

In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

WENDY CHUI PING KWAN
(the “Licensee”)

ORDER

As Council made an intended decision on June 14, 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 Licensee with written reasons and notice of the intended decision dated July 6, 2022; and


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

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

1. The Licensee’s general insurance licence is suspended for a period of one year, commencing on July 27, 2022, and ending at midnight on July 27, 2023;
2. The Licensee’s Level 2 general insurance agent licence will be downgraded to a Level 1 general insurance salesperson licence for a period of one year of active licensing, commencing at the end of the suspension period;
3. The Licensee is required to complete the following courses, or equivalent courses as acceptable to Council, by January 23, 2023:
 - a. The Insurance Institute’s “Ethics and the Insurance Professional” course;
 - b. The Council Rules Course for general insurance salespersons and agents; and

- c. The Autoplan Basics program;
4. The Licensee is assessed Council's investigation costs of \$2,312.50, to be paid by October 25, 2022;
 5. A condition is imposed on the Licensee's general insurance licence that requires the Licensee to complete the above-ordered courses and pay the above-ordered investigation costs in full prior to the licence suspension being lifted; and
 6. A condition is imposed on the Licensee's general insurance licence that the Licensee will not be permitted to complete the Licensee's 2024 annual licence renewal until such time as the above-ordered courses are completed and above-ordered investigation costs are paid in full.

This order takes effect on the **27th day of July, 2022.**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

WENDY CHUI PING KWAN

(the “Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee breached the Council Rules and/or the Code of Conduct (the “Code”) when she processed her own Insurance Corporation of British Columbia (“ICBC”) Autoplan transactions and misrepresented the principal operator of her personal vehicle on several ICBC policies.
2. On April 4, 2022, 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 Licensee and the Licensee was given an opportunity to make submissions and provide further information. Despite being given advance notice, the Licensee did not attend the meeting.
3. Having reviewed the investigation materials and having discussed the matter at the April 4, 2022 meeting, the Committee prepared a report for Council which was reviewed by Council at its June 14, 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 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

Background

5. The Licensee became licensed with Council as a level 1 general insurance salesperson (“Level 1 Salesperson”) on October 22, 1986 and became a level 2 general insurance agent

(“Level 2 Agent”) on March 8, 2000. The Licensee has held an authority to represent an agency (the “Agency”) since becoming licensed.

6. On March 19, 2021, ICBC advised Council that the Licensee had been prohibited from conducting ICBC Autoplan transactions for nine months, effective March 12, 2021.
7. On March 23, 2021, Council staff reached out to the Licensee to request details of the events leading up to the prohibition. On March 25, 2021, the Licensee replied that she had used her ICBC login credentials to process her own personal car insurance renewal.
8. Council staff emailed the nominee of the Agency and the Licensee’s direct manager (the “Current Nominee”) for more information about the matter. On April 1, 2021, the Current Nominee responded that the Agency was unaware of the Licensee’s actions, and no other employees at the Agency were known to have conducted similar actions. The Current Nominee advised that the Agency follows ICBC business requirements, and they have indicated to their staff that they must ask their coworkers to help process any changes or renewals on their own car insurance.
9. On April 13, 2021, the Licensee submitted that she had worked at the Agency since 1986 and had started doing her own insurance renewals in the early 1990s. She stated that the Agency had been a two-person office up until it was sold in January 2019; the other employee was identified as the previous nominee (the “Previous Nominee”), who the Licensee said was aware of her actions. The Licensee further indicated that she was not informed and not aware that she was prohibited from processing her own car insurance. She claimed that she was not aware of any other employees conducting similar actions.
10. According to the Licensee and the Current Nominee, the Agency was sold in 2019 and the Previous Nominee was the nominee before the sale. Council staff made multiple attempts to contact the Previous Nominee by telephone and email to verify the statements made by the Licensee. After making several inquiries, Council staff received a telephone call from a family member of the Previous Nominee who explained that they were not available to respond.
11. In January 2022, ICBC provided Council’s Investigator with records relating to the Licensee’s suspension, which was due to the results of an investigation into her stolen vehicle claim. Among the materials in the file, there was an investigation report (the “Report”) that detailed the steps ICBC took during its investigation.
12. According to the Report, the principal operator on the vehicle was her husband (the “Husband”); it was a shared family vehicle, and the main drivers were the Licensee and the Husband. The Licensee’s son (the “Son”) also used the vehicle for pleasure but took the bus to school and work. After the car was recovered, a search revealed three items (a

baseball cap, an employee parking pass, and a parking ticket) that were all found to belong to the Son. The Son further admitted to being the current principal operator of the vehicle, driving it four times a month to school and significantly more under prior policies.

13. The investigation file indicates that ICBC conducted an interview with the Licensee on June 14, 2019. According to the interview transcript, the Licensee acknowledged that she was familiar with the concept of principal operator and stated that the Son did not drive the vehicle often. Initially, the Licensee maintained that the Son had never driven the vehicle to school. However, the Licensee admitted that the employee parking pass belonged to the Son and that he had used the vehicle for his summer job. The Licensee agreed that during this time the Son would have been the principal operator, but she had not changed the insurance because the Son had only driven the car to work for approximately one month.
14. ICBC denied the Licensee's vehicle claim due to the misdeclaration of the principal operator. ICBC determined that the misdeclaration had been made for several years and was financially motivated to avoid the premium costs associated with the Son being listed as the principal operator, as he was an inexperienced driver.
15. On December 12, 2021, the Licensee had her ICBC login reinstated.

ANALYSIS

16. Council considered the investigation report, the Committee's report to Council, and the Licensee's submissions and determined that the Licensee's conduct regarding the processing of her own ICBC Autoplan transactions and the misrepresentation of the principal operator of her personal vehicle on several ICBC policies amounted to clear breaches of section 3 ("Trustworthiness"), section 4 ("Good Faith"), section 5 ("Competence"), section 8 ("Usual Practice: Dealing with Insurers"), and section 12 ("Dealing with the Insurance Council of British Columbia") of the Code. Council Rule 7(8) require licensees to comply with the Code.
17. In particular, Council found that the Licensee's decision to misrepresent the principal operator of her personal vehicle for several years amounted to a serious violation of the trustworthiness principle that licensees are expected to follow. Council noted that the misrepresentation led to a financial benefit for the Licensee at the detriment of ICBC. Council found that the Licensee improperly used her position as an insurance licensee for personal gain.
18. In addition, by not disclosing to Council that the ICBC suspension was partly due to the misrepresentation, Council determined that the Licensee did not act in good faith towards Council. Council believed that ignorance and inaction contributed to the

misrepresentation as Council appreciated that the Licensee may not have been aware of the Son's frequency of driving. Further, Council believed that the Licensee may not have been aware that she could not process her own transactions. In all, Council determined that the Licensee breached the principle of good faith.

19. With respect to the principle of competence, Council noted that the Licensee failed to advise ICBC of the misrepresentation, which Council opined resulted in a risk to the insurer. Similarly, Council determined that the failure to disclose the misrepresentation to ICBC amounted to a breach of the usual practice of dealing with insurers principle. In addition, by processing her own insurance transactions, the Licensee engaged in a clear conflict of interest, irrespective of her intent.
20. Council determined that the Licensee did not respond honestly to inquiries from Council when she failed to disclose the circumstances surrounding the ICBC suspension. Consequently, s. 231(1)(c) of the Act is relevant as Council found that the Licensee made a material misstatement in response to Council's inquiry per the above.
21. The Licensee chose not to attend the Review Committee meeting and therefore Council was unable to further hear from the Licensee with respect to the issues facing her. While Council noted that it was not drawing an adverse inference for the Licensee's failure to attend, it would have liked to have heard from the 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 and attending Review Committee meetings.
22. Council took several aggravating factors into consideration. For instance, Council noted that the Licensee's misconduct took place over a period of time. The Licensee admitted that she processed her own insurance transactions since the early 1990s and it was found that she misrepresented the principal operator of her personal vehicle for several years. As a Level 2 Agent with over 30 years of experience in the insurance industry, the Licensee ought to have known that her conduct was unacceptable. To that end, Council found that the Licensee's misconduct demonstrated a flagrant disregard for the laws governing the Licensee's conduct. Also, the Licensee made material misstatements to Council as the Licensee failed to disclose that the principal operator misrepresentation contributed to the ICBC suspension.
23. Council further noted that the Licensee derived a financial benefit from the misconduct, as the misrepresentation led to reduced premiums at the detriment of ICBC. In addition, Council determined that the Licensee put the public at risk by not properly insuring the subject vehicle.

24. In terms of mitigating factors, Council accepted that the Licensee does not have a prior discipline history with Council and that she has been employed with the Agency since becoming licensed. Council considered that the Licensee had been suspended by ICBC for nine months. Council also considered that it was not able to hear from the Previous Nominee the circumstances regarding the Licensee's misconduct.
25. 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.
26. With respect to the Licensee's misconduct, Council considered the cases of *Ping Hong (Gary) Chow* (October 2020), *Allen Ton-Ming Fu* (November 2018), *Karishma Christina Jetha Beharry* (April 2016), *Amanda Lambert* (February 2010), and *Patricia Jean Orr* (October 2009).
27. *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 the 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.
28. *Allen Ton-Ming Fu* (November 2018) concerned a Level 2 Agent who processed his own ICBC Autoplan transaction and, while doing so, altered his Claims Rated Scale on the ICBC system, resulting in the licensee receiving the maximum CRS discount on his insurance premium. The licensee had a colleague sign the insurance documents as the agent. ICBC conducted an investigation and subsequently charged the licensee the amount he underpaid for his policy and prohibited the licensee from conducting Autoplan business for a one-year period. Council determined that the licensee improperly used his position

as an insurance licensee for personal gain. Council considered the fact that the licensee was penalized by ICBC; however, it concluded that it was necessary to emphasize to the industry that Council will not tolerate conduct that is self-serving and undertaken for personal gain. The licensee was suspended for one year, subject to supervision for one year, required to complete an ethics course, and assessed investigation costs of \$1,575.00.

29. *Karishma Christina Jetha Beharry* (April 2016) concerned a Level 1 Salesperson who improperly conducted two transactions contrary to ICBC procedures and had attempted to mislead her employer and Council in the matter. In particular, the licensee processed an ICBC insurance transaction for a friend in a manner that attempted to circumvent the friend's debt to ICBC. The licensee took steps to cover up the transaction by providing false and misleading information to her agency and to Council. Council considered the licensee's youth and inexperience; however, it found that the licensee's failure to be honest made her youth and inexperience irrelevant in the situation. The licensee was suspended for one year, subject to supervision for two years, required to complete the ICBC Autoplan Basics for Brokers course and an ethics course, fined \$500.00, and assessed Council's investigation costs of \$831.25 and hearing costs of \$1,368.00.
30. *Amanda Lambert* (February 2010) concerned a Level 1 Salesperson who misstated the purchase price of a motorcycle on the vehicle transfer documents to reduce the tax she owed on the purchase. Council determined that the licensee processed insurance on the motorcycle and signed the insurance documents in a certain manner to mislead the person who had conducted the transaction. Council determined that the licensee's acceptance of responsibility for the misconduct, the licensee's apparent remorse for the transgressions, and the licensee's relative inexperience in the industry, constituted mitigating factors. In addition, the Licensee entered a restorative justice process and agreed to have her work supervised and checked by the branch manager of her agency. The licensee was prohibited from upgrading to a Level 2 general insurance agent licence for one year, required to complete an ethics course, fined \$500.00, and assessed Council's investigation costs of \$1,362.50.
31. *Patricia Jean Orr* (October 2009) concerned a Level 2 Agent who misrepresented to ICBC that she had been the driver of a vehicle involved in an automobile accident, when in fact another individual in her vehicle was the driver of the vehicle. The licensee's agency terminated the licensee's employment and the licensee reimbursed ICBC an amount that it paid out for the claim. Council found that the licensee made a false statement to ICBC which was material to ICBC's review of the licensee's insurance claim, and the licensee did not undertake any corrective measures until the licensee was directed to do so by her employer at the time. Council acknowledged that the licensee accepted responsibility and felt she understood the significance of her actions. In addition, the licensee did not have a

prior discipline history with Council and that the matter appeared to be an isolated incident. The licensee was suspended for six months, downgraded to a Level 1 general insurance salesperson licence for a period of one year following suspension, required to complete an ethics course, and assessed Council's investigation costs of \$875.00.

32. Council determined that *Fu* was more instructive as the facts were similar to the subject case and in both cases the licensees derived a financial benefit from the misconduct. On the other hand, *Fu* only processed his own insurance transaction once, while the Licensee had processed her own insurance transactions since the early 1990s. In addition, *Fu* repaid ICBC the amount that he underpaid. There is no record that the Licensee did the same in the subject case.
33. In addition to *Fu*, Council found *Orr* to be relevant as *Orr* was an experienced Level 2 Agent and ought to have known that her conduct was unacceptable. However, Council also noted that *Orr* only made one misrepresentation and that *Orr* reimbursed ICBC the amount that it paid out on the claim.
34. Council has determined that investigation costs should be assessed against the 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

35. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:
 - (a) Suspend the Licensee's general insurance licence for a period of one year, commencing on the date of Council's order;
 - (b) Downgrade the Licensee's Level 2 general insurance agent licence to a Level 1 general insurance salesperson licence for a period of one year of active licensing, commencing at the end of the suspension period;
 - (c) Require the Licensee to complete the following courses, or equivalent courses as acceptable to Council, within 180 days of the date of Council's order:
 - i) the Insurance Institute's "Ethics and the Insurance Professional" course;
 - ii) the Council Rules Course for general insurance salespersons and agents; and
 - iii) the Autoplan Basics program;


- (d) Assess the Licensee Council's investigation costs of \$2,312.50, to be paid within 90 days of the date of Council's order;
- (e) Impose a condition on the Licensee's general insurance licence that requires the Licensee to complete the above-ordered courses and pay the above-ordered investigation costs in full prior to the licence suspension being lifted; and
- (f) Impose a condition on the Licensee's general insurance licence that the Licensee will not be permitted to complete the Licensee's 2024 annual licence renewal until such time as the above-ordered courses are completed and above-ordered investigation costs are paid in full.

RIGHT TO A HEARING

36. If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case at a hearing before Council. **Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention 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 Licensee does not request a hearing within 14 days of receiving the intended decision, the intended decision of Council will take effect.**
37. Even if the Licensee accepts this decision, 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 6th day of July, 2022.

For the Insurance Council of British Columbia



For Janet Sinclair
Executive Director