

BC FINANCIAL SERVICES AUTHORITY

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended**

**AND IN THE MATTER OF
DAVID WILLIAM RODNEY FOXWELL
(141706)**

DECISION ON LIABILITY

[This Decision has been redacted before publication.]

DATE AND PLACE OF HEARING: May 6, 2025

COUNSEL FOR BCFSA: Laura Forseille

COUNSEL FOR RESPONDENT: Self Represented

HEARING OFFICER: Gareth Reeves

Introduction

1. On May 14, 2024, the BC Financial Services Authority (“**BCFSA**”) issued, pursuant to section 40 of the *Real Estate Services Act*, RSBC 2004, c 42 (“**RESA**”), a notice of discipline hearing against David William Rodney Foxwell. An amended notice of discipline hearing (the “**ANODH**”) was issued on December 11, 2024. The only amendment made in the ANODH was to change the hearing dates to May 6 to 7, 2025.
2. The ANODH alleges that Mr. Foxwell engaged in conduct unbecoming within the meaning of section 35(2) of RESA on December 15, 2021 when he committed six offences contrary to the *Criminal Code*, RSC 1985, c C-46, for which he was convicted on July 4, 2023, including two counts of unlawfully resisting a peace officer, assault of a peace officer causing bodily harm, operating a conveyance in a manner dangerous to the public, operating a conveyance while impaired, and refusing to comply with a demand for a breath sample.
3. A liability hearing was held before me on May 6, 2025 and proceeded by way of an oral hearing. BCFSA and Mr. Foxwell submitted an Agreed Statement of Facts and Proposed Findings of Misconduct dated May 1, 2025 (the “**ASF**”) in which Mr. Foxwell admitted to the conduct alleged in the ANODH and which constituted conduct unbecoming within the meaning of section 35(2)(a) of RESA.

Notice of Hearing

4. The ANODH alleges that Mr. Foxwell committed conduct unbecoming within the meaning of section 35(2) of RESA as follows:
 - a. [He] committed the following *Criminal Code* offences on December 15, 2021 in Leduc, Alberta, for which [he was] convicted on or about July 4, 2023 in the Provincial Court of Alberta:
 - i. Unlawfully resisted [Officer 1], a peace officer, in the execution of his duty, contrary to section 129(a);
 - ii. Unlawfully resisted [Officer 2], a peace officer, in the execution of his duty, contrary to section 129(a);
 - iii. Committed an assault on [Officer 1] while he was engaged in the execution of his duty, causing bodily harm to him, contrary to section 270.01(b);
 - iv. Operated a conveyance in a manner that was dangerous to the public, having regard to all the circumstances, contrary to section 320.12(1);
 - v. Operated a conveyance while [his] ability to operate it was impaired, to any degree, by alcohol or a drug or by a combination of alcohol and a drug, contrary to section 320.14(1)(a);
 - vi. Without reasonable excuse, failed or refused to comply with a demand made pursuant to section 320.27(1)(b) to immediately provide samples of your breath necessary to enable a proper analysis to be made by means of an approved screening device, contrary to section 320.15(1)."

Issues

5. The issue before me is whether BCFSA has proven that Mr. Foxwell committed conduct unbecoming within the meaning of section 35(2) as alleged above.

Jurisdiction and Standard of Proof

6. Pursuant to section 2.1(3) of RESA, the Superintendent of Real Estate (the "**superintendent**") may delegate any of its powers in writing. The Chief Hearing Officer and Hearing Officers of BCFSA's Hearings Department have been delegated the statutory powers and duties of the superintendent under sections 42 through 53 of RESA.
7. BCFSA must prove its case on the balance of probabilities. In other words, it must prove that it is more likely than not that the facts alleged occurred. To make a finding against the respondent, I must find that the evidence is "sufficiently, clear, convincing and cogent" to satisfy that standard: *FH v McDougall*, 2008 SCC 53.
8. In general, evidence is a matter of procedure: *Cambie Hotel (Nanaimo) Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA ("**Cambie Hotel**"), para 38. As an administrative tribunal, the superintendent is not bound by the rules of evidence in the same way a court would be. Absent statutory provision to the contrary, the superintendent may consider any evidence it considers relevant, including hearsay evidence: *Adams v British Columbia (Superintendent of Motor Vehicles)*, 2019 BCCA 225.
9. Further, the fact that the legislation may provide for a formal structure for enforcement proceedings does not preclude hearsay evidence from being admitted at a hearing: *Cambie Hotel*, para 38. RESA has no provision importing civil or criminal rules of evidence into proceedings before the superintendent. The superintendent may, however, draw upon principles underlying court rules of

evidence to exclude, assess, or weigh evidence and none of the above precludes the necessity to assess and weigh evidence.

10. The superintendent must also afford procedural fairness to a respondent where a decision may affect his or her rights, privileges or interests. This right includes a right to be heard. The superintendent affords every respondent an opportunity to respond to the case against him or her by providing advance notice of the issues and the evidence, and an opportunity to present evidence and argument. The superintendent must determine facts, and decide issues set out in the ANODH, based on evidence. The superintendent may, however, apply its individual expertise and judgment to how it evaluates or assesses evidence.

Background

11. The evidence and information before me consists of Book of Documents and the ASF which have been entered as Exhibits 1 and 2, respectively. BCFSa and Mr. Foxwell agreed at the hearing of this matter that the documents contained within the Book of Documents were authentic and could be admitted as such. I therefore admitted that evidence. The ASF along with the reasons of Rice J in *R v Foxwell*, 2023 ABCJ 137 convicting Mr. Foxwell and the reasons of Devlin J in *R v Foxwell*, 2025 ABKB 210 dismissing Mr. Foxwell's appeal, both of which are contained in the Book of Documents, contain sufficient factual basis for me to make the findings indicated below. During the hearing, the parties agreed I could rely on the findings of fact made in those two decisions. The parties may make submissions during the sanction phase regarding the truth of the contents of the remainder of the BOD. The parties did not provide any oral evidence during the liability hearing.
12. Although I have reviewed all of the evidence, the below is not meant to be a complete recitation of all the evidence tendered in this matter.

The Agreed Facts

13. Mr. Foxwell was first licensed as a representative in the trading services category on April 19, 2005. Mr. Foxwell has remained licensed in that fashion since that date, except for a period of two days in March 2017.
14. In December 2021, Mr. Foxwell was licensed with RE/MAX Treeland Realty (X022561).
15. On December 21, 2021, Mr. Foxwell applied to transfer his licence to [Brokerage 1]. In that application, he answered "yes" to the following question:

"Have you ever been convicted of, or are you currently charged with, a criminal or other offence under a federal or provincial enactment, or under the law of any foreign jurisdiction?"
16. Mr. Foxwell also provided a Release Order which showed that he had been charged with committing the following *Criminal Code* offences of December 15, 2021 in Leduc, Alberta (collectively, the "**Charges**"):
 - a. Unlawfully resisting [Officer 1], a peace officer, in the execution of his duty, contrary to section 129(a);
 - b. Unlawfully resisting [Officer 2], a peace officer, in the execution of his duty, contrary to section 129(a);
 - c. Committing an assault on [Officer 1] while [Officer 1] was engaged in the execution of his duty, causing bodily harm to him, contrary to section 270.01(b);
 - d. Operating a conveyance in a manner that was dangerous to the public, contrary to section 320.12(1);

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- e. Operating a conveyance while his ability to operate it was impaired, to any degree by alcohol or a drug or by a combination of alcohol and a drug, contrary to section 320.14(1)(a); and
 - f. Without reasonable excuse, failing or refusing to comply with a demand made pursuant to section 320.27(1)(b) to immediately provide samples of his breath necessary to enable a proper analysis to be made by means of an approved screening device, contrary to section 320.15(1).
17. The Release Order also indicated that Mr. Foxwell had been charged with failing to stop at an intersection red light, contrary to section 54 of the *Use of Highway Rules of the Road Regulation*, Alta Reg 304/2002 of the *Traffic Safety Act*, RSA 2000, c T-6. The Release Order set a January 27, 2022 court date in the Leduc Provincial Court.
 18. On January 11, 2022, Mr. Foxwell submitted a licence transfer application seeking to transfer to [Brokerage 2] in which he again declared he was subject to criminal proceedings. It appears that Mr. Foxwell's transfer to [Brokerage 1] did not proceed.
 19. On March 16, 2023, Mr. Foxwell's legal counsel advised BCFSA Investigations that the trial in the criminal proceedings had proceeded on March 14 and 15, 2023 in the Provincial Court of Alberta and that a verdict was pending.
 20. On June 19, 2023, Mr. Foxwell's legal counsel emailed BCFSA Investigations to advise that Rice J had found Mr. Foxwell guilty of the Charges on June 15, 2023 and Mr. Foxwell's sentencing was scheduled for September 25, 2023. Mr. Foxwell's legal counsel also indicated that Mr. Foxwell would likely appeal his conviction.
 21. Rice J's reasons convicting Mr. Foxwell of the Charges were issued on July 4, 2023: *R v Foxwell*, 2023 ABCJ 137. Regarding Rice J's reasons, the parties have agreed in the ASF as follows:
 - "8. ... Mr. Foxwell drove away after stopping at a mandatory alcohol screening demand. [Officer 1] tried to stop Mr. Foxwell from leaving, reaching through his window with his arm to grab the steering wheel. Mr. Foxwell continued to drive between 40 and 45 km/hr, dragging [Officer 1] about 200 metres. [Officer 1] suffered bruising to his forearm, armpit, and ribcage. Mr. Foxwell was arrested and refused to provide a breath sample.
 9. After being charged, Mr. Foxwell was held at the Leduc detachment for approximately 13.5 hours before he was granted bail. After the bail hearing, he was returned to his cell where he was informed that only cash was accepted for bail, which Mr. Foxwell did not have. He was then held for another 22 hours approximately, during which time he requested phone calls and was not granted them. He was then taken to the Remand Centre, where he was able to pay his bail with a credit or debit card. He was held for 43 hours in total, with approximately 30 hours of that being after he was granted bail.
 10. Mr. Foxwell argued that the overholding at the Leduc detachment constituted a *Charter* breach and warranted a stay under s. 24(1) of the *Charter*.
 11. Justice Rice agreed that Mr. Foxwell had been overheld by approximately 22 hours, and that this "lengthy imprisonment" was "grossly disproportionate", thereby breaching s. 9 of the *Charter*.
 12. Justice Rice found that a sentence reduction and a formal denouncement of the overholding would be an appropriate remedy of the Charter breach, rather than a stay of proceedings."

[sic] [citations omitted]

22. On September 1, 2023, Mr. Foxwell's legal counsel emailed BCFSA Investigations to advise that his sentencing hearing had been adjourned to November 2, 2023.
23. On November 3, 2023, Mr. Foxwell forwarded BCFSA investigations an email from his lawyer, which confirmed that Mr. Foxwell's sentencing hearing had proceeded on November 2, 2023. Rice J had sentenced Mr. Foxwell to a sixteen-month conditional sentence, followed by eight months' probation for the conviction on the assault causing bodily harm to [Officer 1] and Rice J had imposed a "series of fines and mandatory victim fine surcharges totaling \$7,150.00." A conditional sentence is a term of imprisonment which is served in the community.
24. On November 13, 2023, Mr. Foxwell's legal counsel emailed BCFSA Investigations to advise that Rice J had also imposed a three-year driving prohibition on Mr. Foxwell.
25. On December 5, 2023, Mr. Foxwell's probation officer emailed BCFSA Investigations to confirm that Rice J had imposed a Conditional Sentence Order on Mr. Foxwell (the "CSO"). The CSO placed Mr. Foxwell under house arrest from November 2, 2023 to March 1, 2025, followed by eight months' probation from March 2, 2025 to November 1, 2025. Mr. Foxwell was required to complete 100 hours of community service and, as noted above, received a three-year driving prohibition.
26. On January 15, 2024, Mr. Foxwell's legal counsel emailed BCFSA Investigations to advise that Mr. Foxwell's appeal of Rice J's decision was scheduled for May 24, 2024.
27. On January 18, 2024, Mr. Foxwell's probation officer emailed BCFSA to provide a copy of the CSO.
28. On May 14, 2024, BCFSA issued the notice of discipline hearing in this matter.
29. On December 11, 2024, BCFSA issued the ANODH.
30. On April 4, 2025, Devlin J of the Alberta Court of King's Bench issued a decision dismissing Mr. Foxwell's appeal: *R v Foxwell*, 2025 ABKB 210. The appeal was heard on February 21, 2025. I confirmed with Mr. Foxwell at the hearing of this matter that his sentence was not stayed while his appeal was pending, that his conditional sentence had ended, that he was on probation, and that he was scheduled to end his probation on November 1, 2025.

Submissions

31. Because the parties agreed to a liability finding, there were no submissions made during the hearing, except to respond to some brief questions I posed to the parties.

Reasons and Findings

Applicable Legislation

32. The relevant portions of RESA provide as follows:

Misconduct by licensee

35 (1) ...

- (2) A licensee commits conduct unbecoming a licensee if the licensee engages in conduct that, in the judgment of the superintendent,
 - (a) is contrary to the best interests of the public,
 - (b) undermines public confidence in the real estate industry, or
 - (c) brings the real estate industry into disrepute.

Analysis

33. BCFSA and Mr. Foxwell have agreed that Mr. Foxwell committed conduct unbecoming within the meaning of section 35(2)(a) of RESA. The parties did not provide submissions on why section 35(2)(a) as opposed to sections 35(2)(b) or 35(2)(c) should apply in this case. For the purpose of this proceeding, I take BCFSA's position to be that they are narrowing the allegation made in the ANODH to specify only section 35(2)(a) and is not proceeding with regard to the other subsections.
34. For the below reasons, I find, based on the admitted facts in this proceeding, that Mr. Foxwell engaged in conduct unbecoming within the meaning of section 35(2)(a) by engaging in the conduct which gave rise to the Charges in that that conduct, in my judgment, was contrary to the best interests of the public.
35. The conduct Mr. Foxwell engaged in includes Mr. Foxwell driving his vehicle while impaired by alcohol, obstructing two peace officers in the course of executing their duty, driving approximately 200 meters while one peace officer hung onto the side of his car, driving in a manner dangerous to the public, and refusing to comply with lawful demand for a breath sample. In my view, that conduct is contrary to the best interests of the public.
36. The conduct resulting in the convictions for obstruction and for refusing to provide a breath sample are concerning in that they indicate a degree of lack of regard for legal authority. Driving away from a mandatory alcohol screening stop conducted by a peace officer and refusing to provide a mandatory breath sample both indicate that, in that context, Mr. Foxwell disregarded his obligations to comply with the lawful orders of peace officers enforcing traffic safety laws. In my view, failing to comply with legal requirements in that context is contrary to the public interest because it limits the police's ability to properly monitor compliance with traffic safety laws and to keep highways safe from drunk drivers.
37. The conduct resulting in the impaired driving conviction demonstrates a degree of recklessness and disregard for public safety. Driving while impaired presents a serious risk to other users of the road. As a result, driving while impaired is clearly contrary to the best interest of the public.
38. The conduct resulting in the conviction for assault causing bodily harm to [Officer 1] while he was executing his duty is the most concerning conduct. In my view, it is clearly contrary to the public interest to drag a peace officer next to your car for approximately 200 meters while driving away from a mandatory road stop. This conduct includes the element of a lack of regard for legal obligations that I noted above in regard to the convictions for obstruction and refusal to provide a breath sample. It also involves placing a peace officer in a situation of significant personal risk that resulted in physical harm to the officer. That harm could have been substantially greater than the bruising [Officer 1] suffered, but physical harm in that context was entirely foreseeable once Mr. Foxwell began driving and knew [Officer 1] was hanging on to the vehicle. In my view, it is clearly contrary to the best interest of the public to have assaulted [Officer 1] in that way and in that context.
39. I note that I have been provided very little information regarding the exact underpinnings of the conviction for operating a vehicle in a manner that was dangerous to the public. Rice J's decision indicates that this charge was conceded by Mr. Foxwell and therefore Rice J's reasons provide little detail regarding what exact conduct gave rise to that charge and whether it related to conduct that is not otherwise subsumed under the assault conviction. I therefore cannot find that this conduct, on its own, was particularly concerning as it might relate to a conduct unbecoming allegation.
40. In my view, it may not be the case that the conduct that gave rise to the convictions for obstruction and refusal to provide a breath sample are sufficiently contrary to the public's best interest to, on their own, constitute conduct unbecoming within the meaning of section 35(2)(a); however, when combined with the conduct resulting in the impaired driving and assault convictions, the conduct

crosses the line into conduct that is clearly contrary to the best interests of the public. Therefore, I find that the conduct underlying the Charges considered as a whole ran contrary to the best interests of the public.

Conclusion

41. I find that Mr. Foxwell engaged in conduct unbecoming within the meaning of section 35(2)(a) of RESA when he committed the following *Criminal Code* offences on December 15, 2021 for which he was convicted with reasons issued on July 4, 2023:
- a. Unlawfully resisted [Officer 1], a peace officer, in the execution of his duty, contrary to section 129(a);
 - b. Unlawfully resisted [Officer 2], a peace officer, in the execution of his duty, contrary to section 129(a);
 - c. Committed an assault on [Officer 1] while he was engaged in the execution of his duty, causing bodily harm to him, contrary to section 270.01(b);
 - d. Operated a conveyance in a manner that was dangerous to the public, having regard to all the circumstances, contrary to section 320.12(1);
 - e. Operated a conveyance while [his] ability to operate it was impaired, to any degree, by alcohol or a drug or by a combination of alcohol and a drug, contrary to section 320.14(1)(a); and
 - f. Without reasonable excuse, failing or refusing to comply with a demand made pursuant to section 320.27(1)(b) to immediately provide samples of his breath necessary to enable a proper analysis to be made by means of an approved screening device, contrary to section 320.15(1).

Sanction

42. I retain jurisdiction to determine issues of sanctions and expenses, and will hear evidence and submissions from the parties concerning orders under section 43(2) of RESA and expenses under section 44(1) of RESA, and any other actions available to the superintendent.
43. The parties consented to proceeding with the sanction and expenses portion of this hearing by way of written submissions. At the conclusion of the hearing, I indicated that I would provide directions regarding the deadlines for the parties to make their sanction and expenses submissions. I therefore direct the parties to provide their written sanction and expenses submissions by the following dates, in line with what I indicated during the hearing:
- a. BCFSA is to provide its submissions on sanction and expenses by May 28, 2025;
 - b. Mr. Foxwell is to provide his response submissions on sanction and expenses by June 11, 2025;
 - c. BCFSA is to provide its reply to Mr. Foxwell's response submissions, if any, by June 18, 2025.
44. Once I have arrived at a decision on sanctions and expenses, I will issue additional reasons on that matter that will form a part of this decision. In those reasons, I will make an order under section 43(2) of RESA and make such other orders under RESA as I may deem appropriate.

45. Once an order has been made under Part 4, Division 2 of RESA, Mr. Foxwell will have a right to appeal to the Financial Services Tribunal under section 54(1)(e) of RESA. Mr. Foxwell will have 30 days from the date of the sanction decision to file an appeal: *Financial Institutions Act*, RSBC 1996, c 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

DATED at North Vancouver, BRITISH COLUMBIA, this 14th day of May, 2025.

“Original signed by Gareth Reeves”

Gareth Reeves
Hearing Officer