

In the Matter of

The *FINANCIAL INSTITUTIONS ACT*
(the "Act")
(RSBC 1996, c.141)

and

The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
("Council")

and

APRIL DAWN FRASER
(the "Former Licensee")

ORDER

As Council made an intended decision on August 16, 2011, 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 September 13, 2011; 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:

1. the Former Licensee is not eligible to hold an insurance licence for a minimum period of two years from the date on which the Order takes effect;
2. the Former Licensee is assessed Council's investigative costs of \$1,237.50; and
3. as a condition of this Order, the Former Licensee is required to pay the above ordered investigative costs no later than **January 11, 2012**.

This Order takes effect on the 11th day of October, 2011.


Dan Swanlund, B.Comm, CFP
Chairperson, Insurance Council of British Columbia

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)
respecting
APRIL DAWN FRASER
(the “Former Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether there had been compliance by the Former Licensee with the requirements of the Act.

In August 2009, the Former Licensee’s employment with Capital West Insurance Services (the “Agency”) was terminated. The Agency learned that the Former Licensee had taken an Insurance Corporation of British Columbia (“ICBC”) automobile insurance decal from the Agency without registering it or renewing her insurance. She then affixed the decal to her vehicle and drove without insurance until she was caught by the police.

As part of Council’s investigation, an Investigative Review Committee (the “Committee”) was scheduled to meet with the Former Licensee on June 20, 2011. However, the Former Licensee did not appear at the meeting nor did she notify Council that she would not be attending the meeting. Nonetheless, the Committee proceeded to consider the investigative report prepared by Council staff and make a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee’s findings and recommended disposition, along with the aforementioned investigation report, was presented to Council at its August 16, 2011 meeting. At the conclusion of its meeting, Council determined that the matter should be disposed of in the manner set out below.

INTENDED DECISION PROCESS

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/or 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 a written notice of the action Council intends to take against the Former Licensee.

FACTS

Based on the information contained in the investigation report, Council made the following findings of fact:

1. the Former Licensee first obtained a Level 1 general insurance salesperson's licence on June 5, 2006;
2. the Former Licensee's licence had been inactive since August 17, 2009, following the termination of her authority to represent the Agency. Her licence was terminated on July 31, 2011, as she did not submit an annual licence filing;
3. on February 16, 2009, the Former Licensee was involved in a motor vehicle accident ("MVA") for which she was deemed to be at fault;
4. because the Former Licensee's vehicle had been rated in the wrong territory at the time of the MVA, ICBC held her financially responsible for the full amount of the damages from the MVA, which were assessed at \$10,933.60;
5. ICBC offered to reduce the amount owing to \$500.00, provided that this amount was paid within a certain time frame. The Former Licensee agreed to these terms;
6. the Former Licensee did not pay the \$500.00 as agreed, despite an extension from ICBC which granted her more time to make the payment. Consequently, the full amount of the damages was payable;
7. in or around May 2009, the matter was directed to the collections department of ICBC. The collections department sent the Former Licensee a certified letter dated May 29, 2009, requesting payment. This letter was returned unclaimed;
8. the Former Licensee's automobile insurance expired on July 3, 2009. In order to renew her insurance, she was required to pay the outstanding debt of \$10,933.60 owing to ICBC in relation to the MVA;
9. the Former Licensee submitted that she did not renew her insurance because she did not have the money to pay the debt to ICBC;
10. the Former Licensee drove her vehicle on several occasions after her insurance had expired;
11. on August 12, 2009, the Former Licensee took an ICBC insurance decal from the Agency and affixed it to her vehicle without registering the decal and renewing her insurance;

12. on August 17, 2009, the Former Licensee was pulled over by the police while driving her vehicle to work. She was found to be in violation of the *Motor Vehicle Act* for driving without insurance and was ticketed \$598.00 for the infraction;
13. the Former Licensee's vehicle was towed to a tow yard in Maple Ridge; and
14. the Former Licensee subsequently transferred ownership of the vehicle to her boyfriend, who paid the towing bill and who continues to own the vehicle.

LEGISLATION

Rule 7(8) of the Council Rules

Licence Conditions

Applicable to All Classes of Licences

- (8) A licensee must comply with the Council's Code of Conduct, as amended from time to time.

Section 231 of the Act

Part 7 – Administration of the Regulation of Financial Institutions

Division 2 – Insurance Council of British Columbia

Council may suspend, cancel or restrict licences and impose fines

- (1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee
 - (a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,
 - (b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,
 - (c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
 - (d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,
 - (e) has contravened section 79, 94 or 177, or
 - (e.1) has contravened a prescribed provision of the regulations,

then the council by order may do one or more of the following:

- (f) reprimand the licensee or former licensee;
- (g) suspend or cancel the licence of the licensee;
- (h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
- (i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
- (j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;
- (k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount
 - (i) not more than \$20 000 in the case of a corporation, or
 - (ii) not more than \$10 000 in the case of an individual.

- (2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.
- (3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.
- (3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.
- (4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
 - (a) were employed by that agent or adjuster at the time of the suspension, and
 - (b) remain employees of that agent or adjuster at the time of reinstatement, are also reinstated without the necessity of the council taking any action.

Section 236 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Power to impose conditions

- (1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization permit or licence may
 - (a) impose conditions that the person considers necessary or desirable in respect of
 - (i) an order referred to in section 235(1),
 - (ii) a consent referred to in section 235(2),
 - (iii) a business authorization,
 - (iv) a permit issued under section 187(1), or
 - (v) a licence issued under Division 2 of Part 6, and
 - (b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.
- (2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.
- (3) Except
 - (a) on the written application or with the written permission of the holder, or
 - (b) in the circumstances described in section 164, 231 or 249(1),a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
 - (c) a business authorization is exercisable only on or before its issue date, or
 - (d) a permit under section 187(1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue datewith effect on and after that date.

Section 241.1 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Assessment of Costs

- (1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, or either or both of the following in accordance with the regulations:
 - (a) an investigation;
 - (b) a hearing.
- (2) Costs assessed under subsection (1)
 - (a) must not exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and
 - (b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing.
- (3) If a person fails to pay costs as ordered by the date specified in the order or by the date specified in the order made on appeal, if any, whichever is later, the commission, superintendent or council, as the case may be, may file with the court a certified copy of the order assessing the costs and, on being filed, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the court.

ANALYSIS

Council found the above mentioned facts constituted a breach of section 231(1)(b) of the Act in that the Former Licensee failed to act in a trustworthy manner and did not demonstrate that she intends to carry on the business of insurance in good faith and in accordance with the usual practice of the business of insurance. In particular, the Former Licensee abused her position as an insurance licensee by misusing an ICBC insurance decal for personal benefit. Specifically, the Former Licensee took the decal from her workplace without registering it or paying for correlating insurance, and then affixed the decal to her vehicle which she subsequently drove knowing that it was not insured. This was done to circumvent a debt that she owed to ICBC, which arose from an MVA and her failure to have her vehicle properly insured at the time of the accident.

The facts and circumstances regarding the Former Licensee's use of an ICBC decal were not in dispute. Council found these actions represented conduct that is fundamentally contrary to the principles of trustworthiness and good faith. Further, Council viewed the Former Licensee's use of the decal as akin to theft, thereby triggering questions as to her suitability. The evidence established that the Former Licensee acted without regard for the requirements of ICBC, or her responsibility to the insurer as an insurance licensee. As a consequence of the Former Licensee unlawfully affixing the decal on her vehicle and driving without insurance, both ICBC and the public were placed at risk. This, in Council's view, is conduct that cannot be tolerated.

In considering an appropriate disposition, Council reviewed precedents involving similar transgressions. Council considered the decision regarding *J.B. Yang* (“*Yang*”) to be particularly relevant. In *Yang*, Council found that the licensee had failed to act in a trustworthy manner and in good faith when he misused an ICBC automobile insurance decal obtained in the course of conducting an insurance transaction. The licensee affixed the decal to his vehicle to conceal the fact that he was driving without insurance for approximately seven months. Council acknowledged that the licensee was forthright during the investigative process and appeared to have genuinely understood the seriousness of his misconduct. Council also appreciated that it was the licensee’s intention to learn from his experience and remain in the industry. Council concluded that after a period of rehabilitation and with certain protective measures in place, the licensee could, once again, be suitable to hold an insurance licence. In the circumstances, Council determined that a six month suspension would be appropriate. As a further condition of the licensee’s general insurance licence, Council ordered that he complete an ICBC Autoplan Basics for Brokers course prior to the reactivation of his licence. This was in part motivated by concerns about his competency as demonstrated by the licensee’s handling of a plate substitution transaction. The licensee was also fined \$1,000.00, and assessed the costs of Council’s investigation.

In the present case, the Former Licensee engaged in similar misconduct. However, in contrast with *Yang*, the Former Licensee has not submitted any information or evidence to suggest that she intends to rehabilitate and reform her conduct so as to continue in the industry. Rather, the Former Licensee’s behaviour suggested otherwise, including her continued avoidance of the debt she owes to ICBC, as well as her failure to attend a meeting with the Committee, even though she had previously confirmed her attendance. Council found this aggravated the circumstances and it was behaviour that is indicative of someone who shirks responsibility.

Based on the foregoing, Council concluded the Former Licensee is not suitable to hold a licence for a minimum period of two years. After which, she will first have to meet certain requirements and demonstrate to Council she is suitable to hold a licence, before a licence application is approved. Finally, given Council’s conclusion as to the Former Licensee’s misconduct, it was determined the Former Licensee should be assessed the costs of the investigation.

In summary, Council concluded its intended disposition would deter the Former Licensee and other licensees from engaging in this type of behaviour. It would also serve to protect the public and maintain confidence in the insurance industry.

INTENDED DECISION

Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision that the Former Licensee:

1. is not eligible to hold an insurance licence for a minimum period of two years from the date on which the Order takes effect; and
2. is assessed Council's investigative costs of \$1,237.50.

Council also determined the Former Licensee's suitability to hold a general insurance licence in the future will be contingent on her having completed the Insurance Broker's Association of British Columbia ethics course (or one of a similar nature as approved by Council) and ICBC's Autoplan Basics for Brokers course. Further, should the Former Licensee apply for a licence in the future, she will be required to first meet with Council so it can assess whether she has met the licensing qualifications and is otherwise suitable to hold an insurance licence.

The Former Licensee is also advised that should the intended decision become final, the costs which form part of the Order, will be due and payable within 90 days of the date of the Order.

The intended decision will take effect on **October 11, 2011**, subject to the Former Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

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 by **October 10, 2011**. 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 by **October 10, 2011**, the intended decision of Council will take effect.

INTENDED DECISION
April Dawn Fraser
File Number: 166746-I849
September 13, 2011
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Even if this decision is accepted by the Former Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission 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 contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464
Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **13th day of September, 2011.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cc