

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

TING EN (BRIAN) LIN
(the “Licensee”)

ORDER

As Council made an intended decision on December 15, 2020, 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 January 20, 2021; 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:

- I. The Licensee’s life and accident and sickness insurance agent (“Life Agent”) licence and general insurance licence are suspended for a period of six months, commencing February 11, 2021 and ending at midnight on August 11, 2021;
- II. The Licensee is fined \$5,000, to be paid by May 12, 2021, and which must be paid in full prior to the Licensee’s licence suspension being lifted;
- III. The Licensee is assessed investigative costs of \$1,562.50, to be paid by May 12, 2021, and which must be paid in full prior to the Licensee’s licence suspension being lifted;
- IV. A condition is imposed on the Licensee’s Life Agent licence and general insurance licence that he will not be permitted to complete his 2022 annual filing until such time as the fine and investigative costs are paid in full;

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- V. A condition is imposed on the Licensee's Life Agent licence that he be supervised by a Council-approved Life Agent supervisor for a period of one year of active licencing, commencing at the end of the suspension period; and
- VI. A condition is imposed on the Licensee's general insurance licence reducing it to a Level 1 Salesperson general insurance licence for a period of one year of active licensing, commencing at the end of the suspension period.

This order takes effect on the **11th day of February, 2021.**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

("Council")

respecting

TING EN (BRIAN) LIN

(the "Licensee")

1. Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation regarding allegations that, in 2017 and 2018, the Licensee had been unethically profiting from commissions received from the Insurance Corporation of British Columbia ("ICBC") by regularly processing one-year vehicle insurance policies for automobile dealerships engaged in the export of vehicles out of Canada, and then canceling the policies only days later. The purpose of the investigation was to determine whether the Licensee had breached Council Rule 7(8), which requires licensees to comply with Council's Code of Conduct, as well as sections 3 ("Trustworthiness"), 4 ("Good Faith"), 7 ("Usual Practice: Dealing with Clients") and/or 8 ("Usual Practice: Dealing with Insurers") of the Code of Conduct.
2. On November 3, 2020, 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. An investigation report prepared by Council staff was distributed to both the Committee and the Licensee in advance of the meeting. A discussion of the investigation report took place at the meeting, and the Licensee was given an opportunity to make submissions or provide any further information. The Committee met again virtually on November 26, 2020 for further discussion. Having reviewed the investigation materials and discussed the matter with the Licensee, the Committee prepared a report for Council.
3. The Committee's report, along with the aforementioned investigation report, were reviewed by Council at its December 15, 2020 meeting, where it was determined 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

5. The Licensee was first licensed with Council as a Level 1 general insurance salesperson ("Level 1 Salesperson") in June 2012, and he became a Level 2 general insurance agent ("Level 2 Agent") in October 2014. The Licensee has also been licensed as a life and accident and sickness insurance agent ("Life Agent") since April 2018.
6. The Licensee worked for an agency ("Agency A") until being terminated in or around September 2017. Shortly after his departure from Agency A, the Licensee began working for a different agency ("Agency B"). In October 2017, Agency B's nominee noticed that several licence plates were stored under the desk of one of Licensee's colleagues (the "Colleague"), including some which were still in their original plastic wrappings. A preliminary investigation by the nominee revealed that the Colleague had been issuing one-year Autoplan insurance policies that were being cancelled within a few days. ICBC was notified by Agency B's nominee about the matter in December 2017.
7. ICBC commenced its investigation in or around January 2018, investigating the Licensee as well as the Colleague. On May 28, 2018, ICBC prohibited the Licensee from conducting Autoplan business and accessing ICBC's database for a period of at least one year. ICBC required the Licensee to complete the *Ethics for Insurance Brokers* course offered by the Insurance Brokers Association of British Columbia ("IBABC") before being allowed to conduct Autoplan business again, and he was also required to complete ICBC's *Information Security and Privacy Course* and *PolicyCenter Essentials Course* within 30 days of resuming conducting Autoplan business.
8. In order to circumvent contractual terms imposed by vehicle manufacturers prohibiting the sale of new vehicles directly to used vehicle dealerships, the practice of the exporters was to make use of individuals ("Temporary Owners") who would purchase automobiles, typically luxury vehicles, using funds provided by an exporter, for the purpose of transferring them to that exporter shortly after purchase.

9. The Licensee told Council's investigator that he had performed approximately twenty to thirty transactions for exporters while employed at Agency A. After being terminated by Agency A and beginning to work for Agency B, he estimated that he processed an additional ten transactions for exporters. These transactions involved the Licensee issuing one-year Autoplan policies to Temporary Owners and then cancelling them a few days later when the vehicles were transferred to the exporter. In doing so, the Licensee would receive a commission from ICBC for having processed a one-year policy. The Licensee explained that ICBC would pay approximately \$200 in commissions for a one-year policy on a new luxury car, of which 50% would go to himself, and 50% to his agency.
10. The Licensee stated that the new vehicle dealerships would not sell vehicles unless the purchaser obtained a one-year policy and plates, and claimed that, if not for that requirement, he would have issued Temporary Operating Permits instead of one-year policies.
11. When asked by Council's investigator about his termination from Agency A, the Licensee explained that, although he had not been given a reason, he suspected it was because of the transactions he was processing for exporters. The Licensee stated that his manager at Agency A had met with him to discuss the matter, and instructed him to stop processing transactions for exporters. However, the Licensee then spoke to a former manager, no longer affiliated with Agency A, and was told that such transactions were legal as long as the taxes were paid appropriately. The Licensee indicated that he also reviewed ICBC's guidelines and found no specific rules prohibiting the practice, and therefore concluded that processing these transactions for exporters was ethical. He continued to issue and cancel one-year policies at the request of exporters until terminated by Agency A.
12. The Licensee also confirmed to Council's investigator that he had himself served as a Temporary Owner for exporters on three occasions, purchasing new vehicles in October 2017, January 2018, and February 2018, with funds provided by exporters. The October 2017 purchase was done for an exporter that the Licensee had been introduced to by the Colleague, and the Colleague gave him either \$300 or \$350 afterwards on behalf of the exporter.
13. The Licensee stated that he stopped processing transactions for exporters and serving as a Temporary Owner in March 2018, when interviewed by ICBC about the matter. He told Council's investigator that, upon reflection, he now understands there were ethical problems associated with accepting commissions from ICBC for one-year policies that would quickly be canceled.

14. Council was cognizant throughout its investigation that transactions involving the “grey market” export of vehicles are sometimes associated with money laundering. In the course of its investigation, Council determined that the Licensee had facilitated grey market transactions involving the export of luxury vehicles.

REVIEW COMMITTEE MEETING

15. The Licensee was apologetic throughout the meeting, expressing regret about his conduct. He stated that there were no clear guidelines available at the time to provide information about whether the transactions he was processing for his exporter clients were right or wrong. The Licensee told the Committee that he now understands that there was an ethical problem with the transactions he processed, and that they were exploitative of ICBC.
16. The Licensee explained that part of his motivation for processing the exploitative transactions was simply how widespread the practice is. He said that he had assumed, since many other agents were processing transactions for exporters, that there must not be an issue. The Licensee stated that processing such transactions was extremely common in the industry.
17. The Licensee explained to the Committee that exporters were interested in exporting vehicles to China. To do so, they would use Temporary Owners, who would go into a new vehicle dealership to buy a vehicle, and once the deal was confirmed by the dealership, the Temporary Owner would contact the exporter. At that point, the Licensee would attend at the dealership to process the insurance. He would ask the Temporary Owner for their driver’s licence, and ask them about usage of the vehicle, which would typically be described as “for pleasure.” The Licensee said that he would have offered them short-term insurance or a permit, but the dealerships would not sell the vehicle if only short-term insurance was being purchased. A few days after the vehicle was purchased by a Temporary Owner, the one-year policy would be canceled and ownership of the vehicle would be transferred to the exporter. The Licensee said that he processed some, but not all, of the cancellations relating to the vehicles he had processed one-year policies for. He also stated that he was aware that these clients were in the export business.
18. The Licensee estimated that, while at Agency A, he dealt with more than “twenty or thirty” Temporary Owners, and that he processed an exporter related transaction approximately every two weeks.

ANALYSIS

19. Council considers the Licensee's actions, whereby he repeatedly processed and collected commissions for one-year Autoplan insurance policies in circumstances in which he knew or ought to have known that the policies would be cancelled merely days later, to be unethical behavior in contravention of Council Rule 7(8), as well as of sections 3, 4, 7 and 8 of the Code of Conduct.
20. Specifically, Council believes that the breaches of sections 3 ("Trustworthiness"), 4 ("Good Faith"), and 8 ("Usual Practice: Dealing with Insurers") are relatively straightforward. The Licensee's processing of the described transactions demonstrated an overall lack of trustworthiness and good faith, and was exploitative of ICBC and its commissions system. The breach of section 7 ("Usual Practice: Dealing with Clients") was also considered as relevant because the Licensee's actions show that he was not representing all of his dealership clients equally and fairly, exploiting loopholes for the sake of some dealerships that could give them a competitive advantage over other dealership clients.
21. Council took mitigating factors into consideration. Council believes that the remorse shown by the Licensee throughout the meeting was genuine, and also considered the Licensee to have been open and forthright with information. It was also noted that the Licensee continues to be supported by Agency B. The most significant mitigating factor identified by Council was the fact that the Licensee had already experienced considerable sanctions from ICBC for his misconduct, having been prohibited from conducting Autoplan business for a year and being required to complete courses prior to and after having his privileges returned.
22. However, Council also took note of several relevant aggravating factors. For one, Council recognized that the Licensee's actions were financially motivated. Additionally, the admitted number of transactions that the Licensee processed for exporters was sufficient to establish a clear pattern of unethical behavior, and to demonstrate a lack of due diligence and an incredible amount of willful blindness on the part of the Licensee. To make matters worse, the Licensee continued to process exporter transactions and accept ICBC commissions for them after being told to cease doing so by his manager at Agency A, and even after being terminated by Agency A for what he suspected to be their disapproval of the transactions he was carrying out for exporters.
23. Prior to making its disposition, Council took three previous Council decisions into consideration as precedents, as well as one decision of the Financial Services Tribunal (the "FST"). Although Council is not bound to follow the outcomes from prior decisions, it

acknowledges that similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case.

24. *Apex Insurance Services Ltd., Apex Insurance Services (1993) Ltd., Apex Insurance Services (1996) Ltd. and Amy Man Mee Lau* (June 2007) concerned three related agencies and a nominee. Agents working for the agencies processed an excessive number of Autoplan transactions for their own vehicles, as well as for the vehicles of family members. These consisted of 242 ICBC transactions in total, included 64 transactions processed on the nominee's own vehicle. Council found that the agencies and nominee had not acted in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance. Council accepted the nominee's evidence that she had not actively participated in processing the excessive transactions, but concluded that she knowingly allowed others to process them at her office and had taken no action to ensure that misconduct of this nature did not occur. Council suspended the nominee's licence for nine months and ordered that she could not hold a Level 3 general insurance agent for a minimum period of two years. The nominee was also fined \$5,000, while the agencies were each fined \$20,000; the nominee and agencies were also held jointly and severally liable for Council's investigative costs of \$7,800. In separate but related decisions, Council suspended the two agents responsible for the majority of the transactions for six months and fined them both \$10,000; two other agents were also fined \$1,000.
25. *Baljinder Singh Takhar* (October 2007) concerned a Level 1 Salesperson licensee who, between May 2004 and July 2006, processed 163 Autoplan transactions on his and his wife's vehicles. Every two to three weeks, the licensee would purchase a new one-year term policy on either his or his wife's vehicle, then cancel the policy and issue a storage policy. The licensee would earn commission for each new one-year policy, and he avoided cancellation fees by buying a storage policy each time the one-year policy was cancelled. The licensee earned approximately \$4,700 in commissions for the 163 transactions. The licensee's agency was sanctioned by ICBC for the exploitation of its commissions system, and the licensee repaid over \$4,200. Council found that the licensee had failed to act in a trustworthy manner, in good faith and within the usual practice of the business of insurance, and that he had abused his position as an insurance salesperson for personal benefit. He was suspended for a year, fined \$5,000, and assessed half of Council's investigative costs (\$1,181.25).
26. *Peter Hing-Fu Hung* (January 2015) concerned a Level 1 Salesperson who worked mostly as a mobile road services agent. Over the course of two days, the licensee completed insurance transactions for two different luxury vehicles, for an individual who was later found to have been an imposter. There were suspicious circumstances involved with the transactions, but the licensee did not put notation on the transaction documents or take any other action to flag suspicions to ICBC or his supervisor. Council believed that the licensee had "turned a

blind eye” to the suspicious circumstances, and that he had not appreciated his responsibilities when conducting suspicious transactions. The licensee was fined \$1,000, assessed costs of \$2,625, and required to complete three ICBC courses. The licensee was also required to complete IBABC’s *Ethics for Insurance Brokers* course and was only allowed to conduct insurance business from his agency’s office until his courses were completed.

27. Council also took into consideration *Decision No. 2017-FIA-002(a), 003(a), 004(a) 005(a), 006(a), 007(a) and 008(a)*, published by the FST in July 2018 (the “*Toll Bridge Decision*”). This decision concerned seven licensees who had each, on multiple occasions, exploited a “glitch” in ICBC’s software that allowed agents to bypass the normal system restrictions that, at the time, prevented Autoplan insurance from being renewed for a customer with outstanding toll bridge debts. Each of the licensees had used the glitch to allow customers to renew their insurance without first settling their toll bridge debts; the number of incidents ranged from 32 to 116. In each case, Council imposed a \$5,000 fine for misconduct. Council’s decision, however, was challenged by the Financial Institutions Commission, which argued that \$5,000 fines were not significant enough sanctions given the untrustworthiness displayed by the licensees, and the matter was brought to the FST for review. The FST concluded that \$5,000 fines did not reasonably protect the public interest, and emphasized that, in these scenarios involving licensees habitually behaving in an untrustworthy manner, it was wrong to assume that they would not pose an ongoing risk to the public or ICBC. The FST stated that a suspension of six months and the requirement to take an ethics course should serve as the baseline reasonable penalty, which could be adjusted depending on the particular mitigating and aggravating factors applicable in each case. The FST directed Council to issue new penalties, and Council proceeded to do so, suspending the licensees’ licences for varying lengths of time depending on the specifics of each case (between five to nine months), and requiring the licensees to complete an ethics course (although this requirement was waived for licensees who had taken an ethics course already, following commencement of the investigation into their conduct).

28. Council’s opinion is that sanctions levied against the Licensee must take into account the need for both specific and general deterrence. Even though the Licensee was apologetic and remorseful throughout his meeting with the Committee, the number of times that he engaged in exploitative transactions is an indication that he was capable of turning improper behavior into a habitual business practice. As emphasized in the *Toll Bridge Case*, such habitual practice shows, firstly, that the Licensee could not be trusted to refrain from improper practice, and secondly, that he could not be trusted to critically evaluate and stop the practice through a process of reflection. As such, sanctions must serve to deter the Licensee from engaging in similar behavior in the future. However, Council believes that its decision should also send a message to the insurance industry and general public that generating commissions through the processing of exploitative transactions is not

acceptable to Council, and that licensees should self-correct and seek guidance and clarification in situations in which they suspect there may be ethical problems. Council is concerned, based on remarks heard during the Committee meeting, that the practice of exporting vehicles in the manner carried out by the exporters with whom the Licensee dealt may be widespread in British Columbia, and that the involvement of licensees, processing and cancelling Autoplan insurance policies as the Licensee had, may be similarly widespread.

29. After weighing all the relevant considerations, Council concludes that it is necessary to suspend the Licensee's licences for a period of six months and to impose a fine of \$5,000. Further, Council considers it necessary to downgrade the Licensee's general licence for a period of one year of active licensing following the suspension, and to place a supervision condition on his Life Agent licence. Council believes that such a result is compatible with the precedents, including the Toll Bridge Decision. Council would have also required the Licensee to complete an ethics course prior to returning to the insurance business, but it is noted that the Licensee recently completed IBABC's *Ethics for Insurance Brokers* course, in accordance with ICBC's sanction.

INTENDED DECISION

30. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:

- I. Suspend both the Licensee's general insurance agent licence and Life Agent licence for a period of six months, commencing on the date of Council's order;
- II. Fine the Licensee \$5,000, to be paid within 90 days of Council's order, and which must be paid in full prior to the Licensee's licence suspension being lifted;
- III. Assess the Licensee \$1,562.50 of Council's investigative costs, to be paid within 90 days of Council's order, and which must be paid in full prior to the Licensee's licence suspension being lifted;
- IV. Impose a condition on the Licensee's licences that he will not be permitted to complete his 2022 annual filing until such time as the fine and investigative costs are paid in full;
- V. Impose a condition on the Licensee's Life Agent licence that he be supervised by a Council-approved Life Agent supervisor for a period of one year of active licensing, commencing at the end of the suspension period; and

VI. Impose a condition on the Licensee's general insurance licence reducing it to a Level 1 Salesperson licence for a period of one year of active licensing, commencing at the end of the suspension period.

31. 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.

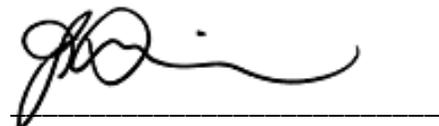
RIGHT TO A HEARING

32. 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 this intended decision, the intended decision of Council will take effect.**

33. 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 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 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 **20th day of January, 2021.**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director
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