shortage of 43 CE credits for the three Licence Periods, the Licensee provided additional CE credits by the time of the Review Committee meeting. However, some CE credits were duplicates and as a result, were not considered by Council as additional CE credits (the “Make-Up Credits”).
11. The Make-Up Credits provided by the Licensee reduced her CE shortage from 43 to 15 credits.
12. The Licensee explained to the Committee that she was working as an A&S Agent part-time while recovering from a serious injury. As the Licensee was only working part-time, she had not written any insurance applications, instead referring the insurance business to her Supervisor.
13. When asked whether the Licensee intended to continue working in the insurance industry, the Licensee replied that would depend on the outcome of this discipline process.
14. The Licensee acknowledged having repeated CE courses and stated that the Licensee did so because she found repeating the courses useful to better understand the content.

15. The Licensee advised the Committee members that, going forward, she has learned to track her CE credits in an Excel spreadsheet, which she would use to monitor her requirements and avoid future duplication.

## **ANALYSIS**

16. Council found that the Licensee failed to obtain the required CE credits for the Licence Periods, contrary to Council Rules 7(5) "*meeting requirements of the CE program*" and 7(8) "complying with Council's Code of Conduct", and Code of Conduct sections 5 ("Competence") and 13 ("Compliance with governing legislation and Council Rules").
17. Council determined the Make-Up Credits did not alter the fact the Licensee breached the Council Rules and Code of Conduct, as the Licensee did not complete the required CE credits for each licence year audited. However, Council did consider the Make-Up credits to be mitigating, as discussed further below.

## **PRECEDENTS**

18. Prior to making its intended decision, Council took several past decisions regarding failure to complete CE into consideration as precedents, including the following:
19. [Annie Chu](#) (May 1, 2018): involved a licensee who failed to meet the CE requirements for two licensing years for both her life and her general licence. Council concluded that her failure to complete the credits showed a disregard for Council Rules and fined the licensee \$1,000 for each licensing year and each licence for which she had failed to meet the CE requirements. The licensee was also required to complete the Council Rules Course and make up for the missing CE credits.
20. [William Charles Brash](#) (March 8, 2022): A life agent's licence had been inactive at the time he called Council for assistance completing his annual filing declaration. The licensee had been unaware that despite his licence being inactive, he was nevertheless required to complete CE, and advised Council that he had not completed the CE required. Subsequently, the licensee completed 60 CE credits. The licensee completed an additional nine courses, though they were ultimately ineligible to be used as CE credits. Council found the licensee had breached his CE requirements for four licence periods, however declined to assess a penalty of \$1,000 for each licence year (\$4,000 total). Council finds the licensee's efforts to make up the deficient CE credits were mitigating, and applied a global \$1,000

penalty, in addition to a requirement to complete the Council Rules Course and pay investigation costs.

21. Council recognized, having reviewed the precedents, that the approach it has adopted for disciplining licensees who have breached Council Rules pertaining to CE requirements is to assess a “baseline” fine of \$1,000 for each breach, as well as require the licensee to complete the Council Rules Course. In some cases, mitigating factors are identified that support a lowering of the fine.

#### **MITIGATING AND AGGRAVATING FACTORS**

22. Council found the Licensee’s efforts to remedy the breach and proactively replace the CE credits to be mitigating, especially given the effort required while the Licensee was recovering from her injury. Council also found the Licensee’s breaches to be the result of inexperience in the insurance industry, rather than a deliberate omission.
23. Council found that the Licensee’s failure to obtain the required CE for multiple licence periods is aggravating. In the Committee’s opinion, the fact the conduct persisted over three licence periods demonstrates it was not an isolated event. Further, Council found the Licensee’s responses to the Committee to be aggravating, as she suggested she would prefer to leave the industry rather than face disciplinary action.
24. Weighing the mitigating factors and aggravating factors listed above, Council determined the aggravating factors slightly outweigh the mitigating factors. However, taken as a whole, the Council determined the aggravating factors are not sufficient to displace the precedents establishing a baseline \$1,000 fine per breach of CE rules.

#### **CONCLUSIONS**

25. Council considered a fine of \$3,000 to be appropriate, representing \$1,000 for each licence period in which the Licensee had a CE shortfall.
26. Council also determined that the Licensee would benefit from completing the Council Rules Course, in order to better familiarize herself with the obligations that accompany licensure.
27. With respect to investigation costs, Council determined that these costs should be assessed to the Licensee. As a self-funded regulatory body, Council looks to licensees who have engaged in misconduct to bear the costs of their discipline proceedings, so that those costs are not otherwise

borne by British Columbia's licensees in general. Council has not identified any reason for not applying this principle in the circumstances.

#### **INTENDED DECISION**

28. Pursuant to sections 231, 236, and 24.1 of the Act, Council made the following intended decision to:
- a. Fine the Licensee \$3,000, to be paid within 90 days of Council's order;
  - b. Require the Licensee to complete the Council Rules Course for life and/or accident and sickness insurance within 90 days of Council's order;
  - c. Assess the Licensee with Council's investigation costs of \$625, to be paid within 90 days of Council's order; and
  - d. Impose a condition on the Licensee's Accident and Sickness agent licence that failure to complete the Council Rules Course and to pay the fine and investigation costs by their deadlines will result in the automatic suspension of the Licensee's licence, and the Licensee will not be permitted to complete the Licensee's 2025 annual licence renewal until such time as the Licensee has completed the Council Rules Course and paid the fine and investigation costs in full.
29. Subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

#### **ADDITIONAL INFORMATION REGARDING FINES/COSTS**

30. Council may take action or seek legal remedies against the Licensee to collect outstanding fines and/or costs, should these not be paid by the 90 day deadline.

#### **RIGHT TO A HEARING**

31. If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case in a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee **must give notice to Council by delivering to its office written notice of this intention within fourteen (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 Licensee does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.**

32. Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority (“BCFSA”) still has a right of appeal to the Financial Services Tribunal (“FST”). The BCFSA has thirty (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 <https://www.bcfst.ca/> or visit the guide to appeals published on their website at <https://www.bcfst.ca/app/uploads/sites/832/2021/06/guidelines.pdf>.

Dated in Vancouver, British Columbia on the **6<sup>th</sup> day of December, 2023.**

For the Insurance Council of British Columbia



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Janet Sinclair  
Executive Director