

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 SANCTION

[This Decision has been redacted before publication.]

|                            |                         |
|----------------------------|-------------------------|
| DATE AND PLACE OF HEARING: | Via Written Submissions |
| COUNSEL FOR BCFSa:         | Laura Forseille         |
| COUNSEL FOR RESPONDENT:    | Self Represented        |
| HEARING OFFICER:           | Gareth Reeves           |

**Introduction**

1. On May 14, 2025, I issued a liability decision indexed as *Foxwell (Re)*, 2025 BCSRE 90 (the “**Liability Decision**”) following a hearing held on May 6, 2025 (the “**Liability Hearing**”).
2. In the Liability Decision, at para 42, I found that David William Rodney 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).

3. Having found that Mr. Foxwell engaged in conduct unbecoming, sections 43(1)(a) and 43(2) require that I determine the appropriate sanction in this case. Below is my decision regarding the appropriate sanction to order in this case.
4. BCFSa seeks the following orders against Mr. Foxwell:
  - a. Mr. Foxwell's license be suspended for one year; and
  - b. Mr. Foxwell pay \$17,298.50 in enforcement expenses in this matter.
5. Mr. Foxwell submits various alternative forms of sanction. I have attempted to categorize the sanctions Mr. Foxwell proposes within the confines of those permitted under section 43(2) of RESA. For example, Mr. Foxwell proposes a period of "probation", which is not strictly within section 43(2) of RESA's textual scope but I take him to mean a period during which he has conditions placed on his licence under section 43(2)(d) of RESA. I take him to submit that he should receive a sanction composed of some combination of the following:
  - a. A suspension of 0-3 months;
  - b. Licensing conditions for a period of 12 to 24 months;
  - c. Orders for remedial education; or
  - d. A "modest" discipline penalty.
6. Regarding enforcement expenses, Mr. Foxwell submits that the expenses order should account for Mr. Foxwell's cooperation with the process and the financial impacts of any suspension order. He seeks to have no expenses order made, to have the expenses order greatly reduced from what BCFSa seeks, or to have a payment plan ordered.

## Issues

7. The issue before me is what orders I should make under section 43 of RESA including the following:
  - a. The sanction or sanctions I should order under section 43(2) of RESA; and
  - b. Whether Mr. Foxwell should be ordered to pay any expenses pursuant to section 43(2)(h) of RESA, and if so, in what amount.

## Jurisdiction and Standard of Proof

8. Pursuant to section 2.1(3) of RESA, the Superintendent of Real Estate (the "**superintendent**") may delegate any of its powers in writing. The Senior Hearing Officer and Hearing Officers of BCFSa's Hearings Division have been delegated the statutory powers and duties of the superintendent under sections 42 through 53 of RESA.
9. The superintendent must also afford procedural fairness to a respondent where a decision may affect his or her rights, privileges or interests. This 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 based on evidence. The superintendent may, however, apply its individual expertise and judgment to how it evaluates or assesses evidence.

## Factual Background

10. The evidence and information before me includes a Book of Documents and an Agreed Statement of Facts and Proposed Findings of Misconduct which have been entered as Exhibits 1 and 2, respectively. As indicated in the Liability Decision, Mr. Foxwell and BCFSA agreed during that hearing that I could rely on the findings of fact in *R v Foxwell*, 2023 ABCJ 137 and *R v Foxwell*, 2025 ABKB 210: Liability Decision, at para 11. The evidence also includes an affidavit from a Senior Licensing Specialist with BCFSA and the exhibits thereto along with certain additional documents submitted by Mr. Foxwell during the sanction phase of this proceeding.
11. The factual background of Mr. Foxwell's conduct and certain details of the investigation are set out in the Liability Decision. Although I have reviewed all the information before me, the below includes only a summary of the relevant background and some of the additional relevant factual information important to this decision. It is not intended to be a complete recitation of everything before me. I will not recite the background of the investigation and Mr. Foxwell's cooperation with it, that background is sufficiently recited in the Liability Decision.

### *The Conduct Behind the Charges*

12. On December 15, 2021, Mr. Foxwell was in Leduc, Alberta, where he had planned to meet up with an individual to whom he had loaned some money. That individual did not show up. Mr. Foxwell proceeded to have more than four drinks before getting behind the wheel of his rented Hyundai Elantra. At about 10:30 pm, [Officer 1], who had been following Mr. Foxwell for some time, initiated a traffic stop. Mr. Foxwell stopped his car in the left turning lane at a red light. [Officer 1] approached Mr. Foxwell's vehicle and told him to put it in park. Mr. Foxwell did not put the vehicle in park despite [Officer 1] telling him repeatedly to do so. After [Officer 1] told Mr. Foxwell that he needed to take a breath sample as part of a mandatory alcohol screening and the light turned green, Mr. Foxwell began driving his car through the intersection, turning left. [Officer 1] reached into the vehicle with his right arm to attempt to put the vehicle in park. Mr. Foxwell accelerated to 40 to 45 km/h, dragging [Officer 1], who was holding on to the steering wheel, beside the car for approximately 200 meters.
13. As they turned the corner, another motorist saw what was occurring, overtook Mr. Foxwell, and eventually parked in a position to prevent Mr. Foxwell from driving further then entered the rear door of the car and shifted it into park. It is not clear to me if Mr. Foxwell stopped largely of his own initiative or because the other driver had edged him off the road. In the absence of a clear finding in *R v Foxwell*, 2023 ABCJ 137 on that point, I find that Mr. Foxwell was not stopped primarily by the other driver, although the other driver's actions may have contributed to his decision to stop.
14. As a result of being dragged, [Officer 1] suffered bruising to his forearm, armpit, and ribcage; a dislocated finger; shoulder strain; and some mental trauma.
15. After Mr. Foxwell was arrested and taken to the Royal Canadian Mounted Police station in Leduc, he refused to provide a breath sample despite a lawful demand and refused to provide his name despite being asked over twenty times. He was also charged with seven charges, six of which became the charges (the "**Charges**") of which he was eventually convicted.
16. Approximately 13 hours after being taken to the Leduc detachment, Mr. Foxwell was granted a cash bail, but was held for an additional period of approximately 30 hours until he was transferred to the Remand Centre because the detachment did not accept card payments and Mr. Foxwell did not have cash. Mr. Foxwell was not given access to a telephone to call someone to pay his bail in cash, despite requesting it. He was only released after being transferred to the Remand Centre.

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### *The Events Following Mr. Foxwell's Release*

17. On December 17, 2021, Mr. Foxwell was effectively terminated from his then brokerage after they discovered through a news report that he had been arrested. He applied for a transfer to [Brokerage 1] on December 21, 2021 and disclosed the Charges, plus the seventh charge referenced above, to BCFSa in his transfer application. He then transferred to [Brokerage 2] ("**Brokerage 2**") ([license number]) with the transfer becoming effective January 13, 2022.
18. Mr. Foxwell's application to [Brokerage 1] did not proceed. It is not clear to me on the record why that application did not proceed, but the record before me shows that Mr. Foxwell's transfer was held up for at least some time while BCFSa Investigations reviewed Mr. Foxwell's suitability as a result of the disclosed charges.
19. On January 11, 2022, Mr. Foxwell applied to transfer to [Brokerage 2]. That transfer was made effective January 13, 2022.
20. On March 14 and 15, 2023, Mr. Foxwell went to trial on the Charges in the Alberta Court of Justice. At trial he conceded most of the Charges but argued that the evidence did not establish he was driving while impaired and argued that dragging [Officer 1] did not constitute assault. He also argued that his overholding at the Leduc detachment contravened his *Charter* rights such that the Charges should be stayed.
21. On July 4, 2023, Mr. Foxwell was convicted of the Charges. Although Justice Rice found that Mr. Foxwell's *Charter* rights had been violated, he declined to order a stay, choosing instead to reduce Mr. Foxwell's eventual sentence and formally denounce the conduct: *R v Foxwell*, 2023 ABCJ 137, paras 236-237. The quantum of that reduction has not been established before me.
22. On November 3, 2023, Rice J sentenced Mr. Foxwell to a 16-month conditional sentence followed by eight months' probation, 100 hours of community service, a series of fines and mandatory victim surcharges of \$7,150, and a three-year driving prohibition.
23. Mr. Foxwell appealed Rice J's decision to the Alberta Court of King's Bench. The record before me does not include Mr. Foxwell's notice of appeal, but by the time the matter proceeded to hearing on February 21, 2025, the issue of whether Mr. Foxwell's conduct was sufficient to contravene the relevant Criminal Code sections set out in the Charges was not live. Instead, the appeal focused on whether the *Charter* breach Mr. Foxwell suffered justified a stay of the Charges.
24. I also note that Mr. Foxwell's sentence had not been stayed during the appeal, such that he continued to serve it, in the community, while the appeal proceeded.
25. On April 4, 2025, Devlin J affirmed Rice J's decision and dismissed Mr. Foxwell's appeal.
26. Because Mr. Foxwell's conviction and sentence had not been stayed, Mr. Foxwell's conditional sentence had ended by the time this matter proceeded to a discipline hearing. His probation will continue until November 1, 2025. Mr. Foxwell complied with the terms of his conditional sentence and, to date, his probation.
27. Mr. Foxwell reported the Charges during his transfer applications in December 2021 and January 2022. BCFSa investigated the Charges. During the course of BCFSa's investigation, Mr. Foxwell responded to the inquiries made of him by BCFSa Investigations and put BCFSa Investigations in contact with his lawyer and parole officer who answered questions and provided their own responses.

28. It also appears that the rental car company that owned the Elantra that Mr. Foxwell was driving at the time of the above incident claimed damages of \$1,189.62 and that Mr. Foxwell paid that by March 9, 2022.

### *Mr. Foxwell's Regulatory History*

29. 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 and for the period from December 9, 2024 to January 24, 2025, as a result of a transfer from [Brokerage 2] to [Brokerage 3] ("**Brokerage 3**"). The details of that transfer are discussed below.
30. As indicated above, Mr. Foxwell had to change brokerages because the events that gave rise to the Charges were published in the media. It appears that this transfer was held up for just short of a month, being December 17, 2021 to January 13, 2022, counting the days from when he learned he would have to change brokerages to the date his transfer was approved. Although Mr. Foxwell remained licensed during this period, his evidence, which I accept, is that he was effectively terminated and was permitted to remain on until his transfer completed so that he could maintain benefits coverage. Mr. Foxwell does not indicate in his evidence or submissions whether or how his practice was impacted during this period.
31. Mr. Foxwell claimed in his submissions that he was unlicensed from December 2024 to January 2025 because of a suitability assessment which delayed his transfer application. Mr. Foxwell initially submitted no evidence regarding this transfer and the last certificate under section 127 of RESA in the record before me was dated July 14, 2023 and did not include the period referenced by Mr. Foxwell. To address this matter, I directed the parties to provide additional submissions and evidence on Mr. Foxwell's transfer in December 2024, what occurred, and how it may impact their position in this proceeding in light of the comments of the Financial Services Tribunal ("**FST**") in *Billie Aaltonen v Registrar of Mortgage Brokers*, 2024 BCFST 2, at paras 67-70, 96, and 102-104 ("**Aaltonen**"), at paras 67-70, 96, and 102-104. BCFSA provided an affidavit and further submissions. Mr. Foxwell provided various pieces of email correspondence, screenshots of text messages with [Individual 1], the Managing Broker of [Brokerage 2], between October and December 2024, and certain financial documents. I accept the affidavit and Mr. Foxwell's further documents as part of the record before me in this proceeding.
32. The further evidence establishes that Mr. Foxwell applied to transfer his licence to [Brokerage 3] in the morning of December 9, 2024. [Brokerage 2] then surrendered Mr. Foxwell's licence later that day, indicating the reason for the surrender as "disrespect of broker/manager".
33. On that same day, BCFSA advised Mr. Foxwell that his licence had been surrendered and that he was not entitled to conduct real estate business in British Columbia after that date. Mr. Foxwell replied to request that his transfer application be expedited.
34. On December 10, 2024, BCFSA's licensing department replied to advise that Mr. Foxwell's application was "in queue" but had not been reviewed and that BCFSA would process the application in the order in which it was received. Mr. Foxwell made a second request to have the application expedited later that day and BCFSA responded that "[a]pplications are processed in the order received."
35. Mr. Foxwell and his new managing broker followed up on December 11 and 12, 2024 and received substantially the same response.
36. At various points in December 2024, Mr. Foxwell also emailed BCFSA's Hearings Division and BCFSA's legal counsel in this matter to ask for assistance in expediting his transfer application. In response, he was advised to contact BCFSA's licensing department.

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37. On January 8, 2025, Mr. Foxwell emailed BCFSA's licensing department to follow up and to express his need to have his transfer application processed. BCFSA's licensing department replied to provide a breakdown of expected application processing times. It indicated that transfer applications usually took 1 to 5 business days.
  38. On January 9, 2025, a Service Program Administrator with BCFSA forwarded Mr. Foxwell's application to a Licensing Manager highlighting the ongoing discipline proceeding, which the transfer application disclosed, and highlighting a note indicating that there must be a consent to certain conditions on his licence if he transfers. The email indicates the matter is time sensitive given it is a transfer application.
  39. On January 13, 2025, the Licensing Manager then forwarded the application to a Senior Licensing Specialist noting that it was "more of a suitability/conditions matter" and highlighting that Mr. Foxwell's new managing broker would need to consent to the conditions on Mr. Foxwell's licence. The conditions provided as follows: "Upon conclusion of the pending legal proceeding against the above licensee, BCFSA will consider the licensee's suitability for continued licensing." The email also directed the Senior Licensing Specialist to contact [Individual 1] regarding the licence being surrendered and BCFSA Compliance & Enforcement.
  40. On January 15, 2025, the Senior Licensing Specialist contacted BCFSA's Legal Services Manager to ask about the status of this discipline proceeding. I have not been provided with a copy of any response to that email.
  41. On the same day, the Senior Licensing Specialist emailed [Individual 1] to ask why Mr. Foxwell's licence had been surrendered. [Individual 1] responded with a telephone call. The Senior Licensing Specialist reports that [Individual 1] told him [Brokerage 2] had terminated Mr. Foxwell because Mr. Foxwell had disrespected [Individual 1] and [Individual 1] could not trust Mr. Foxwell because he had not been fully transparent about the conduct that formed the basis of this discipline proceeding. [Individual 1] reportedly advised that he had spoken with Mr. Foxwell about discrepancies between what Mr. Foxwell told [Individual 1] and what the criminal proceeding documents showed. Mr. Foxwell reportedly used derogatory language directed toward [Individual 1], who lost confidence in Mr. Foxwell's trustworthiness, resulting in Mr. Foxwell's termination.
  42. I note that the Senior Licensing Specialist's evidence regarding what happened between Mr. Foxwell and [Individual 1] is hearsay and that Mr. Foxwell has not had an opportunity to test it because he only found out about it when he received the Senior Licensing Specialist's affidavit. I also note that the evidence is rather vague. It does not provide details of what discrepancies [Individual 1] says he found, when he found them, how [Individual 1] approached the conversation, or what Mr. Foxwell is alleged to have said in their meeting.
  43. Mr. Foxwell argues that hearsay of the account provided by [Individual 1] through the Senior Licensing Specialist does not align with [Individual 1]'s correspondence and conduct leading up to the surrender of Mr. Foxwell's licence. Mr. Foxwell points to [Individual 1]'s support of Mr. Foxwell's application for an adjournment in this proceeding on December 4, 2024 and certain text messages between Mr. Foxwell and [Individual 1]. The text messages show that Mr. Foxwell and [Individual 1] had a meeting on December 4, 2024. The exact details of the meeting are not recorded in the text messages, but there are text messages leading up to the meeting regarding its scheduling, Mr. Foxwell's search for work to supplement his earnings as a licensee, and Mr. Foxwell's inability to make rent. Then, starting at approximately 9:14 pm on December 4, 2024, Mr. Foxwell sent [Individual 1] a series of messages advising that he was taking on two additional jobs and requesting a reduction in Mr. Foxwell's brokerage fees. In those messages, Mr. Foxwell took issue with the compensation Mr. Foxwell received for certain additional work he did for [Brokerage 2], accused [Individual 1] of complacency, and asserted that [Individual 1] could afford to waive the brokerage fees. [Individual 1] responded on Thursday December 5, 2024 to tell Mr. Foxwell to move his licence by Friday. From the context, including Mr. Foxwell's responses, I conclude [Individual 1]

meant Friday December 6, 2025. Mr. Foxwell and [Individual 1] then exchanged messages in which Mr. Foxwell asks for more time, states that he has an interview at 10:00 am, and indicates December 4, 2024 was an emotional day for him, describing it as “one of the WORST in my career.” It is not clear to me if the interview Mr. Foxwell referenced was scheduled for December 5 or 6, 2024. Then, [Individual 1] refused to reconsider and refused to give Mr. Foxwell more time before surrendering Mr. Foxwell’s licence. The text messages provided to me then end. Although it is clear that Mr. Foxwell sent further messages to [Individual 1], I do not know what they said.

44. In my view, the text messages do not contradict the account that [Individual 1] discovered inconsistencies between what Mr. Foxwell told him and what the documents in the criminal proceedings showed. The text messages are effectively silent on what happened during the meeting on December 4, 2024. There is a single December 4, 2024 email from Mr. Foxwell to [Individual 1] at 11:38 am referencing a prior discussion regarding the December 4, 2024 adjournment request. In that email, Mr. Foxwell provided [Individual 1] with an adjournment request form, which [Individual 1] then forwarded on to BCFS Hearing Division. In my view, that email supports the view that Mr. Foxwell and [Individual 1] met on December 4, 2025 and discussed the criminal proceedings and these disciplinary proceedings; however, it does not provide any detail regarding what occurred during that meeting. In my view, [Individual 1]’s support of Mr. Foxwell’s adjournment request does not undermine the conclusion that [Individual 1] and he met on December 4, 2025 and discussed the criminal proceedings, nor do the preceding text messages. I take the email to BCFS to indicate that [Individual 1] was still willing to do what he considered necessary as a managing broker, given Mr. Foxwell was still licensed at [Brokerage 2] at the time. I also take the text messages to indicate that something occurred on December 4, 2024 that significantly altered Mr. Foxwell’s and [Individual 1]’s relationship, a conclusion which is supported by Mr. Foxwell’s text message indicating that December 4, 2024 was a highly emotional day for him.
45. The most substantial piece of evidence that might contradict the account that Mr. Foxwell had either not disclosed something of substance or made inaccurate disclosures to [Individual 1] is [Individual 1]’s October 31, 2023 reference letter for Mr. Foxwell addressed to Rice J, which is discussed below. That letter indicates that [Individual 1] was aware of the Charges that Mr. Foxwell was convicted of and about to be sentenced for. This letter tends to indicate that Mr. Foxwell was generally transparent with [Individual 1] concerning the criminal proceeding. This, along with the fact that [Individual 1] did not appear to have decided to terminate Mr. Foxwell until after receiving Mr. Foxwell’s messages sent on the evening of December 4, 2024, leads me to conclude that, whatever the content of the discussion on December 4, 2024, any inaccuracies or lack of disclosure identified by [Individual 1] were not so significant that they were the primary cause of his decision to terminate Mr. Foxwell and surrender his licence.
46. Looking at the hearsay evidence, the lack of a positive account of the meeting from Mr. Foxwell, and the content of the emails, text messages, and letters provided to me, I conclude that Mr. Foxwell and [Individual 1] had a meeting at approximately 11:00 am on December 4, 2024. In that meeting, [Individual 1] and Mr. Foxwell discussed the criminal proceedings and these discipline proceedings. That evening Mr. Foxwell sent a series of text messages that [Individual 1] took to be disrespectful regarding Mr. Foxwell’s ability to pay brokerage fees and [Individual 1]’s ability or desire to waive or reduce them. [Individual 1]’s decision to terminate Mr. Foxwell and surrender his licence was most likely made in response to Mr. Foxwell’s text messages and not directly in relation to the meeting that morning. It may be that [Individual 1] had confronted Mr. Foxwell during the meeting regarding certain discrepancies or inaccuracies in what Mr. Foxwell told [Individual 1]; however, the evidence is not strong enough for me to conclude that the meeting itself was the primary motivating factor that caused [Individual 1] to terminate Mr. Foxwell. The evidence more strongly supports the view that Mr. Foxwell’s messages on the evening of December 4, 2024 tipped the balance. This conclusion is supported by the text messages and by [Individual 1]’s stated reason for surrendering Mr. Foxwell’s licence: “disrespect of broker/manager”. It is also supported by Mr. Foxwell’s general candour with BCFS during the investigation, [Individual 1]’s reference letter, and the fact that the trial judgment had been available for some time by December 2024, which all suggest Mr. Foxwell

would not have been dishonest or obfuscated what occurred when dealing with [Individual 1]. In any event and regardless of the extent to which Mr. Foxwell's termination was due to his text messages or [Individuals 1]'s concerns regarding Mr. Foxwell's candour, [Individual 1] surrendered Mr. Foxwell's licence because of Mr. Foxwell's conduct and communication with [Individual 1] and not because of Mr. Foxwell's criminal conduct or these discipline proceedings.

47. On January 17, 2025, the Senior Licensing Specialist emailed Mr. Foxwell to confirm that Mr. Foxwell had advised his new managing broker of the pending discipline proceeding and a 2019 insolvency. Mr. Foxwell replied and forwarded that inquiry to his new managing broker, [Individual 2], and asked [Individual 2] to confirm Mr. Foxwell had disclosed those matters. [Individual 2] replied to confirm that Mr. Foxwell had disclosed the insolvency matter. The Senior Licensing Specialist then called [Individual 2], who confirmed that Mr. Foxwell had disclosed the disciplinary proceeding and its details.
48. On January 21, 2025, the Senior Licensing Specialist emailed Mr. Foxwell to advise that the transfer application was approved with the same condition as was placed on his licence before and that BCFSA's licensing team had been advised so that they could process the transfer.
49. Mr. Foxwell then followed up further on January 23, 2025 seeking to have his transfer processed before the end of the week. On that same date, Mr. Foxwell received an email from BCFSA's licensing department advising that it was "experiencing increased volumes across all application types", which are processed in chronological order.
50. On January 23, 2025, Mr. Foxwell followed up with the Senior Licensing Specialist to inquire about the status of his transfer application.
51. BCFSA completed Mr. Foxwell's transfer to [Brokerage 3] on Friday, January 24, 2025. Mr. Foxwell received confirmation of his transfer late in the day, which meant he was not able to be reinstated with the Fraser Valley Real Estate Board, and access their systems, until January 27, 2025.
52. Mr. Foxwell's initial submissions argue that his transfer was delayed because of a suitability review by BCFSA. He points in this regard to BCFSA's licensing department's correspondence, and certain telephone calls he had with other, unnamed individuals at BCFSA, indicating that the usual processing time for transfer applications is 1 to 5 business days. He also points to the lack of explanation in BCFSA's submission regarding the reason for the delay in the transfer application being processed. In my view, the evidence does not establish that Mr. Foxwell's application was delayed because of a suitability review by BCFSA from December 9, 2024 to January 9, 2025. The consistent correspondence from BCFSA during this time indicated that Mr. Foxwell's application had been received and would be processed in the order received. Further correspondence indicated that BCFSA had received an unusual number of applications, which had caused delays. The fact that the delay was due to the volume of applications as opposed to a suitability review, during the above noted date range, is supported by the January 9, 2025 email from BCFSA's Service Program Administrator. In my view, that email would have been sent much earlier if administrative or volume delays had not been the main source of delay. The content of that email indicates that the application had just been taken up for processing at that point.
53. Regarding the period from January 9, 2024 to January 24, 2025, the evidence indicates that Mr. Foxwell's application was being processed and that BCFSA's staff was following up on three points: whether [Individual 2] was aware of Mr. Foxwell's prior bankruptcy, whether [Individual 2] was aware of Mr. Foxwell's criminal and discipline proceedings, and [Individual 1]'s reasons for surrendering Mr. Foxwell's licence. The delay for that period was therefore at least in part a result of the discipline proceeding and Mr. Foxwell's conduct underlying the criminal proceedings. That said, the extent of the delay attributable to this discipline proceeding or the underlying conduct is only a few days at most, given most of the period from January 9, 2024 to January 24, 2024 was occupied with following up on [Individual 1]'s reasons for surrendering Mr. Foxwell's licence, which



I found above was not a result of Mr. Foxwell's criminal conduct, but his treatment of [Individual 1]; with receiving [Individual 2]'s confirmation that Mr. Foxwell had made disclosures, a portion of which was required to attend to confirm disclosure of the insolvency issue; and further administrative delays from January 21 to 24, 2025.

54. I note that Mr. Foxwell takes issue with BCFSa's failure to attend to his application more quickly despite his repeated follow-up emails to BCFSa's staff. I should not be taken to say that the delay in processing Mr. Foxwell's application was beyond reproach given Mr. Foxwell's repeated follow-ups, his unlicensed status at the time, and BCFSa's own representations regarding its usual processing times. I explicitly make no finding in that regard, noting those factors, the need for BCFSa to address large volumes of applications in a manner that treats all applicants fairly, and the need for BCFSa to make inquiries regarding transfers that occur concurrently with licenses being surrendered in order to protect the public. I do, however, find that the delays in Mr. Foxwell's licence transfer application was only minimally a result of this discipline proceeding or the conduct at issue in it and instead arose because of administrative issues with BCFSa's handling of applications at the time in question.
55. Mr. Foxwell has no disciplinary history under RESA and I am aware of no other regulatory or disciplinary history or other criminal history for Mr. Foxwell.

### ***Mr. Foxwell's Personal History***

56. Mr. Foxwell is 52 years of age at the date of these reasons.
57. Mr. Foxwell has been involved in the community in various volunteer capacities. I do not have specific details and dates of his involvement but Mr. Foxwell has indicated he has volunteered with the [various charitable organizations] in Langley. He has had to step back from these roles because he was convicted of the Charges.
58. Mr. Foxwell has a history of [redacted disorders], for which he has received previous treatment. After the above noted incident, Mr. Foxwell began taking counselling. Mr. Foxwell has provided a letter from Group Therapy Clinician at [Healthcare Facility 1] speaking to his completion of various group therapy sessions. This includes [various communication and therapy courses] starting in September 2023 with the remainder in progress. This seems to correspond with an October 17, 2022 letter from a Clinical Counsellor at [Healthcare Facility 2] reporting that Mr. Foxwell attended 18 in person sessions and 30 Zoom group sessions on topics including [various topics].
59. Mr. Foxwell has provided several reference letters that are addressed to Rice J from various friends, members of the business community, and other real estate licensees in the lower mainland, many of whom have known Mr. Foxwell for years. Included in those letters is a reference letter from [Individual 1], which was emailed to Mr. Foxwell on October 31, 2023. As a whole, these letters report that Mr. Foxwell is a good real estate licensee, is willing to help when asked, and is active in community charitable endeavours. The letter from [Individual 1] indicates that he sees no issues with Mr. Foxwell's performance as a real estate licensee and spoke well of Mr. Foxwell's business reputation. In my view, the weight of that letter is diminished by [Individual 1]'s later surrender of Mr. Foxwell's licence, but that surrender likely arose more from a breakdown in their personal relationship rather than from [Individual 1]'s loss of faith in Mr. Foxwell's abilities as a licensee. Most of the letters are quite dated at this point, which diminishes their weight slightly, though they all indicate an awareness of Mr. Foxwell's criminal proceeding, which is the most major concern regarding his reputation and personality before me.
60. There are two more recent letters speaking to Mr. Foxwell's willingness to donate a kidney to one of the writers. The authors of these letters state that Mr. Foxwell has offered to donate a kidney to the husband who is suffering from a disease that slowly diminishes the function of his kidneys. I

have no evidence that Mr. Foxwell has followed through with that donation, but that is a significant sacrifice and speaks significantly to Mr. Foxwell's character.

61. Taken as a whole, the reference letters generally comport with the evidence that Mr. Foxwell is actively and positively involved in his community, that he had a generally good reputation and character prior to the events that gave rise to the Charges, and that he maintains a good character with an interest in helping others.
62. Mr. Foxwell has also provided a personal statement in which he describes the impact on him of his conduct on the night of December 15, 2021. He notes that he had come out of an abusive relationship, but does not describe the nature of that abuse. He states he has had to be "accountable to family, friends, colleagues and clients, and many public entities as well" and that he "had made [him]self a disgrace due to a grave error in judgment in one night of self-loathing." He states that he has been blessed by friends, colleagues, and clients who have given him a second chance. He states that his life will never be the same and the experience will stay with him forever. He highlights his efforts at rehabilitation and the way in which those steps have matured him.

## Submissions

### BCFSA's Submissions

63. BCFSA seeks a one-year suspension as well as investigation and hearing expenses of \$17,298.50.
64. BCFSA submits that the purposes of RESA are to protect the public and to uphold public confidence in the real estate industry, citing *Murphy (Re)*, February 20, 2014, OSRE, p 32. BCFSA submits that selecting the correct sanction requires consideration of those purposes and the goals of specific and general deterrence, citing *Thow v BC (Securities Commission)*, 2009 BCCA 46 ("*Thow*"), at paras 33-34. BCFSA also highlights other generally recognized principles and purposes underlying regulatory sanctions, such as denunciation, education of licensees and the public regarding regulatory requirements, rehabilitation of respondents, proportionality, and preventing profit from wrongdoing. BCFSA also quotes from *Law Society of British Columbia v Dent*, 2016 LSBC 5 ("*Dent*"), at paras 20-23, which sets out a list of factors to consider when determining an appropriate regulatory sanction as follows:

#### **Nature, gravity and consequences of conduct**

- [20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

#### **Character and professional conduct record of the respondent**

- [21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?

#### **Acknowledgement of the misconduct and remedial action**

- [22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

**Public confidence in the legal profession including public confidence in the disciplinary process**

[23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

65. BCFSA submits that *Wark (Re)*, 2010 CanLII 44372 (BC REC), *The Law Society of Manitoba v Fourmeaux Clemens*, 2024 MBLS 2 (CanLII) ("**Fourmeaux Clemens**"), and *Chinn (Re)*, 2015 CanLII 153610 (AB RECA), which I summarize below, should guide my approach to type and quantum of sanction I order here. BCFSA submits *Wark (Re)* establishes that a suspension is the appropriate form of sanction in Mr. Foxwell's case on the basis that, around the time of Mr. Wark's suspension, the usual sanction for failure to report charges was a reprimand and expenses, which indicates that the sanction imposed in that case was mostly for Mr. Wark's criminal conduct. I note that BCFSA submits that Mr. Foxwell should receive a longer suspension than Mr. Wark.
66. BCFSA submits that Mr. Foxwell's conduct is severe. It submits that it is aggravating that his conduct was criminal and that it involved a refusal to cooperate with law enforcement and their lawful demands and placed the safety of other drivers and law enforcement at risk. BCFSA highlights the injuries [Officer 1] suffered. BCFSA further submits that, as found by Rice J, driving while impaired and refusing to provide a breath sample "pose serious problems to our communities" and that Mr. Foxwell's conduct "strike[s] a blow to the administration of justice": *R v Foxwell*, 2023 ABCJ 137, at para 235. Finally, BCFSA notes Devlin J's comments that Mr. Foxwell's actions were "lethally dangerous" and included "dragging a police officer, at speed, to evade the penal consequences of having been caught driving drunk": *R v Foxwell*, 2025 ABKB 210, at para 79.
67. BCFSA submits that Mr. Foxwell's age and experience is not relevant, but that inexperience and youth are not a factor here. BCFSA acknowledges Mr. Foxwell does not have a disciplinary record but submits this is a neutral factor.
68. BCFSA submits that Mr. Foxwell's reporting of the Charges should not be considered a mitigating factor because he was required to report it as part of his transfer applications. BCFSA also submits that Mr. Foxwell's agreement to the ASF should be considered a neutral factor and not mitigating, particularly because BCFSA has sought reduced expenses as a result. BCFSA submits that Mr. Foxwell attempted to minimize his culpability in his criminal trial which reflected negatively on his honesty and credibility at that trial. BCFSA submits that Mr. Foxwell's acknowledgment of his misconduct and the effect it has had on the public and the industry is "to the minimal extent required by the circumstances" and that it should not be considered mitigating.
69. BCFSA relies most heavily on the final category identified in *Dent*. BCFSA relies on the comments in *Chinn (Re)* to the effect that having an individual licensed and able to practice while subject to a criminal sentence would negatively impact the reputation of the industry. BCFSA argues that I should consider the impact of allowing Mr. Foxwell to continue to practice while serving his sentence. BCFSA submits that I should suspend Mr. Foxwell "for a period of time at least somewhat commensurate with the amount of time that he has been licensed under RESA while serving a criminal sentence."
70. BCFSA submits that the sanction imposed should sufficiently denounce Mr. Foxwell's conduct and demonstrate to licensees that they may face significant regulatory sanction for criminal conduct. BCFSA submits in this regard that specific and general deterrence is already served by the sentence imposed as a result of Mr. Foxwell's convictions.
71. BCFSA submits that a one-year suspension would be proportional to the severity of Mr. Foxwell's conduct unbecoming because Mr. Foxwell avoided incarceration as a result of the *Charter* rights

he suffered, despite an order of incarceration being justified in the circumstances: as noted by Devlin J, *R v Foxwell*, 2025 ABKB 210, at para 85. Mr. Foxwell therefore avoided a sentence with a much more severe personal impact: *R v Foxwell*, 2025 ABKB 210, at para 85. BCFSA argues that I should consider the “relative laxity” of Mr. Foxwell’s sentence in making my decision.

72. Finally, BCFSA notes that the Law Society hearing panel in *Fourmeaux Clemens* stated that “criminal convictions of any kind impact the reputation of the profession (particularly in this case where impaired driving laws were violated, other users of the road were put in jeopardy, and an innocent person was terrorized)”: at para 36. BCFSA notes that Ms. Fourmeaux Clemens had voluntarily withdrawn from the industry approximately two years before her one-year suspension and submits that this indicates a one-year suspension would be appropriate in Mr. Foxwell’s case.
73. Regarding expenses, BCFSA has provided a bill of costs in the amount of \$18,948.50. BCFSA has deducted 14 hours of legal counsel time from that amount because Mr. Foxwell agreed to the ASF and rendered the liability portion of the hearing unnecessary.

### ***Mr. Foxwell’s Submissions***

74. As indicated above, Mr. Foxwell submits that I should order a sanction including some combination of the following:
  - a. A suspension of 0-3 months;
  - b. Licensing conditions for a period of 12 to 24 months;
  - c. Orders for remedial education; or
  - d. A “modest” discipline penalty.
75. Mr. Foxwell highlights his cooperation with BCFSA’s investigation, his admission of his misconduct, his efforts at rehabilitation, the impact of the criminal proceedings and their publication on his business and personal reputation, and the time since the underlying conduct. He notes that his conduct on December 15, 2021 was not related to a real estate transaction. He submits that a one-year suspension would be disproportionate and inconsistent with prior decisions. He says a one-year suspension will be “career ending” for him.
76. Mr. Foxwell submits that he and BCFSA agreed that his conduct unbecoming was limited to section 35(2)(a) of RESA and did not include section 35(2)(b) or (c) of RESA.
77. Mr. Foxwell submits that he has already been held to account by the criminal proceedings and has suffered public humiliation by way of repeated media coverage. This has impacted his personal life, career, and finances and damaged his reputation. He notes that he has a criminal record now and carries that stigma with him and has been restricted in his ability to work by the conditions that form part of his conditional sentence. Mr. Foxwell did not initially quantify his financial losses but has provided, in his further submissions, copies of his T4s for the 2023 and 2024 tax years and an agent earnings report from [Brokerage 3]. I discuss those documents below. He submits that this proceeding should acknowledge the seriousness of his conduct and focus on his rehabilitation, rather than punish him again.
78. Mr. Foxwell submits that he self-reported at the earliest opportunity, was cooperative with BCFSA’s investigation, and agreed to the ASF. He submits that he was allowed to renew his licence twice and transfer it three times, which he says indicates he was not a threat to the public, likely to reoffend, or in non-compliance.
79. Mr. Foxwell submits that he “is a changed person from who he was in 2021” as a result of his counselling. He relies in part on the fact that he has had no other run ins with the law since 2021,

which he submits indicates the conduct was an “isolated lapse in judgment rather than reflective of Mr. Foxwell’s character or fitness to practice” [sic].

80. Mr. Foxwell acknowledges that a sanction is warranted to demonstrate to the industry that criminal conduct can have regulatory consequences, but that this does not call for a “maximal suspension”. He reiterates, in this regard, that it was “agreed to by all parties” that this matter fell under section 35(2)(a) of RESA and therefore did not involve undermining public confidence in the real estate industry or bringing the real estate industry into disrepute under section 35(2)(b) or (c) of RESA.
81. Mr. Foxwell submits that a harsh sanction in this case would send a message that discourages self-reporting, taking positive remedial steps, acknowledging their misconduct, and cooperating with the regulator. He submits that a fair and proportionate sanction will increase confidence in the regulatory process by demonstrating that misconduct is dealt with appropriately and not vindictively.
82. Mr. Foxwell relies on the prior decisions, summarized below, in *O’Neill (Re)*, 2018 CanLII 129781 (BC REC); *Wark (Re)*; *Singh Rai (Re)*, 2013 CanLII 51535 (BC REC); *Sahota (Re)*, 2011 CanLII 57196 (BC REC); *Calvin Johnson Carr (Re)*, 2012 CanLII 82244 (BC REC); *Testini (Re)*, 2011 CanLII 64331 (BC REC); and *Kanda (Re)*, 2024 BCSRE 64. Mr. Foxwell submits that these precedents demonstrate that his conduct deserves a substantially less severe sanction than that sought by BCFSR. Regarding *Wark (Re)*, Mr. Foxwell argues that his sanction should not exceed that in *Wark (Re)* and submits that public commentary on the *Wark (Re)* decision as being lenient highlights that a one-year suspension would be exceptional in the regulatory context.
83. Mr. Foxwell argues that *Fourmeaux Clemens* involved a sanction “bordering on the harshest available” and that the fact that Ms. Fourmeaux Clemens had been out of the industry for two years “soften[ed] the impact” of that sanction. He argues that the suspension in this case would be “a brand-new forced removal” that would undo the “rebuild he has been working on since 2021”.
84. Mr. Foxwell submits that I should consider the consequences he has suffered as a result of his conduct; the time that has passed; his compliance with his conditional sentence and probation conditions; his community service both before and after his conviction, which he says exceeded his court ordered community service; his rehabilitation efforts; his remorse; and his loss of licensing in December 2024 and January 2025.
85. Mr. Foxwell submits that a suspension of 0-3 months would align with the orders in *O’Neill (Re)* and *Wark (Re)* and would not be essentially the same as in *Kanda (Re)*, which he submits involved repeated misconduct, deception, lack of cooperation, no remorse, and a high probability of reoffence. He submits that such a suspension would sufficiently denounce his conduct and demonstrate that such conduct is not acceptable and support the principle of rehabilitation. He submits that allowing him to continue to practice would protect the public by demonstrating that a rehabilitated person can be allowed to continue to practice and benefit the public by way of a firm but fair regulatory intervention.
86. Mr. Foxwell submits that he would welcome “reasonable conditions or remedial measures” like further education or counselling. He also submits that a “modest discipline penalty” might be imposed for “additional monetary deterrence”, but he has limited ability to pay and his income for 2025 has been “almost nil”. Again, Mr. Foxwell’s evidence of his financial position is addressed below.
87. Mr. Foxwell submits that he is not attempting to avoid consequences, but wishes to avoid a suspension that would “destroy and collapse a 20-year career and would be a form of life sentence.”
88. Regarding expenses, he submits that the expenses should be reduced or not ordered because of his cooperation in this matter and in consideration of the substantial financial impact that a suspension, if ordered, would cause.

### BCFSA's Reply

89. In reply to Mr. Foxwell's submissions, BCFSA submits that the proposed one-year suspension would not constitute "double punishment". BCFSA points to *R v Wigglesworth*, [1987] 2 SCR 541 where the Supreme Court indicated that a finding of guilt and a sentence in a criminal proceeding does not preclude a disciplinary proceeding or regulatory sanction: at 565-567. BCFSA acknowledges that Mr. Foxwell's conviction and sentence should be considered as part of the *Dent* factors, but argues that the criminal sentence does not preclude regulatory action.
90. BCFSA submits that the prior orders in *O'Neill (Re)*, *Singh Rai (Re)*, *Sahota (Re)*, *Calvin Johnson Carr (Re)*, *Testini (Re)*, and *Kanda (Re)*, 2024 BCSRE 64 are not particularly relevant on the basis that those matters did not involve regulatory intervention for the underlying criminal conduct, but involved failures to disclose or withholding information regarding criminal charges and proceedings. BCFSA submits that *Kanda (Re)* supports its position that a one-year suspension is appropriate because Mr. Foxwell's case "requires a greater focus on specific deterrence because he continues to operate in the industry and has done so throughout the course of his conditional sentence order", whereas Mr. Kanda had left the industry by the time of the decision in that case.
91. Regarding *Wark (Re)*, BCFSA submits that there is no evidence that public commentary described *Wark (Re)* as lenient. BCFSA submits that if I accept that it was lenient, I should infer that the sanction in that case did not meet the goal of maintaining public confidence in the real estate industry and so Mr. Foxwell should receive a longer suspension.
92. BCFSA also generally opposes Mr. Foxwell's proposed alternative sanctions. BCFSA submits that a probationary period is unnecessary and would not serve a remedial purpose because Mr. Foxwell's conduct did not occur in his capacity as a real estate licensee. BCFSA submits that remedial education or counselling would similarly be unnecessary because such an order would duplicate the rehabilitative steps Mr. Foxwell has taken and as such would not serve the goal of specific deterrence or further his rehabilitation. BCFSA makes no specific submission opposing Mr. Foxwell's proposal for a modest discipline penalty, but notes that he had submitted no evidence to support the claims that he has limited ability to pay and "almost nil" income for 2025. I note that these submissions were provided before Mr. Foxwell provided his T4s and his agent earnings report from [Brokerage 3].
93. On the issue of costs, BCFSA submits that the costs it has sought have already been discounted to reflect Mr. Foxwell's agreement to the ASF, which avoided a liability hearing and reiterates that Mr. Foxwell has not provided any evidence of his financial circumstances which would allow me to make findings of fact about those circumstances. BCFSA further submits that an order that Mr. Foxwell "face standard cost consequences" would not be unacceptably punitive. It submits that *Thow*, at para 38 indicates that penalties aimed at encouraging compliance may appropriately impose heavy burdens on respondents.

### Additional Submissions on the December 2024 Transfer

94. As indicated above, I directed the parties to provide additional submissions on Mr. Foxwell's transfer from [Brokerage 2] to [Brokerage 3] in December 2024 and January 2025 and what, if any, impact those events had on their positions. I asked the parties to address the comments in *Aaltonen*, at paras 67-70, 96, and 102-104 ("**Aaltonen**").
95. BCFSA submits that *Aaltonen* treated Ms. Aaltonen's time out of the industry using a two-step process considering the financial impact and considering the extent to which Ms. Aaltonen's losses were caused by actions of the regulator, in that case the Registrar of Mortgage Brokers (the "**Registrar**"). BCFSA notes that in *Aaltonen*, the Registrar had sought to impose conditions on Ms. Aaltonen's registration, which her supervising Designated Individual was unwilling to accept, causing her to lose her employment and making it difficult for her to find new employment. BCFSA

submits that Mr. Foxwell's loss of employment was caused "by an altercation with is managing broker" and there were no issues with him finding new employment given he transferred on the day his licence was surrendered.

96. BCFSa further submits that there were no issues of procedural fairness in the suitability review of Mr. Foxwell's transfer application and that BCFSa renewed Mr. Foxwell's licence in the usual course once its licensing department received the application. BCFSa acknowledges that *Aaltonen* requires me to consider any financial losses suffered by Mr. Foxwell as a potential mitigating factor, but submits neither the superintendent nor the discipline process caused Mr. Foxwell to become unlicensed and therefore I should not give Mr. Foxwell's loss, if any, during that period any additional weight. BCFSa submits that Mr. Foxwell became unlicensed because of a breakdown of the relationship between Mr. Foxwell and his managing broker, not the superintendent's actions, and therefore cannot be seen to achieve a deterrent effect. BCFSa further submits that Mr. Foxwell had not provided any evidence of what his financial loss might be on which I could base a finding regarding that loss.
97. In addition to his factual arguments, which have been addressed above, Mr. Foxwell also submits that his being unlicensed from December 9, 2024 to January 24, 2025 caused him financial losses resulting from his inability to provide real estate services during that time. He submits that because he became unlicensed he had to refer out clients and was delayed in taking certain courses for his licence renewal in March 2025. He further submits that the loss of his licence compounded ongoing losses in business over the period after his criminal sentencing and that the "lingering 'cloud'" of the possible further loss of his licence because of these discipline proceedings has diminished his ability to retain clients for fear that his real estate services will be interrupted. Mr. Foxwell has provided his T4s from [Brokerage 2] for the 2023 and 2024 tax years showing earnings of [amount 1] and [amount 2] respectively. He has also provided an agent earnings report from [Brokerage 3] showing net pay for the 2025 year to date of [amount 3] after deduction of various fees and expenses. Mr. Foxwell submits that his income from real estate services has dropped to "almost nil in 2025".

## Reasons and Findings

### *Applicable Legislation*

98. Section 43(2) of RESA provides that if the superintendent finds that a licensee has committed professional misconduct or conduct unbecoming then the superintendent must make an order doing one or more of the following:
  - (a) reprimand the licensee;
  - (b) suspend the licensee's licence for the period of time the superintendent considers appropriate or until specified conditions are fulfilled;
  - (c) cancel the licensee's licence;
  - (d) impose restrictions or conditions on the licensee's licence or vary any restrictions or conditions applicable to the licence;
  - (e) require the licensee to cease or to carry out any specified activity related to the licensee's real estate business;
  - (f) require the licensee to enrol in and complete a course of studies or training specified in the order;
  - (g) prohibit the licensee from applying for a licence for a specified period of time or until specified conditions are fulfilled;
  - (h) require the licensee to pay amounts in accordance with section 44 (1) and (2) [recovery of enforcement expenses];



- (i) require the licensee to pay a discipline penalty in an amount of
  - (i) not more than \$500 000, in the case of a brokerage or former brokerage, or
  - (ii) not more than \$250 000, in any other case;
- (j) require the licensee to pay an additional penalty up to the amount of the remuneration accepted by the licensee for the real estate services in respect of which the contravention occurred.

99. I am required to make at least one of the types of orders set out under section 43(2) of RESA and can make more than one in coming to the appropriate sanction.

### ***Discussion: Sanction***

100. I turn now to an assessment of the sanction I will order in this case.

101. Although I am not bound by the authority in *Dent* given it was decided in the context of discipline of a member of the legal profession, it is a useful framework often applied in the context of disciplinary and enforcement decisions under RESA. I will therefore follow that framework in assessing this matter. I note that the factors listed in *Dent* are not exhaustive and I must determine the appropriate sanction in light of the whole of the circumstances.

102. I largely agree with the summary of the relevant purposes and principles animating regulatory sanctions set out in my summary of BCFSA's submissions at paragraph 64 above. I would add that *Thow*, at para 38 highlights that the primary goals of regulatory sanctions are to protect the public and encourage compliance. They are not meant to be only denunciatory or retributive; however they can, in appropriate cases, impose heavy burdens on respondents designed to achieve specific deterrence, general deterrence, and protection of the public.

### **Nature, Gravity, and Consequence of Conduct**

103. Regarding the nature and gravity of Mr. Foxwell's conduct, it is severe. According to Rice J's findings, Mr. Foxwell drove while impaired, then assaulted a peace officer while attempting to avoid the legal consequence of doing so by driving away, which led to Mr. Foxwell dragging the officer next to his car for some distance. As Rice J found, this conduct was sufficiently intentional to constitute assault within the meaning of the *Criminal Code*, in particular, Mr. Foxwell continued driving after he began accelerating and knew [Officer 1] was hanging out of the side of his car. Mr. Foxwell may not have meant to harm [Officer 1] but that was a natural consequence of his actions and in fact arose in this case.

104. As noted by Devlin J, "[i]ntentionally dragging a police officer, at speed, to evade the penal consequences of having been caught driving drunk, is both lethally dangerous and, as the trial judge found, itself 'a blow to the administration of justice'": *R v Foxwell*, 2025 ABKB, at para 79 quoting *R v Foxwell*, 2023 ABCJ 127, at para 235. The conduct was therefore serious not only because of the danger it posed to [Officer 1], but also because it represented a disregard for the legal authority of [Officer 1] as a peace officer conducting a traffic stop and making a legal demand for a sample of Mr. Foxwell's breath. I note that Mr. Foxwell's refusals to cooperate with the officers, in addition to his attempt to flee, were various and continued: he told the officers his wallet was at his hotel when it was in his car, he refused to provide his name or date of birth at the scene, he resisted [Officer 2] in execution of his duty, he refused to provide a breath sample at the Leduc detachment, and he refused to provide his name despite being asked over twenty times while at the Leduc detachment: *R v Foxwell*, 2023 ABCJ 137, paras 23-25, 31, and 75.

105. In my view, the nature of Mr. Foxwell's conduct unbecoming in this case is severe because of the significant risk it created for [Officer 1], the actual harm it caused him, and because it demonstrates



a significant disregard for legal authority considering the totality of Mr. Foxwell's actions. In my view, the severity of the conduct is seriously aggravating.

106. In terms of the impact on the victim, [Officer 1] suffered bruising to his forearm, armpit, and ribcage; a dislocated finger; shoulder strain; and some mental trauma. He received treatment for his mental trauma. In my view, those are significant consequences for [Officer 1]. I find that the impact on [Officer 1] is significantly aggravating.
107. Turning to the consequences to Mr. Foxwell, I accept that Mr. Foxwell faced immediate consequences for his actions both in terms of his immediate emotional turmoil at the scene where he repeatedly said "I just want to fucking die" and in terms of his overholding at the Leduc detachment in breach of his *Charter* rights: *R v Foxwell*, 2023 ABCJ 137, at para 65. I accept that Mr. Foxwell faced significant consequences for his conduct after the fact. It is clearly established that Mr. Foxwell was sentenced to a 16-month conditional sentence followed by eight-months' probation, which will end in November 2025. Mr. Foxwell also faced over \$7,000 in fines and surcharges and paid his counsel to defend him and to defend his *Charter* rights in the criminal proceedings.
108. It is also established that his *Charter* rights were violated by way of an overholding at the Leduc detachment; however, that breach was largely addressed by a sentence reduction in Mr. Foxwell's criminal proceeding. I have not been provided any clear information regarding the amount of that reduction, although Devlin J did note that Mr. Foxwell's conduct likely would have attracted a lengthy period of actual jail time were it not for the *Charter* violation.
109. Regarding the business impacts to Mr. Foxwell, *Aaltonen* requires that I consider the impacts to Mr. Foxwell that arose from his conduct and the discipline or other legal processes that flowed from it. In my view, it is not sufficient to consider only the consequences that flowed from actions taken by the superintendent; I must also consider what consequences flowed from the conduct itself even if the superintendent was not the proximate cause of those consequences.
110. Mr. Foxwell was effectively terminated by his then brokerage and went through a transfer process that lasted just under a month. The events of December 15, 2021 were publicized in the media after his arrest which undoubtedly impacted his personal and business reputation. This impact on his reputation is most clearly demonstrated on the record before me in Mr. Foxwell being forced to change brokerages. It is not clear to me how extensive this impact was at the time because Mr. Foxwell has not supplied any income information for 2021 or 2022 to show the extent of this impact. Without that evidence I cannot conclude that the financial impact on Mr. Foxwell for 2022 was substantial.
111. Mr. Foxwell's criminal proceedings were publicized again in the summer of 2023, following his conviction, and in November 2023, following his sentencing. Mr. Foxwell has submitted tax forms that show his income from his real estate services business from 2023 to 2024 fell substantially and fell further in 2025. Two things suggest to me that some portion of this drop in income is attributable to Mr. Foxwell's criminal sentencing. First is that the timing aligns with Mr. Foxwell commencing his criminal sentence in late 2023. Second is that the terms of Mr. Foxwell's sentence likely restricted his ability to generate new clients by restricting his activities and his involvement in the community. It therefore makes sense that Mr. Foxwell lost income as a result of his criminal sentence, which in turn flowed from his criminal conduct. As noted above, Mr. Foxwell has not provided any income information for 2021 or 2022, so I cannot clearly determine what proportion of this drop in real estate income might be attributable to 2023 being a positive outlier for Mr. Foxwell. Without clear evidence of the trend in Mr. Foxwell's income, I do not conclude that he lost \$100,000 in income in 2024 as a result of his criminal sentence, but I conclude that at least half of the approximately \$100,000 difference from 2023 and 2024 is likely a consequence that flowed from Mr. Foxwell's criminal conduct. I also note that Mr. Foxwell's remaining income for 2024, even accounting for the drop from 2023, is reasonably significant in absolute terms.

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112. Regarding 2025, it appears that Mr. Foxwell's income from real estate services has dropped further. It is not clear to me exactly how this has impacted Mr. Foxwell's finances as a whole. His text messages with [Individual 1] indicate that he was having trouble making rent, but also indicated that he had taken on additional employment. The types of employment he describes do not strike me as likely to afford him the same remuneration as he earned from his real estate business in 2023 or 2024, but it may be that this other work is taking Mr. Foxwell's attention away from his real estate work and thereby limiting his ability to generate work. Without clear evidence, I cannot conclude that Mr. Foxwell has suffered a complete destruction of his real estate business as a direct result of his criminal sentence or this proceeding, as opposed to some portion of the decrease arising from him prioritizing other options, or that it has degraded his total income far below his 2024 earnings after accounting for the other employment he referenced in his text messages with [Individual 1].
113. Mr. Foxwell has further submitted that the "lingering 'cloud'" of a possible suspension has diminished his ability to earn income through his real estate services because of his decision to refer out clients instead of risking having to refer them out later if he is suspended. He submits that he made this choice to ensure the real estate services to his clients are not interrupted. I do not accept this argument. It makes little sense to me to refuse to provide real estate services for which one is licensed on the risk that a suspension will come and clients will have to be referred out at that point. Without corroborating evidence, I do not accept that Mr. Foxwell has been doing this. I do however accept that this disciplinary proceeding, which commenced in May 2024 and for which an amended notice of discipline hearing was issued in December 2024, would have had some impact on Mr. Foxwell's ability to generate business, but I do not find that it has a sufficiently substantial effect to change my assessment of the financial impacts that flowed from Mr. Foxwell's criminal conduct.
114. I also note that I largely reject Mr. Foxwell's submission that his becoming unlicensed in December 2024 and January 2025 was because of this discipline proceeding or his criminal conduct. In my view, that period of lapse in Mr. Foxwell's licensing arose from administrative delays due to volume in BCFSAs's licensing department and because of a breakdown in Mr. Foxwell's relationship with [Individual 1] caused by Mr. Foxwell's choices in his communications with [Individual 1]. I assign only a minimal portion of that delay to regulatory action taken by BCFSAs in connection with this discipline proceeding or Mr. Foxwell's criminal conduct.
115. Considering the above, I do accept that Mr. Foxwell has suffered a further and significant diminishment of his real estate business in 2025 as a result of his criminal conduct and criminal sentence, and to a lesser extent this discipline proceeding. I cannot concretely quantify that number. Although I accept there has been a significant impact, I do not accept that the impact of the criminal process or this discipline proceeding represents the whole difference between the 2024 and 2025 income amounts provided.
116. I also accept that Mr. Foxwell incurred legal costs for his criminal defence, fines, and liability for damages.
117. I also accept that his criminal conduct and its publication likely impacted Mr. Foxwell personally and I accept that he lost some clients and some friends. I also accept that he withdrew from his volunteering activities on the boards he mentions.
118. Considering the above, I find that the impacts to Mr. Foxwell of his criminal sentence, the disruptions to his business, the impacts to his personal life, and the financial impacts are substantially mitigating.

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**Respondent's Character and Conduct Record**

119. Mr. Foxwell has no disciplinary record and no other criminal record of which I am aware. This is a neutral factor because compliance is expected of licensees: *Rohani (Re)*, 2024 BCSRE 31 at para 53.
120. I agree with BCFSa that "[y]outh and inexperience do not come into play" in this case.
121. I find that Mr. Foxwell had a record of positive community involvement through his volunteer work on the boards that he identifies and that those in his community identified him as an individual willing to help when needed. This includes evidence that he is willing to donate a kidney to a friend in need, which is a significant personal sacrifice. Overall, I accept that the conduct Mr. Foxwell engaged in on the night of December 21, 2021 was out of character for him. In my view, these factors, taken together, are mitigating.

**Acknowledgment and Remedial Action**

122. Regarding Mr. Foxwell's acknowledgment of his misconduct and remedial actions, BCFSa submits that I should consider these aspects as neutral factors. Mr. Foxwell, for his part, submits that I should consider his substantial steps toward rehabilitation through counselling and community service, part of which was court ordered.
123. I do not agree with BCFSa that Mr. Foxwell's self-reporting is a neutral factor. In my view, self-reporting his charges is somewhat mitigating, though not significantly mitigating if considered on its own because, as BCFSa notes, Mr. Foxwell had a statutory duty to disclose the charges. So, if I were to consider it in a vacuum, it would be minimally mitigating; however, the self-report does not stand on its own, I must view the self-report in the context of the remaining body of evidence regarding Mr. Foxwell's cooperation generally. Looking at that evidence, Mr. Foxwell self-reported and then proceeded to answer the questions put to him and provide updates either himself or through his legal counsel. There is no evidence that Mr. Foxwell sought to unduly delay this matter. That said, Mr. Foxwell was required to answer BCFSa's questions and provide responses promptly.
124. In my view, Mr. Foxwell's self-report and the extent of his cooperation with the investigation is minimally mitigating because it did not substantially go beyond what was required of him in the circumstances. He was required to answer BCFSa's investigator's questions, and he did so.
125. BCFSa has also submitted that Mr. Foxwell's agreement to the ASF should not be considered mitigating because it has been addressed in the context of the expenses order sought by BCFSa. BCFSa has provided no authority for the proposition that addressing an ASF by way of a reduction of expenses acts to limit its value in the context of assessing its value as a mitigating or aggravating factor. In fact, there is clear authority for the proposition that an ASF can be a substantially mitigating factor: *Manjot Khunkhun v Registrar of Mortgage Brokers*, 2025 BCFST 3 at para 101.
126. In my view, two elements support the view that Mr. Foxwell has acknowledged his misconduct.
127. First, Mr. Foxwell has taken significant steps to seek out and complete counselling courses. Mr. Foxwell's steps to rehabilitate himself support the view that Mr. Foxwell has acknowledged that what he did was wrong and requires correction. This supports my view that he has acknowledged his misconduct and supports the mitigating effect of that by demonstrating his commitment to rehabilitation.
128. I note that Mr. Foxwell paid for the damage to his rental vehicle himself, but that amount was relatively low and, given he was likely obliged to pay that amount, I do not find that to be mitigating to any important extent.

129. I also note that there is some reference to [Officer 1] having made a claim for damages, but there is no evidence before me regarding whether that proceeded or if Mr. Foxwell was involved personally. I therefore have no evidence that Mr. Foxwell took steps to remediate the harms caused to [Officer 1].
130. Second, the ASF reflects an acknowledgment by Mr. Foxwell of his misconduct and the consequence of that conduct to [Officer 1]; however, there are two points that detract from that acknowledgment somewhat.
131. First, reviewing Mr. Foxwell's statements made in the investigation, I find they align with the general tenor of his evidence in the criminal trial as described by Rice J in that he admits the basic outline of what occurred while he "nibbles at the edges of his culpability": *R v Foxwell*, 2023 ABCJ 137 at para 87. For example, in the investigation Mr. Foxwell produced an August 16, 2023 dated statement to [Insurance Company 1]. The statement is signed by Mr. Foxwell as being true and correct to the best of his knowledge more than a month after Rice J issued his reasons on July 4, 2023 but from its content it is clearly made after the trial but before Rice J issued his reasons. The statement appears to be a transcription of Mr. Foxwell's statements made to a claims adjuster and it likely was not prepared or signed until after Mr. Foxwell initially gave the statement. In that statement, Mr. Foxwell stated that he had one drink with dinner, one at the hotel lounge, and one at the Brew House for a total of three drinks. This notwithstanding that he gave evidence at his criminal trial on March 14, 2023 that he had four drinks that night and that Rice J found that Mr. Foxwell had had more than four drinks: *R v Foxwell*, 2023 ABCJ 137, at paras 68-70 and 106. This statement also does not include reference to [Officer 1]'s demand that Mr. Foxwell put the car in park or an admission that Mr. Foxwell failed to do so. It further provides Mr. Foxwell's account that he was driving 20 km/h and that, when he drove away from the intersection, he intended to pull the car over, accounts that Rice J explicitly rejected: *R v Foxwell*, 2023 ABCJ 137, at paras 91 and 104. In my view, this tends to demonstrate that Mr. Foxwell's acknowledgment of the extent of his wrongdoing is both somewhat recent and largely a result of the fact that he was convicted of that conduct on a beyond a reasonable doubt standard.
132. I also consider Mr. Foxwell's submission that he was not found to have committed conduct unbecoming within the meaning of sections 35(2)(b) and 53(2)(c) of RESA to support the contention that he continues to attempt to nibble at the edges of his culpability. He does so by stating the following:
- "He has fully acknowledged his misconduct (through an Agreed Statement of Facts) and cooperated with BCFSA's process from the outset, with both parties agreeing to the Conduct unbecoming being limited to section 35(2)(a) "Conduct Unbecoming Contrary to the best interests of the Public" (not including or encompassing b) undermines public confidence in the real estate industry, or (c) brings the real estate industry into disrepute).
- and
- "Public confidence does not require a draconian punishment in this matter as it has been determined the public confidence in the industry has not been undermined nor has the industry been brought into disrepute."
133. To be clear, I have made no finding regarding whether Mr. Foxwell committed conduct unbecoming within the meaning of sections 35(2)(b) or 35(2)(c). As indicated in the Liability Decision, I found that BCFSA was not proceeding with regard to those sections and not that BCFSA had failed to prove that Mr. Foxwell's conduct fell under those sections: at para 33. This distinction is important in this context because it cannot be now said that Mr. Foxwell qualified as conduct unbecoming under those sections or that his conduct did not fall under those sections. Those issues were not determined either way.

134. It is additionally important to note that all misconduct or conduct unbecoming will have a negative impact on public confidence in the industry and the industry's reputation. That is why the fourth aspect of the *Dent* framework specifically refers to the need to maintain public confidence by reference to specific and general deterrence, proportionality, and parity with prior decisions. It may not be the case here that the conduct has been adjudicated specifically to have undermined public confidence in the industry or to have brought the industry into disrepute, but the regulator must ensure that the response it provides is sufficient to ensure the ongoing public confidence in the industry considering the conduct, the respondent, the discipline process, and the outcome as a whole.
135. In my view, Mr. Foxwell's submission in this regard, particularly the latter quote, overstates the findings made in this case and attempts to diminish his culpability by doing so.
136. In addition, Mr. Foxwell initially submitted that he was unlicensed for two months in December 2024 and January 2025 as a result of a suitability review by BCFSa. As I have found above, Mr. Foxwell was in fact unlicensed for approximately a month and a half and the bulk of that period was a result of administrative delays with BCFSa and not a suitability review. In my view, this indicates that Mr. Foxwell tends to slightly exaggerate the consequences he suffered as a result of his criminal conduct in order to decrease the consequences in this discipline proceeding.
137. That said, the extent to which the above detracts from Mr. Foxwell's acknowledgment of his misconduct is attenuated by the fact that Mr. Foxwell has always largely admitted what occurred. Reviewing the trial decision in *R v Foxwell*, 2023 ABCJ 137, Mr. Foxwell admitted to several charges and argued against only a few factual issues with regard to what happened on December 15, 2021. The bulk of the decision concerned his *Charter* arguments regarding his overholding at the Leduc detachment. There was some issue regarding whether Mr. Foxwell swore at the [Officer 1], whether he "gunned it", the speed at which he was driving, and whether the distance he travelled was 200 meters or not: at para 101. The issue of whether Mr. Foxwell swore at [Officer 1] and whether he "gunned it" were resolved in Mr. Foxwell's favour when applying the beyond a reasonable doubt standard to the Crown's evidence: at paras 102-103. Rice J found that Mr. Foxwell did not accelerate only to 20 km/h, as he had testified, but that he had accelerated to 40-45 km/h and that he had travelled 200-250 meters before stopping: paras 104-105. Rice J found that Mr. Foxwell had been slurring his words, had had more to drink than he had testified to, was intoxicated, and had driven away from the traffic stop to prevent his arrest: at paras 106-107 and 119. There was also some issue about whether the evidence established Mr. Foxwell was impaired or whether his actions were sufficient to constitute assault, both of which were resolved against him: at paras 108-120. On the whole though, Mr. Foxwell admitted the general outline of what happened.
138. I note also that the issues that Mr. Foxwell raised on his appeal concerned mostly the trial judge's treatment of his *Charter* arguments and not his findings of guilt on the Charges: *R v Foxwell*, 2025 ABKB 210 at para 36. Therefore, Mr. Foxwell did not pursue a denial of his culpability beyond the Alberta Court of Justice trial.
139. Viewed in total, Mr. Foxwell's bites at the edges of his culpability have decreased over time from his position at trial to his position in this proceeding.
140. Second, despite Mr. Foxwell's admission in the ASF regarding the consequences to [Officer 1], Mr. Foxwell makes no mention of [Officer 1] at all in his submissions or his personal statement. If Mr. Foxwell truly acknowledged his misconduct, I would have expected him to indicate some acknowledgment of the harm he caused to [Officer 1] and some remorse for that harm. This leads me to conclude that although Mr. Foxwell may have accepted what he did, he has not fully accepted or acknowledged the consequences that flowed from it. This generally aligns with Mr. Foxwell's submissions and personal statement which tend to focus on himself rather than indicating he understands the impacts of his conduct on others. I acknowledge in this regard that the impacts on

Mr. Foxwell have been substantial and that Mr. Foxwell's personal statement notes the following, which indicates he has some appreciation of the impact of his actions on others:

"I've had to be accountable to family, friends, colleagues, and many public entities as well. I had made myself a disgrace due to a grave error in judgement in one night of self loathing."

141. Considering the above as a whole, I find that Mr. Foxwell has acknowledged his conduct unbecoming in this proceeding. He may have done so after a criminal trial, just before the discipline hearing, and not without demonstrating a full appreciation of its impacts, but he acknowledged in the ASF what he did, and that he caused injuries to [Officer 1]. That acknowledgment should be treated as a substantial mitigating factor in this proceeding. In my view, the question before me is whether Mr. Foxwell, as he appears before the superintendent now, has acknowledged his misconduct, not whether he acknowledged it in the criminal trial. It is relevant to that assessment how Mr. Foxwell's acknowledgment came about; however, without evidence which substantially detracts from the acknowledgment, the fact that an acknowledgement came about is substantially mitigating. In my view, the above considerations do not substantially detract from Mr. Foxwell's acknowledgment of his misconduct. Mr. Foxwell's admission to his misconduct and his steps to rehabilitate himself are substantially mitigating in these circumstances.

### **Specific and General Deterrence and Public Confidence**

142. I turn then to the question of public confidence, which in the *Dent* framework includes a consideration of the adequacy of the specific and general deterrent effect of the proposed orders, the rehabilitative effect of the orders, the impact of the proposed orders on public confidence in the integrity of the industry and licensees, and the relationship between the proposed orders and similar cases. In this section, I discuss specific and general deterrence. In the next section, I discuss the precedents and the appropriate type of order. In the final section of this discussion, I address the appropriate sanction considering the goals of regulatory sanction and the mitigating and aggravating factors.
143. BCFSa provides contradictory submissions regarding specific and general deterrence. On one hand, in its main submissions BCFSa states, "Specific and general deterrence for criminal activity is already served by the *Criminal Code*". On the other hand, in its reply submissions, when comparing Mr. Foxwell's case to that in *Kanda (Re)*, BCFSa submits that Mr. Foxwell's "sanction requires a greater focus on specific deterrence because he continues to operate in the industry and has done so throughout the course of his conditional sentence order...".
144. Mr. Foxwell submits that his criminal sentence, the personal consequences he has faced, and the rehabilitation he has undertaken have already acted as a "powerful deterrent". He also echoes BCFSa's submission that specific and general deterrence are primarily addressed by the criminal sentence.
145. Regarding specific deterrence, I largely agree that specific deterrence is largely achieved through Mr. Foxwell's criminal sentence, the significant financial consequences that Mr. Foxwell has suffered, and the personal consequences to Mr. Foxwell of a criminal proceeding and record. That said, I am conscious of the fact that Mr. Foxwell received a lesser sentence than he otherwise would have as a result of the RCMP's breach of his *Charter* rights. As noted by Devlin J, Mr. Foxwell received "a 16-month conditional sentence where a lengthy term of real jail would otherwise have been the fit outcome": *R v Foxwell*, 2025 ABKB 210, at para 35. In my view, this lesser sanction resulted in a decreased degree of specific deterrence in the criminal proceeding than Mr. Foxwell otherwise should have faced, both in terms of the personal consequences of incarceration and the increased financial consequences of a complete loss of income. There is also some remaining specific deterrent effect in sanctioning Mr. Foxwell in this proceeding given my discussion above

about the limits of Mr. Foxwell's acknowledgement of his misconduct. In my view, Mr. Foxwell's acknowledgement is significant but imperfect.

146. Noting the above, I must take Mr. Foxwell as he stands before me and consider his significant efforts at rehabilitation, his compliance with his criminal sentence, and the full extent of his acknowledgment and remorse, though imperfect. I find that Mr. Foxwell, as he appears in this proceeding, has largely acknowledged his misconduct, complied with his sentence, and rehabilitated himself such that specific deterrence is not the major motivating factor behind any order I make here. In my view, any order I make that will achieve the other goals of regulatory discipline, as discussed below, will meet the goal of specific deterrence and therefore those other goals are the primary considerations here.

147. Regarding general deterrence, it was not sufficiently achieved in this context by the criminal process for two reasons. First, Mr. Foxwell obtained a lesser sentence than "would otherwise have been the fit outcome" because of the breach of his *Charter* rights; that decreases the general deterrent effect of the criminal sanction somewhat, though only marginally because individuals who may be deterred from criminal conduct by Mr. Foxwell's sanction would be aware that his sentence was reduced because of that breach: *R v Foxwell*, 2025 ABKB 310, at para 35. Second, and more importantly, the criminal process did not specifically consider the matter through a regulatory lens and therefore did not account for the need to ensure other licensees do not engage in similar behaviour in the future. General deterrence is needed in this case to demonstrate to all licensees and to the public that the superintendent "will not tolerate proven criminal behaviour and, when it does occur, will take the matter seriously and will proceed accordingly": *Fourmeaux Clemens*, at para 46(k).

148. Regarding public confidence, Mr. Foxwell argues that maintaining public confidence in the real estate industry does not require a "draconian punishment as it has been determined the public confidence in the industry has not been undermined nor has the industry been brought into disrepute." I have responded to this submission above, but it bears repeating, I have not found that Mr. Foxwell's conduct did not undermine public confidence in the real estate industry or that it did not bring the real estate industry into disrepute: I made no finding in that regard. In any event, the concern with public confidence in the context of the *Dent* analysis is not concerned solely with whether the conduct itself undermined public confidence, though that is certainly a concern, it is concerned also with whether the regulatory response to that conduct is sufficient to maintain public confidence in the industry.

149. As noted in *Fourmeaux Clemens*, at para 46(l), discussing the issue of public confidence as a factor in determining the regulatory sanction:

This is a factor of paramount importance.

The Purpose of the Society is succinctly described in Section 3(1) of the *Legal Profession Act*. It reads: "The purpose of the Society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence."

Lawyers are expected to follow and uphold the law, and the public needs to know that when they do not, their professional regulator will ensure that they are held to account."

150. Although these statements are made in the context of regulating the legal profession, RESA also has a primary goal of protecting the public interest in the real estate industry and the closing sentence of the above statement applies to regulated individuals generally. Licensees, as members of a highly regulated industry and as individuals who prepare and negotiate legal agreements, are expected to comply with the law and the public must be confident that the superintendent will ensure that they are held to account where they fail to do so.

151. Although, I do agree with the sentiment expressed in Mr. Foxwell's submission that public confidence is best promoted by not implementing a "draconian punishment", that does not mean that the sanction cannot be significant where warranted: *Thow*, at para 38. The sanction should be crafted to meet the regulatory needs in the circumstances. The circumstances in this case include Mr. Foxwell's severe misconduct that injured a police officer, endangered that officer's life, and obstructed the police's attempts to enforce the law. The circumstances also include Mr. Foxwell's rehabilitative efforts, his admissions, the personal impacts on him, the substantial financial impacts on him, and his criminal sentence.
152. Considering those factors, I find that there is a significant need for the order made in this case to ensure public confidence in the integrity of the real estate industry and the regulatory process. In my view, the superintendent must make it clear that the highly dangerous criminal conduct Mr. Foxwell engaged in, which also obstructed and interfered with law enforcement, is not acceptable. That conduct was "both lethally dangerous and, as the trial judge found, itself 'a blow to the administration of justice'": *R v Foxwell*, 2025 ABKB 210, at para 34 citing *R v Foxwell*, 2023 ABCJ 137, at para 235. That kind of conduct requires a substantial response from the regulator to ensure that the public maintains confidence in the integrity of the industry and the regulator's ability and willingness to appropriately respond to misconduct, particularly severe misconduct.
153. In my view, the need to maintain public confidence underlies the above discussed need for general deterrence and therefore it forms the paramount motivating goal in this proceeding, as it did in *Fourmeaux Clemens*. As indicated above, general deterrence is achieved by a sanction that sufficiently indicates to the industry in general that the superintendent will take significant action to address criminal conduct of the sort Mr. Foxwell committed: that justification for the penalty comes primarily from a need to maintain public confidence in the industry and the regulator.

#### **Previous Orders and Type of Order**

154. When determining the appropriate sanction, I must also consider previous sanctions ordered by the superintendent and other regulators. These orders are not binding on me, but consistency with prior orders of the superintendent is desirable in ensuring public confidence in the industry and the disciplinary process and in ensuring appropriate general deterrence. I also note that most of the prior orders referred to are consent orders, which are sometimes the result of negotiations and motivations that are not reflected in the final order. I therefore treat consent orders with a degree of caution.
155. The parties have referred to the following decisions and orders:
- a. *Wark (Re)*, in which Mr. Wark consented to a six-month suspension, a \$1,000 discipline penalty, and payment of \$1,000 in expenses. Mr. Wark had been licensed since 1958 at various levels and had no prior disciplinary record. He was charged on September 18, 2007 with five criminal counts of a sexual nature regarding events that allegedly occurred in the 1960s and 1970s. Mr. Wark only advised the Real Estate Council of British Columbia ("**RECBC**") of the charges in June 2009. He pleaded guilty to "four counts of indecent assault involving four young girls ... resulting in a Conditional Sentence Order of two-years-less-a-day, followed by a three year Probation Order" [*sic*]: at para C.1.a. He admitted to committing conduct unbecoming within the meaning of section 35(2) of RESA and to failing to promptly disclose his charges as required by then section 2-21(2) of the Real Estate Services Rules (the "**Rules**") (now 23(2)).
  - b. *Fourmeaux Clemens*, in which Ms. Fourmeaux Clemens received a one-year suspension commencing no later than March 1, 2024 and was ordered to pay costs of \$1,500, those orders being made in line with a joint submission. The presiding panel noted that this sanction was "at or near the upper limit one expects to see short of disbarment": at para 46(j). Ms. Fourmeaux Clemens had been an "inactive" member of the Law Society of



Manitoba since her voluntary withdrawal in April 2022. Ms. Fourmeaux Clemens had been convicted after trial in June 2023 of impaired driving and assault with a weapon contrary to sections 320.14(1)(a) and 267(a) of the *Criminal Code*. On the night of the offences, September 19, 2021, Ms. Fourmeaux Clemens had driven while impaired by alcohol and prescription medication and had followed and repeatedly rammed another vehicle driven by a person who she did not know and who had not provoked her. She followed and rammed this individual's vehicle for some time before leaving the road at a roundabout and colliding with a concrete post. She was arrested at a nearby coffee shop where she was "aggressive and uncooperative" with the arresting officers and paramedics: at para 37. At trial, she argued that the Crown had not proven she was the driver who had rammed the complainant and that she was not intoxicated but "acting in an automatic state, involuntarily brought on by post-traumatic disorder": *R v Fourmeaux-Clemens*, 2023 MBPC 33, at para 3. After her conviction, she was sentenced to an 18-month conditional sentence, an 18-month driving prohibition, and 30 hours of community service. Her sentence was to end in March 2025. She also received a \$3,500 fine, was subject to a restitution order, and paid the damage claims made by Manitoba Public Insurance. Ms. Fourmeaux Clemens admitted her conduct constituted conduct unbecoming, demonstrated deep regret and remorse, self-reported her charges, cooperated fully with the disciplinary proceedings, agreed to a joint submission, and took proactive steps to "ameliorate the harm caused to her victim": at para 37. She also had a history of "extensive community involvement" with various volunteer organizations and provided *pro bono* work: at para 44. Further, she had suffered "a serious incident of intimate partner violence" in January 2021 and was working to rehabilitate herself and "to bring the perpetrator to justice": at para 43.

- c. *Chinn (Re)*, in which Mr. Chinn's authorization to trade in real estate was cancelled and he was prohibited from applying for a new authorization until February 8, 2016, being the date of the completion of his parole period. Mr. Chinn was found to have engaged "in conduct that undermines the public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute" under section 42(g) of the *Real Estate Act*, RSA 2000, c R-5. Mr. Chinn had pleaded guilty to operating a motor vehicle in a manner dangerous to the public causing death and was sentenced on August 8, 2013 to two-and-a-half years in prison and a three-year driving prohibition. The conduct underlying that conviction included driving a vehicle while he was tired and had been drinking and driving through a "heavily used area of the city" at 91 km/h in an area with a 50 km/h speed limit, he was driving 79 km/h at the time of the crash: at para 47(b). At the time of the decision, made July 22, 2015, Mr. Chinn had been released on parole and was serving his sentence in the public. Counsel for the regulator sought a cancellation and a three-year prohibition on reapplying. The panel did not make that order because Mr. Chinn had no disciplinary or criminal history; had cooperated with the police, the Crown, and the regulator; had received an interim suspension of his authorization commencing August 14, 2013, before his license lapsed on September 30, 2013; had been actually incarcerated for several months before receiving day parole and then full parole on September 18, 2014; and had lost substantial income due to the criminal and regulatory proceedings. I note that the total effective period of ineligibility Mr. Chinn received was six days short of two-and-a-half years, counting from the date when his interim suspension started. I also note that Mr. Chinn had a history of volunteering with business associations from which he chose to step down after being charged.
- d. *O'Neill (Re)*, in which Mr. O'Neill consented to a one-month suspension and payment of a \$2,000 discipline penalty and \$1,500 in expenses. Mr. O'Neill was charged with various offences in 2013, 2015, and 2016 for which he was convicted and sentenced in 2014, 2015, and 2016 with some of the charges being dismissed. He only advised RECBC and his managing broker of these charges in 2016. He continued to advise RECBC of further charges and convictions. He had a pre-existing criminal record which he had failed to disclose on his original licensing application in 1991. Mr. O'Neill consented to findings that he had committed professional misconduct by failing to promptly disclose many of his criminal charges and convictions between 2013 and 2016 to RECBC and his managing

broker contrary to then sections 2-21(2) and (4) of the Rules (now sections 23(2) and (4)) and making a false or misleading statement in his 2015 license renewal application by failing to disclose his 2014 conviction contrary to section 35(1)(g) of RESA.

- e. *Singh Rai (Re)*, in which Mr. Rai consented to a reprimand for failing to disclose a charge and conviction for impaired driving on a reinstatement application contrary to section 35(1)(g) of RESA and failed to promptly disclose the charge and conviction to RECBC and his managing broker contrary to then sections 2-21(2) and (4) of the Rules (now sections 23(2) and (4)).
  - f. *Sahota (Re)*, in which Mr. Sahota consented to a reprimand and payment of \$750 in expenses for failing to disclose an assault charge to RECBC contrary to then section 2-21(2) of the Rules (now sections 23(2)) and failing to cooperate with RECBC's investigation by failing to respond to requests for information regarding his failure to disclose his charges and to provide relevant documents contrary to then section 2-19 of the Rules (now section 21) and section 35(1)(e) of RESA.
  - g. *Calvin Johnson Carr (Re)*, in which Mr. Carr consented to a reprimand, a condition that he inform RECBC of the disposition of his criminal charge, and payment of enforcement expenses where he had failed to promptly notify RECBC and his managing broker that he had been charged with a criminal offence contrary to then sections 2-21(2) and (4) of the Rules (now sections 23(2) and (4)).
  - h. *Testini (Re)*, in which Mr. Testini consented to a reprimand and payment of \$1,000 in expenses for contraventions of then sections 2-21(2) and (4) of the Rules (now sections 23(2) and (4)) and section 35(1)(g) of RESA. Mr. Testini had failed to promptly disclose assault, assault with a weapon, and uttering threats charges to RECBC and his managing broker and had failed to disclose the charges on a transfer application.
  - i. *Kanda (Re)*, in which Mr. Kanda failed to disclose three sets of criminal charges and one set of criminal convictions to RECBC or BCFSa, at the relevant times, and his managing brokers contrary to then sections 2-21(2) and (4) (now 23(2) and (4)) and had also withheld and concealed information from BCFSa Investigators, made false or misleading statements to BCFSa investigators, and withheld or refused to provide documents to BCFSa contrary to sections 37(4), 35(1)(g), and 35(1)(e) of RESA. After a hearing, which Mr. Kanda did not attend, Mr. Kanda was suspended for a year and ordered to pay a discipline penalty of \$10,000 and expenses of \$17,431.30. Mr. Kanda was not licensed at the time of the discipline hearing or the sanction decision.
156. The above cases fall into two distinct groups. First, there are the cases in which the regulated person's criminal conduct was directly at issue in the proceeding. These cases include *Wark (Re)*, *Fourmeaux Clemens*, and *Chinn (Re)*. Second, there are cases in which a real estate licensee failed to disclose charges or made false statements to the regulator or during the investigation. Those cases include *O'Neill (Re)*, *Sing Rai (Re)*, *Sahota (Re)*, *Calvin Johnson Carr (Re)*, *Testini (Re)*, and *Kanda (Re)*.
157. Mr. Foxwell relies on the latter group of cases and in particular *O'Neill (Re)* and *Kanda (Re)*. He argues that those cases involve repeated criminal conduct along with false or misleading statements to the regulator and obstruction of the investigation, which Mr. Foxwell's case does not involve. Mr. Foxwell submits that *O'Neill (Re)* indicates that a much shorter suspension than sought by BCFSa is warranted; however, Mr. Foxwell's submissions fail to note that none of the latter group involve sanctions imposed for the actual criminal conduct. In my view, that distinguishing factor makes most of those cases unhelpful for the purposes of assessing the appropriate sanction in this case.
158. Mr. Foxwell also argues that *Wark (Re)* supports a much lower sanction than that sought by BCFSa given Mr. Wark's conduct involved four counts of indecent assault involving four young girls,

worse and more numerous crimes than Mr. Foxwell's assault on a police officer. Mr. Foxwell submits, without providing evidence, that public commentary on *Wark (Re)* indicated the sanction was lenient, which Mr. Foxwell says highlights the exceptional nature of a one-year suspension. BCFSA argues that if I accept that public commentary on the *Wark (Re)* decision indicated it was lenient, I should consider that as indicating a more significant sanction is required.

159. BCFSA submits that *Wark (Re)* stands for the proposition that the appropriate type of sanction in this case is a suspension. In my view, *Wark (Re)* along with *Chinn (Re)* and *Fourmeaux Clemens* all indicate that the appropriate sanction for serious criminal conduct unconnected to an individual's regulated activities is a suspension or other order excluding them from the industry for some time. In my view, that type of order is clearly more appropriate than a monetary sanction. The severity of Mr. Foxwell's conduct and the fact that the criminal sanction meted out a significant degree of deterrence leads me to conclude that the major motivating factor in this case is maintenance of public confidence in the integrity of the industry and the regulator, which is best served in this case not by a monetary penalty, but by a suspension which demonstrates the necessary degree of disapprobation of Mr. Foxwell's conduct.
160. I also agree with BCFSA's submission that there is no clear need in this case for licence conditions or for orders for remedial education or other steps given Mr. Foxwell's conduct did not occur in the course of him providing real estate services and given Mr. Foxwell's significant steps toward rehabilitation.
161. Regarding the type of order to be made, I note that Mr. Foxwell argues that BCFSA has allowed him to continue to be licensed since he reported the Charges to them, including two renewals and three transfers, which he says indicates he is not a threat to the public or likely to reoffend. There is some merit to this argument in that the failure to pursue an interim suspension may reflect the fact that BCFSA did not consider that Mr. Foxwell's circumstances required a suspension on an urgent basis. That said, the fact that BCFSA has allowed Mr. Foxwell to continue to be licensed, to renew his licence, and to transfer his licence, does not mean that a suspension order is inappropriate in response to his conduct. It means that BCFSA did not consider there to be a need to do so urgently through section 45 of RESA and thereby deprive Mr. Foxwell of the scope of procedural protections available at a full hearing. The renewals and transfers are particularly irrelevant because BCFSA would likely have the burden of proving any misconduct in such a proceeding: *Howard Steven Levenson v Law Society of Upper Canada*, 2009 ONLSP 98 (CanLII), at para 55. Further, given the requirements of section 12 in the case of renewals and the fact that, generally, licensees remain licensed while the superintendent considers transfer applications, Mr. Foxwell would have continued to have been licensed pending a resolution of those processes. As a result, it may also indicate that BCFSA did not consider Mr. Foxwell's conduct to render him unfit or unsuitable to be licensed, which would support a cancellation and which is consistent with BCFSA's position in this proceeding. In my view, BCFSA's approach in this case merely reflects a preference to pursue the matter through the discipline hearing process under Divisions 1 and 2 of Part 4 of RESA. Finally, the issue of whether Mr. Foxwell must be removed from the industry to protect the public as a result of his likelihood to reoffend is not the only reason which might support a suspension order. In my view, the need to demonstrate sufficient disapprobation of the underlying misconduct to support public confidence in the integrity of the industry and the regulator can also support the need for a suspension.
162. I therefore find that the most appropriate form of sanction in this case is a suspension.
163. In considering *Wark (Re)*, I note three things. First, *Wark (Re)* is a consent order and of somewhat limited value because it may represent a compromise between Mr. Wark and the regulator, the details of which might not all be specified in the published order. Second, Mr. Wark pleaded guilty to his charges in 2009, at least 30 years after the offences occurred, and had a long history of

regulatory compliance after the offences. Third, *Wark (Re)* was decided by the predecessor to the superintendent and prior to the revisions to the sanctions regime made in September 2016 to substantially increase the available monetary sanctions, which significantly reduces its value as a precedent in determining the sanction I should impose here. In my view, regardless of whether public commentary viewed *Wark (Re)* as lenient, I view it as lenient and explicable only by virtue of the significant span of time between the crimes and the regulatory action, if it is explicable on the face of the decision at all.

164. In my view, *Chinn (Re)* and *Fourmeaux Clemens*, although decided under different regulatory regimes, are the most similar to Mr. Foxwell's conduct. Like Mr. Foxwell's case, *Chinn (Re)* involved driving while intoxicated; however, Mr. Chinn's conduct resulted in much more significant consequences, having caused death. Also, like Mr. Foxwell's case, Mr. Chinn cooperated with the regulatory investigation, lost income, and had a history of volunteering. Unlike Mr. Chinn, Mr. Foxwell admitted liability before the regulator. Mr. Chinn also received actual prison time and a longer sentence. It is difficult to directly compare Mr. Chinn's sentence with Mr. Foxwell's given Devlin J's comment that Mr. Foxwell could have justifiably received a "lengthy term of real jail" were it not for the *Charter* breach, but the description of Mr. Chinn's crime suggests to me that it was significantly more grave: *R v Foxwell*, 2025 ABKB 210, para 35. I note that for Mr. Chinn's conduct he was effectively barred from the Alberta real estate industry for approximately two and a half years. In my view, the sanction Mr. Chinn received is greater than is required for Mr. Foxwell given the context.
165. *Fourmeaux Clemens* is much more similar to this case. In both this case and *Fourmeaux Clemens*, the respondent self-reported, cooperated with the regulatory investigation, had a history of volunteerism, had taken significant steps toward rehabilitation, and admitted to misconduct findings.
166. The conduct in *Fourmeaux Clemens* and the conduct in this case are somewhat similar, involving driving while intoxicated in a manner that seriously endangered others, but dissimilar in other important respects. Ms. Fourmeaux Clemens's conduct was more prolonged, involving a lengthy chase of an innocent person compared to Mr. Foxwell's 200 meter dragging of a police officer. That said, Mr. Foxwell's conduct included a significant and repeated element of a disregard for the administration of justice in that he dragged [Officer 1] in an attempt to flee after a breath demand, resisted [Officer 1] and [Officer 2], refused to provide a breath sample, and refused to provide his name to officers. This conduct resulted in convictions for more offences and for more serious offences for Mr. Foxwell than Ms. Fourmeaux Clemens. Ms. Fourmeaux Clemens and Mr. Foxwell's conditional sentences were similar in length, though Mr. Foxwell received and is serving an additional period of probation and I acknowledge Mr. Foxwell's sentence was reduced in response to the *Charter* violations he suffered. Regarding this latter point, I note Devlin J's statement that, absent the reduction, Mr. Foxwell's conduct would have warranted a lengthy term of actual jail time: *R v Foxwell*, 2025 ABKB 310, at para 35. In my view, that indicates that Mr. Foxwell's conduct was more severe than in *Fourmeaux Clemens*. On the whole, the nature of Mr. Foxwell's conduct and its consequences is more serious than Ms. Fourmeaux Clemens's was.
167. This case and *Fourmeaux Clemens* are dissimilar in certain other notable regards. First, *Fourmeaux Clemens* involved the discipline of a lawyer and not a real estate licensee. In my view, lawyers have a greater duty to uphold the rule of law and failures to do so may have a greater impact on the reputation of the profession than is the case for licensees. Real estate licensees are still regulated individuals who are expected to demonstrate respect for the law, but I do not consider the expectation to be the same as for lawyers. Therefore, the criminality of Ms. Fourmeaux Clemens's conduct may have been treated more seriously in that regulatory context. In addition, a one-year suspension was considered to be at the upper end of the range of available sanctions for

Ms. Fourmeaux Clemens, just short of disbarment: at para 46(j)). In my view, this is not the same for real estate licensees whose licences have two-year terms: Rules, s 14. In my view, there is therefore more room for license suspensions that exceed one-year within the RESA regime without the suspension necessarily being directly compared to cancellation.

168. Second, Ms. Fourmeaux Clemens's regulatory sanction, like Mr. Chinn's, was set to end at the end of her criminal sentence. The sanction BCFSA seeks exceeds the end of Mr. Foxwell's conditional sentence order entirely and the end of his probation by many months. I will address this point further below, but I note it is a significant distinguishing feature between this case and *Fourmeaux Clemens*.

169. Third, unlike Mr. Foxwell, Ms. Fourmeaux Clemens had been voluntarily out of the industry for almost two years before her suspension took effect. Mr. Foxwell argues that this means the suspension was less impactful for Ms. Fourmeaux Clemens than for him given he is currently licensed and practicing in the real estate industry. In my view, that is not a compelling argument. Ms. Fourmeaux Clemens was still a member of the Law Society of Manitoba when she was suspended. She was "inactive" at the time, but remained a member. It is not clear exactly why she moved to "inactive" status, given the decision does not say, but it is reasonable to assume that the then ongoing criminal proceedings had some impact on Ms. Fourmeaux Clemens's decision to become inactive. In my view, the suspension was significant to her and she described it as "a little overwhelming" in her submissions in support of the joint submission: at para 40. That submission and her continued membership with the Law Society reflects some intention on Ms. Fourmeaux Clemens's part to return to legal practice. In my view, the impact of the one-year suspension on Ms. Fourmeaux Clemens was likely substantial because it extended an already lengthy period during which she was not operative in the industry. By comparison, Mr. Foxwell has had the benefit of the right to continue to operate in the industry since his conviction. I note that I have found that Mr. Foxwell suffered a significant decrease in his income as a result of his criminal sentence, which indicates he has suffered some diminishment of his ability to practice in 2024 and 2025. I also note that Mr. Foxwell's financial documents disclose that the change from active practice for Mr. Foxwell may not be as stark as he initially attempted to portray it. Mr. Foxwell's initial submissions left the impression that he had a thriving real estate business that he rebuilt after his conviction. The facts instead show that he has a dwindling business. I therefore do not agree that a suspension will impact Mr. Foxwell more than a suspension impacted Ms. Fourmeaux Clemens.

170. With the above in mind, I turn to an assessment of the sanction to be imposed in this case.

### **Sanction Decision**

171. In determining the sanction in this case, I remind myself that public protection and encouraging compliance are the primary goals of regulatory sanctions. I also remind myself that such sanctions should not be purely retributive or denunciatory. Even if they impose a significant burden on an individual, that burden should be imposed to achieve specific deterrence and general deterrence, rehabilitate the respondent, protect the public, and enhance public confidence in the process, the industry, and the regulator: *Thow*, at para 38.

172. As discussed above, I find that *Chinn (Re)* and *Fourmeaux Clemens* are the most relevant cases provided to me. I find that *Fourmeaux Clemens*, in particular, includes the most similarities to Mr. Foxwell's case in terms of the nature of the underlying conduct and the mitigating and aggravating factors, with the exception that I consider Mr. Foxwell's criminal conduct to have been more aggravating than Ms. Fourmeaux Clemens's. I note in particular that *Fourmeaux Clemens* involved "significant and compelling mitigating factors [which made] the case an appropriate one for leniency and compassion". In my view, balancing the aggravating factors of the seriousness of Mr. Foxwell's conduct and the consequences of that conduct against the mitigating factors of

Mr. Foxwell's criminal conviction, his criminal sentence, the financial consequences to him, his community involvement and positive character, his acknowledgment of his misconduct, and his steps toward rehabilitation, brings this matter largely in line with the facts of *Fourmeaux Clemens*.

173. That said, there are significant features that might distinguish between *Fourmeaux Clemens* and this case. Those are the different regime, Ms. Fourmeaux Clemens's inactive status, and the alignment of the end of the criminal sentence and the regulatory sanction.
174. Regarding the differences in the regulatory regimes, my view is that the differences are not so substantial that *Fourmeaux Clemens* cannot be guiding. This acknowledges that lawyers and real estate licensees are likely to be held to different standards regarding compliance with the law generally, that Mr. Foxwell's specific conduct was more severe in regard to its affront to the administration of justice, and that the licensing regimes appear to give different weight to a suspension of the duration BCFSa seeks in this case. In my view, despite the different regimes, *Fourmeaux Clemens* still represents a useful guide to the appropriate response here.
175. Regarding Ms. Fourmeaux Clemens's inactive status, I have already rejected Mr. Foxwell's argument that it diminishes the impact of her suspension. I also note here that, as indicated above, it is likely that Ms. Fourmeaux Clemens's criminal proceedings were a factor in her decision to move to inactive status, such that there is some link between the criminal conduct and her being inactive and out of the industry. The extent of the link is not entirely clear but, in my view, the duration of Ms. Fourmeaux Clemens's removal from the industry was effectively much longer than the one-year suspension she received. As indicated above, there is some parallel there between Ms. Fourmeaux Clemens's inactive status and the financial consequences Mr. Foxwell has incurred in 2024 and 2025 as a result of his criminal sentence.
176. As noted above, the alignment of the criminal sentence and the regulatory sanction occurred in both *Chinn (Re)* and *Fourmeaux Clemens*. If I make the order BCFSa seeks, I would be ordering a suspension that exceeds both Mr. Foxwell's conditional sentence, which has already ended, and would exceed his probation, which ends in November 2025. There is some appeal to the approach taken in those cases because, as noted in *Chinn (Re)*, the reputation of the industry suffers if a person currently serving a criminal sentence continues to be licensed: at paras 48 and 51. That said, I find that where, as in this case, the regulatory matter does not proceed to a discipline hearing until well into or after a licensee serves a criminal sentence, linking the length of the regulatory suspension to the end of the criminal sentence may not achieve the goals of general deterrence and protection of the reputation of the industry and the regulator. It is somewhat unfortunate that this matter did not proceed to hearing earlier when Mr. Foxwell was serving his sentence and may not have been even challenging Rice J's factual findings that Mr. Foxwell committed the conduct at issue. That said, the superintendent cannot lose its ability to take appropriate regulatory action that educates licensees regarding applicable standards of conduct, deters future misconduct, and maintains the integrity of the industry and the regulator, just because the criminal and regulatory proceedings were discontinuous.
177. Therefore, I reject, in this case, the approach taken in both *Fourmeaux Clemens* and *Chinn (Re)* to simply align the suspension, or period of ineligibility, with the criminal sentence. In doing so, I am conscious of the need to still consider the fact that the criminal sentence has impacted Mr. Foxwell substantially and the fact that a suspension will continue those impacts beyond the end of his criminal sentence. In that regard, the suspension in this case is more impactful than it might otherwise be and I should be careful to ensure the sanction is not excessively punitive. To that extent, I accept Mr. Foxwell's argument that he should not be double punished. I do not take him to mean that I lack the regulatory authority to issue a sanction order. As BCFSa points out, *R v Wigglesworth* explicitly permits the imposition of both criminal and regulatory sanctions, which acknowledges that there may be a need for regulatory and criminal intervention. Instead, I take

Mr. Foxwell to mean that I should account, to an appropriate extent, for the consequences he has already faced, including his criminal sentence.

178. Therefore, in determining the appropriate sanction I consider the aggravating factors of the seriousness of Mr. Foxwell's conduct and the consequences of that conduct. Mr. Foxwell assaulted [Officer 1] causing him physical and mental harm while attempting to escape a roadside breath test and then further obstructed the police in the execution of their duties. I also consider the mitigating factors of Mr. Foxwell's criminal conviction; his criminal sentence; the financial consequences to him of his criminal conduct, including a substantial portion of the decrease in his income from his real estate business in 2024 and 2025 and a small portion of his period of loss of his licence in December and January 2025; his community involvement and positive character; his acknowledgment of his misconduct; and his significant steps toward rehabilitation. In my view, there is a need in this case for a significant sanction that fulfills the goals of regulatory sanction including general deterrence and the need to demonstrate to real estate licensees and the public that the regulator will take appropriate action in response to severe misconduct of the kind Mr. Foxwell engaged in. I find that any order that properly serves those goals will more than adequately provide for specific deterrence. I am also conscious of the fact that any lengthy suspension I impose will have a significant impact on Mr. Foxwell, though less than he initially suggested based on his income from his real estate business in 2025. I am also conscious of the fact that any lengthy suspension I impose will extend the time during which Mr. Foxwell faces discrete consequences for his criminal misconduct beyond the term of his criminal sentence, but that Mr. Foxwell was permitted to remain licensed and to continue to generate substantial income as a licensee while he served his conditional sentence.
179. For the reasons expressed above, I find that the similarities between Mr. Foxwell's case and *Fourmeaux Clemens* are sufficiently significant to outweigh the differences between the cases such that it is an appropriate guide to determine the length of suspension appropriate in this case. Although they fall within different regimes, I find that the increased aggravating nature of Mr. Foxwell's conduct, the increased importance of compliance with the law for lawyers generally, and the difference in the nature of a one-year suspension within the regimes largely balances out in this proceeding such that I consider *Fourmeaux Clemens* as a useful starting point to determine the length of suspension to order. In particular, I reiterate that the mitigating factors in *Fourmeaux Clemens* are similar and bear similar weight as those in Mr. Foxwell's case, such that substantial deviation from that one-year mark is not warranted.
180. In coming to this conclusion, I reject Mr. Foxwell's submission that a 0-3 month suspension would be appropriate in the circumstances. A suspension of that length would not properly serve the purposes of regulatory sanction in this case. In particular, it would not sufficiently achieve general deterrence or sufficiently maintain public confidence in the industry or the regulator.
181. That said, some reduction from that starting point should occur because the duration of the suspension will extend beyond the period during which Mr. Foxwell is subject to his criminal sentence and therefore extend the totality of his punishment beyond what Ms. Fourmeaux Clemens received. That reduction cannot be so significant to render the suspension not substantial, because such an order would not meet the paramount goal of maintaining public confidence. In my view, that reduction should also be somewhat tempered by the fact that Mr. Foxwell was permitted to continue to operate his real estate business for the last year and a half and to generate substantial income from it. Perhaps that income was not as high as he has previously earned, but it was still a substantial income in absolute terms. In this regard, Mr. Foxwell has not been as substantially impacted as Ms. Fourmeaux Clemens, who was inactive for a significant time before her suspension.

182. Balancing the above considerations and acknowledging that the duration of an appropriate suspension can never be determined with absolute precision, I find that the facts of this matter warrant an order that Mr. Foxwell be suspended for a period of 10 months. That duration is substantial and extends for a significant period beyond the end of Mr. Foxwell's probation, but a lesser duration would not appropriately meet the need for the superintendent to send a clear message to licensees and the public that criminal conduct of the sort Mr. Foxwell engaged in does not comport with the expectation of licensees.

### ***Discussion: Enforcement Expenses***

183. Sections 43(2)(h), 44(1), and 44(2) of RESA permit the superintendent to require a licensee to pay the expenses, or part of the expenses, incurred by BCFSa in relation to either or both of the investigation or the hearing to which the order relates. Section 44(2)(a) provides that the amounts ordered must not exceed the prescribed limits for the type of expenses claimed as set out in section 4.4 of the *Real Estate Services Regulation*, BC Reg 506/2004.
184. BCFSa submitted an appendix of enforcement expenses totaling \$18,948.50. In its submissions, it only seeks \$17,298.50, arrived at by removing \$1,650, which is 11 hours of hearing preparation time for BCFSa's counsel for the liability hearing in this matter at a rate of \$150 an hour.
185. In *Siemens (Re)*, 2020 CanLII 63581, at paras 62-63, the panel stated as follows, regarding ordering enforcement expenses:
- 62. Enforcement expenses are a matter of discretion. A discipline committee will ordinarily order expenses against a licensee who has engaged in professional misconduct or conduct unbecoming a licensee. Orders for enforcement expenses serve to shift the expense of disciplinary proceedings from all licensees to wrongdoing licensees. They also serve to encourage consent agreements, deter frivolous defenses, and discourage steps that prolong investigations or hearings.
  - 63. The practice of discipline committees has also been to assess reasonableness of enforcement expenses by examining the total amounts in the context of the duration, nature, and complexity of the hearing and its issues. While a discipline committee may reduce any award of enforcement expenses to account for special circumstances, such as where the Council fails to prove one or more allegations corresponding to a significant and distinct part of a liability hearing, no such special circumstances arise in this case.
186. BCFSa has proved its allegations in substance in this proceeding and was substantially successful regarding the sanction sought. I therefore find that an expenses order is appropriate.
187. The amount BCFSa claims includes \$12,600 in expenses for the investigator's time, which is supported by a certificate of costs breaking down the investigator's time under various headings totaling 126 hours. Given the nature of the investigation in this matter and Mr. Foxwell's cooperation with the investigation, I find that the amount of time claimed for the investigation is not reasonable. The allegations themselves are relatively straightforward and supported by factual findings arising from Rice J's decision. In my view, the steps taken by the investigator were largely necessary and appropriate, but I find that the time allocated to report writing, being 52 hours, was excessive given the nature of the allegations and the evidence gathered. In my view, the hours claimed should be reduced to 30 hours. This would be a reasonable time to collate and describe the collected evidence and then to draft the material into a report format given the simplicity of the issues and the fact that the material points were largely determined by Rice J. This amounts to a reduction of \$2,200 from the amount claimed by BCFSa.



188. Reviewing the other expenses claimed and accounting for BCFSA's reduction of its time spent preparing for the liability hearing, I find that the other expenses claimed are reasonable and permitted by RESA and the *Real Estate Services Regulation*.
189. In my view, Mr. Foxwell has not sufficiently established that the financial impacts of his conduct or of the suspension I have decided to order are sufficient to warrant a further reduction. Although he has faced significant financial consequences and will continue to face such consequences, those are necessary criminal and regulatory responses to his criminal conduct. Mr. Foxwell has established that his real estate business has been substantially diminished, but he has provided little evidence of his other sources of income, from other employment or otherwise, or his current assets that would indicate to me that he will be unable to pay an expenses order, provided enough time to do so.
190. I recognized that expenses awards are discretionary. I find there should be a \$2,200 reduction from the amount claimed for report drafting during the investigation. I find that Mr. Foxwell has not established that his financial circumstances warrant a further reduction. I find that an expenses order under section 43(2)(h) in the amount of \$15,098.50 is appropriate given the nature, duration, and complexity of the matter, including the investigation and the hearing process.

## Orders

191. In the Liability Decision, I found 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).
192. Having made those findings, I make the following orders:
- a. Pursuant to section 43(2)(b) of RESA, Mr. Foxwell's licence is suspended for a period of 10 months from the date of this order; and
  - b. Pursuant to section 43(2)(h) of RESA, Mr. Foxwell pay enforcement expenses in the amount of \$15,098.50 within 90 days of the date of this order.
193. Pursuant to section 54(1)(e) of RESA, Mr. Foxwell has the right to appeal the above orders to the Financial Services Tribunal. Mr. Foxwell has 30 days from the date of this decision to file any such

appeal: *Financial Institutions Act*, RSBC 1996, c 141, s 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, s 24(1).

DATED at North Vancouver, BRITISH COLUMBIA, this 25<sup>th</sup> day of August, 2025.

“Original signed by Gareth Reeves”

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Gareth Reeves  
Hearing Officer