IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *LGM Financial Services Inc. v. British Columbia Financial Services Authority,* 2025 BCSC 2423

Date: 20251208
Docket: S244984
Registry: Vancouver

Between:

LGM Financial Services Inc.

Petitioner

And

British Columbia Financial Services Authority

Respondent

Before: The Honourable Justice Majawa

Reasons for Judgment

Counsel for the Petitioner:	D.J. Smith S. Kim
Counsel for the Respondent:	N. Krueger G.K. Smith
Place and Dates of Hearing:	Vancouver, B.C. September 10-11, 2025
Place and Date of Judgment:	Vancouver, B.C. December 8, 2025

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OVERVIEW

[1] The petitioner, LGM Financial Services Inc. ("LGM"), seeks declaratory relief against the respondent, the British Columbia Financial Services Authority ("BCFSA") in respect of Regulatory Statement 24-008 (the "Statement"), which BCFSA issued on April 25, 2024.

[2] LGM argues that BCFSA acted *ultra vires* its statutory authority when it issued the Statement for two reasons. Firstly, LGM says that the Statement proposes a definition of "automobile insurance" that is materially different from the legislative definition provided in the *Classes of Insurance Regulation*, B.C. Reg. 208/2021 (the "*Regulation*"), of the *Financial Institutions Act,* R.S.B.C. 1996, c. 141 (the "*FIA*"). Secondly, the Statement has a mandatory effect. In issuing the Statement, LGM argues that BCFSA impermissibly exercised a statutory power of decision by prescribing LGM's legal rights.

[3] LGM is concerned that the Statement's purportedly new definition captures one of LGM's products— Appearance Protection Service Contracts —such that LGM would consequently be prohibited from selling and/or administering these products in British Columbia under s. 75 of the *FIA,* as a direct result of the Statement. Section 75 of the *FIA* prohibits a person from carrying on an insurance business in British Columbia unless certain conditions are met. Relatedly, LGM argues that the Statement has caused confusion across the automotive industry at large and has halted the sale of products that have been sold and administered in this province for over two decades.

[4] LGM thus asks the court to make declarations that LGM's Appearance Protection Service Contracts are not "insurance" at law, that Appearance Protection Service Contracts are not governed by the relevant legislation, and that the Statement does not apply to Appearance Protection Service Contracts. In the alternative, LGM asks the court to set aside BCFSA's decision to issue the Statement in the first place.

[5] BCFSA asserts that nothing about the Statement materially alters the legislature's definition of "automobile insurance" or directly affects LGM's business practices. According to BCFSA, the Statement simply provides notice to the public of how BCFSA interprets and intends to administer s. 75 of the *FIA*—the Statement is not a rule or an order in itself. Rather, BCFSA says that it is the *FIA*, and not the Statement, that may impact LGM's right to sell Appearance Protection Service Contracts. Therefore, BCFSA argues that the Statement is not reviewable by this Court under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 (the "*JRPA*"). Finally, BCFSA says that granting the relief sought would usurp its statutory mandate to regulate the insurance industry in the public interest. BCFSA thus asks that the petition be dismissed with costs.

[6] In my view, the main issue to be determined is whether the Statement is an exercise of a statutory power such that it can properly be subject to judicial review, pursuant to the *JRPA*. I have determined that it is not, and therefore, dismiss the petition.

BACKGROUND FACTS

[7] LGM is a British Columbia-based company that sells and administers products designed to provide automobile consumers with access to services that their vehicles may need.

[8] Among the products that LGM sells and administers are Appearance Protection Service Contracts and Inherent Defect Service Contracts, which LGM describes as follows:

> (a) pre-paid services related to the automobile's appearance and other non-mechanical failures caused by normal usage or wear and tear–in other words, aesthetic issues that do not impact the ability of the automobile to function ("Appearance Protection Service Contracts"); and
>
> (b) pre-paid services related to defects in the automobile that were inherent at the time of manufacturing and, consequently, at the time of purchase ("Inherent Defect Service Contracts").

[9] These two products are collectively referred to as "Service Contracts".

[10] LGM sells Service Contracts through automobile dealerships to consumers who are purchasing or leasing automobiles. Service Contracts are offered as optional and voluntary products which are ancillary to the sale or lease of the automobiles. The parties to Service Contracts are the consumer and an obligor, who is typically the Original Equipment Manufacturer of the automobile ("OEM"). The OEM, in turn, relies on LGM to administer Service Contracts, which LGM does by processing Service Contracts, marketing them to dealerships, and processing claims, among other responsibilities. LGM is compensated by the obligor through administration fees and a portion of any surplus generated from the sale of Service Contracts.

[11] LGM has been selling and administering Service Contracts in British Columbia for many years, without intervention or objection from BCFSA or its predecessor, the Financial Institutions Commission of British Columbia ("FICOM"). Service Contracts generate approximately a quarter of LGM's revenues in British Columbia.

[12] On November 1, 2019, BCFSA was established pursuant to s. 2 of the *Financial Services Authority Act*, S.B.C. 2019, c. 14 (the "*FSAA*"), thus replacing FICOM. As per s. 4 of the *FSAA*, BCFSA must exercise its powers and perform its duties, which include the administration of statutes like the *FSAA*, the *FIA*, and the *Insurance Act*, R.S.B.C. 2012, c. 1 (the "*IA*"). BCFSA's mandate includes administering these statutes and regulating insurance companies in the public interest.

[13] After its establishment, BCFSA began implementing a review process of regulatory instruments in order to standardize its approach to communicating information, expectations, and requirements to regulated entities. Accordingly, in August 2021, BCFSA developed the Regulatory Statement Template (the "RST") to standardize the format of regulatory statements.

[14] The purposes of these regulatory statements include communicating BCFSA's position on, or interpretation of, a specific legislative position and

communicating the form and content for submitting relevant documents, applications, submissions, and other items to BCFSA or to the Superintendent of Financial Institutions (the "Superintendent").

[15] In October 2023, BCFSA issued two Investigation Orders pursuant to s. 215(1) of the *FIA* in order to investigate LGM's business practices and activities with respect to a particular product distinct from Service Contracts: the Secure Drive Appearance Protection ("SDAP") product. Unlike Service Contracts, LGM sold the SDAP product directly to consumers without the participation of an OEM. However, the coverage provided by the SDAP product is substantially identical to the coverage provided by Appearance Protection Service Contracts.

[16] On February 21, 2024, BCFSA issued a letter to LGM outlining BCFSA's view that the SDAP product was automobile insurance and that LGM was carrying on the business of insurance without authorization, contrary to s. 75 of the *FIA*. In this letter, BCFSA provided a detailed explanation of the test that it applies when reviewing a particular product to determine whether this product qualifies as automobile insurance.

[17] On April 25, 2024, BCFSA issued Regulatory Statement 24-008. BCFSA's purpose for issuing this Statement was to provide notice to the public of how it interprets and administers the *FIA*, particularly s. 75. BCFSA also sought to ensure transparency and to provide certainty to insurance companies, consumers, and the insurance industry at large.

[18] The Statement says the following:

> Under B.C. law, product warranties and vehicle warranties are considered to be insurance….
>
> 2. Vehicle warranty insurance relates to loss of, or damage to, motor vehicles arising from mechanical failure.
>
> 3. Automobile insurance covers loss or damage to automobiles, such as indemnification for loss in the event of a theft, motor vehicle accident, or if the glass, paint, or other part of a motor vehicle is otherwise damaged due to a fortuitous event.

> Insurance products can only be underwritten by appropriately authorized insurers and marketed and sold by licensed insurance agents unless an appropriate exemption from either of these requirements exists under the legislation.
>
> [Emphasis in original.]

[19] The Statement also describes its purpose and effect at the bottom of the final page:

> Regulatory Statements establish the form and content of a regulatory submission; prescribe the manner of meeting or enforcing a requirement existing in an enactment; and/or provide the regulator's view of the laws that BC Financial Services Authority administers. Regulatory Statements are made pursuant to a requirement or power contained in provincial legislation. Compliance with a Regulatory Statement is therefore mandatory. Regulatory Statements may refer to law, practice, or background existing at the time of publication. If relying on the legal information contained in a Regulatory Statement, confirm that any references to the law, including enabling legislation, are up to date and obtain independent legal advice, when needed.…
>
> [Emphasis added.]

[20] Both before and after the Statement was issued, the Superintendent began reviewing OEMs selling products similar to LGM's Appearance Protection Service Contracts. Several OEMs ultimately entered into voluntary compliance agreements ("VCAs") with BCFSA, in which they undertook to not carry on any new business of insurance in British Columbia unless authorized to do so pursuant to the *FIA*. On July 23, 2024, LGM also entered into a VCA with BCFSA, in which LGM agreed to cease the underwriting, marketing, and distribution of any new SDAP contracts until and unless authorized to do so by BCFSA or pursuant to the *FIA*.

IS THE STATEMENT AN EXERCISE OF A STATUTORY POWER?

Positions

[21] The threshold issue is whether the Statement is a reviewable exercise of a statutory power such that this Court has jurisdiction to set it aside pursuant to s. 2(2)(b) of the *JRPA*.

[22] LGM argues that, by issuing a statement which materially alters the definition of “automobile insurance” and which purports to be of mandatory effect, BCFSA exercised a statutory power of decision which has impacted LGM’s legal rights to carry on business. Accordingly, s. 2(2)(b) of the *JRPA* is applicable and this Court has jurisdiction to set the Statement aside.

[23] The basis for LGM’s argument is twofold—first, that the examples contained in the Statement of the types of vehicular damage which are covered by automobile insurance materially altered the definition of “automobile insurance”; and second, that the sentence in the Statement which says that compliance is mandatory makes the Statement binding, such that LGM could not ignore it. In short, LGM’s argument is that the Statement broadens the legislation and has a mandatory effect, both of which make it a reviewable exercise of a statutory power.

[24] On the other hand, BCFSA argues that the issuance of the Statement does not constitute an exercise of a statutory power, and thus, this Court does not have jurisdiction to set it aside. BCFSA’s position is that the Statement is merely a means through which BCFSA is conveying information to the public about its intended interpretation of the *FIA* for regulatory purposes. The Statement does not materially alter the legislative definition of “automobile insurance”, nor is it, in itself, a binding opinion or recommendation. Rather, it is a clarification about BCFSA’s approach to interpreting particular provisions of the *FIA*. Accordingly, s. 2(2)(b) of the *JRPA* is inapplicable and the Court does not have jurisdiction to set the Statement aside.

Relevant Law

[25] The Court’s jurisdiction to grant relief in a judicial review of an administrative tribunal’s exercise of a statutory power is derived from s. 2(2)(b) of the *JRPA*, which says as follows:

> 2 (2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:
> …
>
> (b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

[26] According to s. 1 of the *JRPA*:

> "statutory power" means a power or right conferred by an enactment
>
> (a) to make a regulation, rule, bylaw or order,
> (b) to exercise a statutory power of decision,
> (c) to require a person to do or to refrain from doing an act or thing that, but for that requirement, the person would not be required by law to do or to refrain from doing,
> […]

[27] Section 1 of the *JPRA* also states that:

> "statutory power of decision" means a power or right conferred by an enactment to make a decision deciding or prescribing
>
> (a) the legal rights, powers, privileges, immunities, duties or liabilities of a person…

[28] The relief sought by LGM requires this Court to find that issuing the Statement was an exercise of a statutory power, and that the Statement is an exercise of a statutory power of decision. A statutory power of decision may be found to have been exercised if the action prescribes a person's legal rights.

[29] Section 75 of the *FIA* says the following:

> 75 A person must not carry on insurance business in British Columbia unless the person is
>
> (a) an insurance company or extraprovincial insurance corporation that has a business authorization to carry on insurance business,
>
> […]
>
> (d) licensed… as an insurance agent, insurance salesperson, insurance adjuster or employed insurance adjuster and is carrying on the insurance business only in that capacity…

[30] Section 1(1) of the *Regulation* says that:

> "automobile insurance" means insurance
>
> (a) against liability arising out of bodily injury to, or the death of, a person, or the loss of, or damage to, property, caused by an automobile or the use or operation of an automobile,
>
> (b) against the loss of, the loss of use of, or damage to, an automobile…

Analysis

Does the Statement Materially Alter the Legislative Definition of "Automobile Insurance"?

[31] The first question to address is whether the Statement defines "automobile insurance" in a way that materially differs from the *FIA*'s regulations, such that it affects the accepted scope of practice within the automobile insurance industry. If it does, it might be seen as an improper exercise of a statutory power: *Laboratories C.O.P. Inc. v. New Brunswick College of Pharmacists*, 2020 NBCA 74 at para. 24.

[32] As in *Laboratories*, answering this question requires a review of the relevant provisions of the *FIA*, the *Regulation*, and the Statement itself.

[33] The Statement says that automobile insurance covers loss or damage to automobiles, consistent with the definition found in s. 1(1) of the *Regulation*. However, the Statement then lists additional details about the nature of this loss or damage, including "in the event of a theft, motor vehicle accident, or if the glass, paint, or other part of a motor vehicle is otherwise damaged due to a fortuitous event." It is this additional list of examples which LGM says materially changes the definition of "automobile insurance" relative to the *Regulation*.

[34] BCFSA asserts that these examples are intended to provide meaningful guidance to the public and insurance industry participants on how BCFSA interprets the *FIA*. In other words, the examples align with the *Regulation*'s definition of "automobile insurance". According to BCFSA, the examples in the Statement do not depart from, change, expand on, broaden, redefine, or otherwise materially alter the legislature's definition of "automobile insurance", as provided by the *FIA* and the *Regulation*.

[35] Moreover, BCFSA maintains that its interpretation of the relevant provisions, in line with the Statement's definition, predated its decision to publish the Statement.

[36] This chronology is demonstrated through the explanation that BCFSA provided to LGM regarding the SDAP in the February 2024 letter. In this letter,

BCFSA clarified its interpretation of the relevant provisions in the *FIA* and the *Regulation* concerning the definition of "automobile insurance" prior to issuing the Statement in April. BCFSA also described the test it applies to determine whether a product qualifies as automobile insurance based on the provisions of the *FIA*.

[37] The content and timing of the February 2024 letter which explains its interpretation consistently with that later described in the Statement, supports BCFSA's position that the Statement itself did not materially alter the *FIA*'s definition of "automobile insurance". Instead, it clarified BCFSA's existing approach to interpreting and administering the *FIA*.

[38] LGM also understood and appears to have accepted the definition of "automobile insurance", as it is interpreted by BCFSA, when it entered into a VCA with BCFSA in July 2024, concerning the SDAP product. While the sales model of the SDAP and the Appearance Protection Service Contracts differed, the products themselves are almost identical in terms of the coverage provided. The VCA was executed in accordance with BCFSA's view that the SDAP product was captured within the definition of "automobile insurance", pursuant to BCFSA's interpretation of the legislation. BCFSA held this view at least as early as February 2024 when it sent the letter to LGM explaining why it considered the SDAP product to be "automobile insurance" under the *FIA*. The Statement was not issued until April 25, 2024.

[39] Further, the general purpose of insurance is to provide a mechanism for transferring fortuitous contingent risks, such that insurance makes economic sense only where the losses it covers are unforeseen or accidental: see e.g., *Coast Capital Savings Credit Union v. Liberty International Underwriters,* 2017 BCCA 362 at para. 46; *Agresso Corp. v. Temple Insurance Co.,* 2007 BCSC 19 at para. 36; *Cultus Lake Park Board v. Gestas Inc.*, 1992 CanLII 1393 (B.C.S.C.), 75 B.C.L.R. (2d) 281 at para. 42. Since the Statement says that BCFSA interprets automobile insurance to cover loss or damage to automobiles which is "due to a fortuitous event", the Statement's definition is consistent with what has long been recognized as a core principle of automobile insurance.

[40] Section 1(1) of the *Regulation* simply defines “automobile insurance” as meaning insurance against loss or damage to an automobile. This definition is broad enough to include the definition of “automobile insurance” found in the Statement, which provides particular examples of fortuitous loss or damage, such as damage to glass or paint, to be included within it. If the legislature intended to exclude damage to glass or paint arising from a fortuitous event from the definition of “automobile insurance” in the *FIA,* then it could have done so in the *FIA* and its regulations. Had it done so, the Statement’s definition of “automobile insurance” might have materially altered the legislative definition. However, it did not and the Statement’s definition of “automobile insurance” does not materially alter the legislative definition.

[41] Just because the Statement provided details about the types of fortuitous damage that may be included within the definition of “automobile insurance”–namely, fortuitous damage to glass, paint, or other parts of a motor vehicle–it does not necessarily mean that it advanced a materially different definition of “automobile insurance”, nor does it necessarily mean that any new obligations have been imposed on LGM. As discussed above, BCFSA had considered fortuitous damage to an automobile to be covered by automobile insurance in accordance with the *FIA* before the Statement was issued, and the Statement simply clarifies its interpretation.

[42] Importantly, “professional bodies charged with administrative and regulatory duties over their members are entitled to issue” statements which serve to inform and guide entities subject to its authority, without attracting judicial review: *Laboratories* at para. 42. Authorities like BCFSA have an “implicit statutory authority to offer guidance” on the interpretation of relevant legislation: *Fort Nelson First Nation v. British Columbia (Environmental Assessment Office),* 2016 BCCA 500 at para. 43. Accordingly, BCFSA has the authority to issue the Statement, in order to “exercise its statutory authority and fulfil its regulatory mandate in a fairer, more open and more efficient manner”: *Laboratories* at para. 42.

[43] I find the case before me to be analogous to the circumstances in *Laboratories,* where the New Brunswick College of Pharmacists (the "College") issued a statement in response to concerns that pharmacists were unlawfully practising dietetics by promoting weight-loss products: *Laboratories* at paras. 3 and 5. The College's statement addressed these concerns by highlighting the competence-based and ethical issues associated with the impugned conduct; listing the professional standards that it breached; and emphasizing the relevant legislation: at para. 16. The appellants argued that the College's statement impermissibly restricted the legislated permissible scope of practice for pharmacists: at para. 6. However, having reviewed the scope of practice of pharmacists set out in the legislative framework and the statement, the Court in *Laboratories* found that the statement did not alter it, but rather, served as a reminder which confirmed it and warned pharmacists not to exceed it: at para. 41.

[44] Similarly, the Statement issued by BCFSA does not impermissibly restrict the accepted scope of practice within the automobile insurance industry. Within the Statement, BCFSA adds examples to the definition of "automobile insurance" in a manner consistent with its interpretation of the applicable legislation, and with general principles of insurance. Providing these additional details falls within BCFSA's entitlement to inform the public and industry participants about how it intends to fulfil its regulatory mandate of regulating the insurance industry in accordance with the public interest and pursuant to the *FIA*. Like in *Laboratories*, the Statement is "nothing more than a reminder or guideline confirming the existing scope of practice" for the automobile insurance industry, not altering it: at para. 41 (emphasis added).

[45] In conclusion, the Statement does not materially alter the definition of "automobile insurance" contained in the *FIA* and its regulations, and accordingly, does not alter the industry landscape for automobile insurers and related companies like LGM.

Does the Statement Have Mandatory Effect?

[46] The relevant paragraph of the Statement says the following:

> Regulatory Statements establish the form and content of a regulatory submission; prescribe the manner of meeting or enforcing a requirement existing in an enactment; and/or provide the regulator's view of the laws that BC Financial Services Authority administers. Regulatory Statements are made pursuant to a requirement or power contained in provincial legislation. Compliance with a Regulatory Statement is therefore mandatory. Regulatory Statements may refer to law, practice, or background existing at the time of publication. If relying on the legal information contained in a Regulatory Statement, confirm that any references to the law, including enabling legislation, are up to date and obtain independent legal advice, when needed.
>
> […]
>
> [Emphasis added.]

[47] LGM argues that the language in the underlined sentence means that the Statement has mandatory effect, such that it is as an exercise of a statutory power under the *JRPA*. In other words, LGM asserts that this language indicates that BCFSA exercised a "statutory power of decision" under s. 1 of the *JRPA*—by making a decision "deciding or prescribing [LGM's] legal rights". Specifically, LGM argues that the Statement prescribes LGM's ability to sell Appearance Protection Service Contracts, on the basis of the Statement's assertion that compliance with regulatory statements is mandatory.

[48] The *Laboratories* case cites *Ainsley Financial Corp. v. Ontario Securities Commission,* [1994] O.J. No. 2966, 1994 CanLII 2621 (O.N.C.A.) at para. 16, to explain how language can be used to distinguish between a mere guideline and a statement which has mandatory effect:

> 16 There is no bright line which always separates a guideline from a mandatory provision having the effect of law. At the centre of the regulatory continuum one shades into the other. Nor is the language of the particular instrument determinative. There is no magic to the use of the word "guideline," just as no definitive conclusion can be drawn from the use of the word "regulate." An examination of the language of the instrument is but a part, albeit an important part, of the characterization process. In analyzing the language of the instrument, the focus must be on the thrust of the language considered in its entirety and not on isolated words or passages.

[49] Applied to this case, it is my view that the use of the word “mandatory” does not, in itself, make the Statement an exercise of a statutory power of decision. The use of this language does not necessarily mean that the Statement prescribes LGM’s legal right to sell Appearance Protection Service Contracts.

[50] LGM takes issue with the sentence “Compliance with a Regulatory Statement is therefore mandatory”. However, this sentence does not exist in isolation; it is part of a more comprehensive passage. The language of the instrument must be considered in its entirety in order to determine whether the instrument should be characterized as a guideline or a mandatory provision having the effect of law: *Ainsley* at para. 16.

[51] When the impugned sentence is considered in the context of the sentence that precedes it, it is evident that what is mandatory is not compliance with the *Statement* in itself, but rather, compliance with the *legislation* pursuant to which the Statement was issued. Further, the last sentence, which encourages anyone relying on the legal information in the Statement to obtain independent legal advice, points to the legislation as the source of the requirements described in the Statement.

[52] In addition, the language of a regulatory instrument is “but a part, albeit an important part” of the characterization process: *Ainsley* at para. 16. The character of the instrument as a whole must also be evaluated to determine whether it is a guideline or a mandatory provision: *Lorval Developments Ltd. v. Langley (Township)*, 2025 BCSC 1148.

[53] The character of the Statement can be best understood by examining the context in which it was issued. As Lucas Neufeld, a BCFSA Senior Policy Analyst, deposed, BCFSA developed the RST in 2021 to standardize the format of regulatory statements. The Statement complies with the RST in both its stated purpose and in the concluding paragraph and thus appears to be part of BCFSA’s broader standardization efforts.

[54] The RST suggests inserting the sentence below in the "purpose" section of statements that provide BCFSA's position on and/or interpretation of a specific provision. The Statement adopts the exact language of the RST's suggested sentence in these circumstances:

> This Regulatory Statement sets out the position of BCFSA with respect to the underwriting, marketing, and sale of product warranty insurance, vehicle warranty insurance, and automobile insurance in British Columbia ("B.C.") in accordance with the *Financial Institutions Act* ("FIA").

[55] In other words, the Statement's replication of the "purpose" sentence which the RST suggests using in statements that provide BCFSA's position on and/or interpretation of a specific provision, demonstrates the character of the Statement as: (a) an interpretation of a legislative provision, and (b) part of BCFSA's standardization movement, rather than as something specifically targeting the automobile insurance industry.

[56] Further, the underlined sentence is part of a boilerplate paragraph found at the end of the RST, meaning that it is to be used in all regulatory statements issued after the creation of the RST. In my view, this use of standardized language undermines LGM's assertion that the Statement is a binding exercise of a statutory power of decision with respect to the automobile insurance industry. Instead, the boilerplate language reinforces the character of the Statement as part of BCFSA's broader movement to standardize its regulatory communication. The Statement is simply an iteration of a template created by BCFSA staff to "review, revise, and reclassify regulatory instruments" in a uniform fashion.

[57] The Statement can be distinguished from the order at issue in *Crook v. British Columbia (Director of Child, Family and Community Service*), 2020 BCCA 192, which LGM argues is analogous to the present case. In *Crook*, the Director of Child, Family and Community Services made an order requiring the appellant to supervise his children while taking public transit. The appellant would not otherwise have been required to do so. The Court found that the Director had purported to exercise a statutory power subject to judicial review when it made this order, because the order

was mandatory and it affected the appellant's legal rights as a parent to decide whether his children could safely ride the bus on their own: *Crook* at para. 31.

[58] In contrast, the Statement does not, in itself, have a mandatory effect on LGM's ability to sell Appearance Protection Service Contracts. Rather, what is mandatory is compliance with the relevant legislation, and it is this legislation which affect LGM's legal rights. The entirety of the Statement's language, combined with the fact that the Statement was issued in the context of BCFSA's broader efforts to standardize its regulatory communications, supports this conclusion. Unlike the appellant in *Crook*, LGM would have still needed to comply with the requirements outlined in the Statement even if it had not been issued, because LGM is required to comply with the underlying legislation.

[59] After considering the language and character of the Statement in its entirety, I find that the Statement does not contain a "binding recommendation or mandatory requirement… amounting to an order", beyond its reminder that compliance with the *FIA* is mandatory: *Crook* at para. 52.

[60] In conclusion, the Statement does not have a mandatory effect and cannot be construed as a binding opinion or recommendation, in itself.

Conclusion on Whether the Statement is an Exercise of a Statutory Power

[61] I have found that the Statement does not materially alter the definition of "automobile insurance" and does not have a mandatory effect; therefore, the Statement cannot be construed as an exercise of a statutory power. The Statement does not prescribe anyone's legal rights, and thus, this Court does not have jurisdiction to set it aside.

THE DECLARATORY RELIEF SOUGHT IS NOT AVAILALBLE

[62] While my conclusion with respect to the Statement not being subject to judicial review is sufficient to dispose of the petition, I will briefly consider the declaratory relief sought by LGM.

[63] LGM seeks declarations that Appearance Protection Service Contracts are not "insurance" at law; that Appearance Protection Service Contracts are not governed by the *FIA* or the *IA*; and that the Statement does not apply to the sale of Appearance Protection Service Contracts. I would decline to make any of the declarations sought by LGM for two reasons: (a) to do so would usurp BCFSA's statutory function to determine whether a person carries on an insurance business; and (b) there is not a sufficient evidentiary basis before the Court.

[64] The *FIA* provides BCFSA with investigatory, enforcement, and other powers related to the administration of the *FIA,* and BCFSA is empowered to make determinations of who is carrying on an insurance business. Particularly relevant to this case are the following:

a) The Superintendent can appoint a person to investigate whether any person has or has not complied with the provisions of the *FIA* (s. 215(1));

b) Upon the completion of this investigation, if the Superintendent finds that the person under investigation was not complying with the *FIA*, the Superintendent could order that person to do anything that the Superintendent considers necessary to remedy the situation, including ordering them to cease their non-compliant course of conduct (s. 244 (2)(f));

c) Alternatively, the Superintendent can enter into a voluntary compliance agreement with the person under investigation if that person is a financial institution, within which the financial institution undertakes to rectify the non-compliant act or course of conduct (s. 244(2)(g));

d) Before completing an investigation, the superintendent may accept a written undertaking from a non-compliant person (s. 208);

e) If the Superintendent finds that the person under investigation is non-compliant and seeks to make an order rectifying this under s. 244(2)(f),

the Superintendent must first notify the person of their decision (s. 237(3)), and the person may require a hearing to present their case (s. 237(4));

f) A person who is directly affected by a s. 244(2) order can appeal the decision to the Supreme Court.

[65] BCFSA was established under the *FSAA* and it is responsible for exercising its powers and performing its duties under the various acts it administers, including the *FIA*. Under s. 201 of the *FIA,* BCFSA is mandated to regulate insurance companies. In these circumstances, the legislature is presumed to have intended for BCFSA to fulfill its mandate and interpret the law that it is empowered to administer: *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 at para. 24.

[66] Importantly, BCFSA has not made a determination as to whether the Appearance Protection Service Contracts are “automobile insurance.” What has happened is that BCFSA has expressed its opinion that products which cover fortuitous damage to glass, paint, or other parts of a vehicle—like Appearance Protection Service Contracts—fall within the definition of “automobile insurance, and subsequently, certain OEMs have entered into VCAs in which they have agreed not to sell these products. Similarly, LGM has entered into a VCA in which it agreed to not sell the SDAP product. BCFSA has not concluded a formal investigation by the Superintendent, nor has it made any orders in which it has formally determined the nature of the Appearance Protection Service Contracts or the SDAP product.

[67] The OEMs who entered into VCAs could have instead waited to see if a formal order was forthcoming from BCFSA in regards to whether the Appearance Protection Service Contracts are automobile insurance and for the cessation of their sale. They then could have followed the administrative and appeal procedures set out in the *FIA*. Similarly, LGM could have done the same instead of entering into a VCA in respect of the SDAP product. I note that during the course of the hearing, BCFSA indicated that LGM could apply to vary the terms of the July 2024 VCA, so

that BCFSA could consider whether a decision could be made about the formal characterization of LGM's products.

[68] I agree with BCFSA that the declaratory relief sought by LGM is an attempt to side-step the function of BCFSA and granting it would "deprive [BCFSA] of its statutory right" to make a reasonable determination as to what products LGM can legally sell and administer and whether LGM carries on an insurance business with respect to the Appearance Protection Service Contracts: *FS Insurance Brokers, Inc. v. Insurance Council of British Columbia,* 2023 BCSC 1190 at para. 51.

[69] Moreover, and in any event, there is not a sufficient evidentiary record before this Court upon which the declarations sought could be made. In a letter dated May 16, 2025, BCFSA advised LGM of some of the evidence that would be required in order to determine if the Appearance Protection Service Contracts are automobile insurance. Such evidence would include the context of the products' marketing and sales practices, the frequency and nature of claims that are covered, and the amount spent by OEMs on claims made under the product in relation to the products' price and term. None of this evidence is before the Court.

[70] The declaratory relief sought by LGM would deprive BCFSA from fulfilling its statutory mandate to regulate insurance companies and would do so on an incomplete evidentiary record. The relief sought is not available in the circumstances.

CONCLUSION AND DISPOSITION

[71] I have concluded that the Statement is not an exercise of a statutory power because it does not materially alter the definition of "automobile insurance" found in the *FIA* and because it does not have mandatory effect. Moreover, the declaratory relief sought by LGM is not available in these circumstances.

[72] For these reasons, the petition is dismissed. The respondent is entitled to its costs.

"Majawa J."