

**IN THE MATTER OF**  
**THE REAL ESTATE SERVICES ACT, S.B.C. 2004 c.42 as amended,**  
**AND IN THE MATTER OF**  
**THE QUALIFICATION FOR LICENSING OF [THE APPLICANT 1]**

**REASONS FOR DECISION**

**[This decision has been redacted before publication]**

DATE AND PLACE OF HEARING:	June 24 & 25, 2021 Virtual Qualification Hearing
QUALIFICATION HEARING COMMITTEE:	Neal Nicholson Ruth Hanson Len W Hrycan (Chair)
COUNSEL FOR THE REAL ESTATE COUNCIL OF BRITISH COLUMBIA:	Mr. Kyle A. Ferguson Ms. Meredith MacGregor
COUNSEL FOR THE APPLICANT:	Self-Represented
APPLICANT:	[the "Applicant"]

**A. INTRODUCTION**

[1] This hearing was conducted pursuant to Section 10 of the *Real Estate Services Act*, S.B.C. 2004, CH. 42 (the "RESA" or the "Act") and Section 2-6 of the Rules (the "Rules") of the Real Estate Council of British Columbia (the "Council") to determine whether [the Applicant] satisfied the Council that he is currently of good reputation and is suitable to be licensed under the Real Estate Services Act ("RESA"), provided he meets all the other requirements for licensing under RESA.

**B. SUMMARY OF DECISION**

[2] The Hearing Committee is NOT satisfied that [the Applicant] is currently of good reputation and suitable to be licensed as a Managing Broker or Associate Broker, with or without conditions and restrictions on his license as permitted in Section 15 of the RESA. Further, the Hearing Committee felt that a period of 3 years was necessary before any reapplication for licensure. We are persuaded by the evidence presented at the Qualification Hearing.

**C. ISSUES**

[3] There were four issues before the Hearing Committee in this Qualification Hearing:

- (a) Does [the Applicant] meet the statutory burden to satisfy the Council that he is “of good reputation and suitable to be licensed” as a Managing Broker with the formerly licensed brokerage, [the “Brokerage”], as required by s. 10 of the RESA?
- (b) Has [the Applicant] met the statutory burden to satisfy the Council that he is “of good reputation and suitable to be licensed” as an Associate Broker?
- (c) If the Hearing Committee determines that [the Applicant] is suitable for licensing at either level, should it impose conditions on his licence?
- (d) If the Hearing Committee is not satisfied that [the Applicant] is suitable for licensing in either category, does the Committee want to suggest a time frame or other requirements before which [the Applicant] may re-apply in that category?

[4] The burden of proof is on [the Applicant], as the applicant, and the standard to be met is the balance of probabilities. *Welder (Re)*, Decision and Reasons, January 25, 2018 (RECBC) at para 26; *X (Re)*, 2019 CanLII 106128 (BC REC) (“*Re X*”) at para. 33

**D. PROCEEDINGS**

[5] Section 2-6 of the Rules provides:

“Qualification hearings

2-6 If the Council considers that there may be an issue as to whether an applicant is qualified to be licensed

- (a) in accordance with Section 10 [qualifications for obtaining license] of the Act,  
or
- (b) at the level and in the category for which the applicant is applying,

the Council may direct that the matter is to be dealt with by way of a hearing conducted by a hearing committee.”

Two Pre-Hearing Conferences were held on May 11, 2021 and May 18, 2021. Orders were issued in each of the Pre-Hearing Conferences. An Amended Notice of Qualification Hearing dated May 21, 2021 was sent to the Applicant advising him of the issues listed above. Exhibit 1

[6] Section 10 of the RESA provides:

“Qualifications for obtaining licence

10 An applicant for a new license or license renewal must satisfy the real estate council that they meet the following applicable requirements:

- (a) the applicant is of good reputation and suitable to be licensed at the level and in the category for which the applicant is applying;

...

(d) in all cases, the applicant has not:

- i. been refused a licence under real estate, insurance, mortgage broker or securities legislation in British Columbia or in another jurisdiction,
- ii. held a licence that was suspended or cancelled under real estate, insurance, mortgage broker or securities legislation in British Columbia or in another jurisdiction,

- iii. been disciplined by a professional body, or
- iv. been convicted of an offence

for a reason that reveals the applicant to be unfit to be a licensee;

(e) in all cases, the applicant meets any other qualification requirements established by the rules.”

[7] Section 13 of the RESA states that before refusing to issue a license the Council must provide the applicant with an opportunity to be heard respecting the matter.

[8] Section 15 of the RESA states:

“Conditions and restrictions in relation to a specific issue

15 (1) Subject to this section, the real estate council may, as it considers necessary or desirable in relation to a specific license,

- (a) impose conditions and restrictions on the license,
- (b) vary a condition or restriction applicable to the license,
- (c) ... [omitted].

(2) The powers under subsection (1)(a) or (b) to impose or vary a condition or restriction are exercisable only

- (a) on or before the date on which the license is issued, with effect on or after that date, or
- (b) on the written application or with the written consent of the licensee.

(3) Before imposing or varying a condition or restriction as referred to in subsection (2)(a), the real estate council must give notice to the applicant and provide the applicant with an opportunity to be heard respecting the matter.

(4) If the real estate council imposes or varies a condition or restriction as referred to in subsection (2)(a), it must:

- (a) provide the applicant with written notice of the condition or restriction and the reasons for it, and
- (b) advise the applicant of the right to appeal under Division 4 [Appeals to Financial Services Tribunal] of Part 4.

(5) The power under subsection (1)(c) to remove a condition or restriction is exercisable at any time on the real estate council’s own initiative or on the written application of the licensee.”

## **E. EVIDENCE**

[9] The evidence before the Hearing Committee consisted of 2 Exhibits as detailed in the List of Exhibits, the oral testimony of [Witness 1] (RECBC Senior Director, Accounting and Audit), [Witness 2] (RECBC Compliance Officer) and [the Applicant] (the applicant). The evidence included an Amended Notice of Qualification Hearing and Pre-Hearing Conference Orders (Exhibit 1) and two binders titled Book of Documents (Exhibit 2).

[10] For simplicity, the Committee has expressed facts below by adopting them from the written submissions of the Council dated June 25, 2021. While the Committee would not ordinarily adopt the submissions of one party, especially to such an extent, no real dispute exists in this case as to the facts about the applicant’s past issues, as set out by the Council, especially where the facts are well-supported by documentary evidence. The Committee has thus taken this course on the understanding that copying is permissible, provided the Council has put its mind to the evidence, as the Committee affirms it has done here. As noted in *Cojocar v. British Columbia Women’s Hospital and Health Centre*, [2013 SCC 30](#) at para. 54, “...extensive copying does not in itself show that the reasons were not those of the judge. It may simply reflect the judge’s decision that he was persuaded by the material he copied and found it important.”

**(1) [The Applicant]’s application for licensure**

[11] [The Applicant] was first licensed with the RECBC in 2003. After being licensed as a Representative with a series of brokerages, on January 9, 2012, [the Applicant] became licensed as the Managing Broker of the brokerage [the Brokerage]. [The Applicant]’s licensing history is as follows:

Brokerage	Licence Level	Licence Category	Start Date	End Date
[the Brokerage]	Associate Broker	Trading, Rental, Strata	2/17/2018	(*) (see note below)
[the Brokerage]	Managing Broker	Trading, Rental, Strata	2/17/2016	2/16/2018
[the Brokerage]	Managing Broker	Trading, Rental, Strata	2/17/2014	2/16/2016
[the Brokerage]	Managing Broker	Trading, Rental, Strata	8/9/2013	2/16/2014
[the Brokerage]	Managing Broker	Trading, Rental	2/17/2012	8/9/2013
[the Brokerage]	Managing Broker	Trading, Rental	1/9/2012	2/16/2012
[Redacted]	Representative	Trading	2/17/2010	1/9/2012
***Unlicensed***			11/13/2008	02/16/2010
[Redacted]	Representative	Trading	9/5/2007	11/12/2008
***Unlicensed***			9/4/2007	9/4/2007
[Redacted]	Representative	Trading	4/18/2006	9/3/2007
[Redacted]	Representative	Trading	10/4/2005	4/18/2006
[Redacted]	Representative	Trading	9/4/2005	10/3/2005
[Redacted]	Representative	Trading	9/4/2003	9/3/2005

(\*) On May 28, 2018 the licence of [the Brokerage] was made inoperative, and as a result [the Applicant]'s licence went inoperative on that date as well. [The Brokerage] was formally wound-up on or around May 17, 2019.

[12] On February 9, 2018, [the Applicant] applied to renew his licence as the Managing Broker of [the Brokerage].

[13] On May 2, 2018, the Council advised [the Applicant] that it was not prepared to renew his licence as a Managing Broker, but that the Council was prepared to renew his licence as an Associate Broker. [The Applicant] was advised that [the Brokerage] would have until May 25, 2018, to find a new Managing Broker, otherwise the brokerage and [the Applicant]'s licence would become inoperative. [The Applicant] was advised that pursuant to s. 13 of the RESA he had the opportunity to be heard by a qualification hearing committee with respect to the decision not to licence him in the category of Managing Broker. [The Applicant] was also advised that the Council had the authority to conduct an investigation and require him to provide documentation that the Council considers necessary.

[14] In a separate letter on May 2, 2018, the Council advised [the Applicant], among other things, that effective the above date, his licence was renewed as an Associate Broker with [the Brokerage].

[15] [The Applicant] requested a qualification hearing in respect of the refusal to renew his licence as a Managing Broker.

[16] On May 28, 2018, the license of [the Brokerage] was made inoperative due to a lack of a Managing Broker, and accordingly [the Applicant]'s licence as an Associate Broker went inoperative.

[17] On October 31, 2018, the RECBC's Compliance Officer emailed [the Applicant] in respect of his February 2018 application to renew his licence as a Managing Broker. The Compliance Officer requested further information from [the Applicant], and advised that following receipt of that information she would schedule an interview.

[18] [The Applicant] responded to the Compliance Officer's email on November 2, 2018, stating that, among other things, he was working in China.

[19] On March 20, 2019, the Council received a new application from [the Applicant] to reinstate his licence as an Associate Broker with the brokerage [redacted]. As [the Applicant]'s licence had been inoperative for more than 90 days, such an application was required under Section 4-7 of the Council's Bylaws.

[20] Further investigations into his suitability were conducted, which included obtaining additional documentation in respect of the programs completed by [the Applicant] as part of the Court ordered Alternative Measures Program and an interview of [the Applicant] was conducted by the Council.

[21] On June 3, 2020, [the Applicant] was advised that the Council had concerns with his actions and the nature of his communications with RECBC staff, and that it was of the view that conditions on an Associate Broker licence were necessary and desirable. Enhanced Supervision conditions were proposed to [the Applicant] through which the Managing Broker of [redacted] would oversee aspects of [the Applicant]'s conduct in providing real estate services, including monitoring his communications.

[22] [The Applicant] requested a qualification hearing in respect of that decision and a hearing was set for October 5-6, 2020.

[23] On September 22, 2020, [the Applicant] advised that he would accept the conditions proposed by the RECBC if the RECBC was willing to issue him an Associate Broker licence. [The Applicant] further advised that he no longer wished to proceed with the qualification hearing. As he no longer wished to be

licensed with ICI Source Real Asset Services, the Council provided [the Applicant] with six months to find a brokerage with which to be licensed under the agreed upon conditions.

[24] In March 2021, [the Applicant] sent a series of emails, including around approximately 25 emails to RECBC staff on March 10, 2021. Amongst the emails, [the Applicant] indicated that he now wanted a qualification hearing. This hearing was accordingly set for June 24-25, 2021.

[25] A pre-hearing conference was held on May 11, 2021 where procedural orders in respect of the hearing were made. The pre-hearing conference was reconvened on May 18, 2021 with [the Applicant] in attendance and paragraph 4 of the May 11, 2021 Order was varied, while [the Applicant]'s request to vary certain other provisions of the Order was dismissed.

**(2) [The Applicant]'s Bookkeeping and Record-keeping Issues, as Managing Broker of [the Brokerage]:**

[26] From January 9, 2012 until May 2018, [the Applicant] was the Managing Broker of [the Brokerage]. During this time, [the Applicant] failed to file the Brokerage Activity Report within the timeline required by the Rules every year, except for 2016. [The Brokerage] also repeatedly failed to prepare and maintain proper books and records, which were identified by the brokerage's own accountants, and which persisted despite assurances each year from [the Applicant] that corrections would be made. With respect to the books and records, the evidence established the following. [The Brokerage]'s Year-Ended January 31, 2013

[27] [The Applicant] failed to file the [the Brokerage]'s Annual Report for the year-ended January 31, 2013, by the May 31, 2013 deadline. [The Applicant] did not file the Annual Report until June 27, 2013, almost a month late.

[28] [The Brokerage] was issued an administrative penalty for this late filing. Payment was requested by July 12, 2013, but payment was not made until September 19, 2013 after follow-up by the RECBC.

[29] When [the Brokerage]'s 2013 Annual Report was received, the accountants had noted as follows:

During the reporting period and the five months after the period end, the brokerage has transacted only two trades. With such low volume of trading one would expect that there should not be much compliance problem with RESA, RES Regulation and REC Rules by the brokerage. On the contrary, I noted that the brokerage has run into all sort of non-compliant [sic]...

[30] [The Brokerage]'s accountants also identified numerous deficiencies, which included, for example, that:

- a. transactions for the trust and general accounts were not prepared and updated on a monthly basis, but were instead done during the last month of the reporting period and transactions for subsequent months after the reporting period had not been prepared;
- b. overdrawing in the pooled trust account occurred for eight months during the reporting period;
- c. trust ledgers were not prepared for trades in a timely fashion, and monthly liability and asset reconciliation were not prepared for the pooled trust account; and
- d. trade files lacked trade record sheets and were missing documents and information.

[31] On July 15, 2013, the RECBC requested that [the Applicant] explain the exceptions identified by [the Brokerage]'s accountants and to provide copies of certain reconciliations. His response was to be provided by August 7, 2013. By early October 2013, [the Applicant] had still not responded, and so the RECBC followed up with [the Applicant]. [The Applicant] finally responded on October 27, 2013, in which his response stated:

The exceptions to compliance outlined in [the Accountant]'s report are a result of my lack of attention to detail and disregard for the rules.

From now forward I am going to be compliant and follow the rules.

[32] A Council inspection of [the Brokerage] on October 23, 2013, numerous books and records issues were again identified, including, among other things: no records of cheques or deposit slips; a reconciliation was only prepared for one month for the trust account and the general account was not being reconciled; the past reconciliations that had been provided were incomplete; trade record sheets were missing information; and there were discrepancies in the nature of the relationship as reflected in the Working With a Realtor forms and on the listing contracts with clients.

**(a) [The Brokerage]'s Year-Ended January 31, 2014**

[33] In 2014, [the Applicant] again failed to file [the Brokerage]'s Accountant's Report within the deadline required under s. 7-7 of the Rules. After he was reminded by the RECBC that the report was due on May 31, 2014 and had not been received, [the Applicant] filed the Accountant's Report on June 11, 2014.

[34] On June 12, 2014, an administrative penalty was issued against [the Brokerage] for the late filing of the Accountant's Report.

[35] The Accountant's Report noted that [the Brokerage] had only acted on two sales, but the accountants noted that "the brokerage has quite a few exceptions in terms of proper General Recordkeeping and Internal Controls to ensure compliance with the Real Estate Services Act, Real Estate Service [sic] Regulation and Real Estate Council Rules". The accountants identified numerous exceptions to the Rules, including:

- a. Accounting records for the trust and general operating accounts were not prepared on a monthly basis, and were only recorded to September 30, 2013, and even then were incomplete. Reconciliations were not prepared on a monthly basis;
- b. Monthly trust liability and asset reconciliations were not prepared in a timely fashion;
- c. Overdrawing of the pooled trust account occurred in eight months during the reporting period; and
- d. Trade deal files did not include all relevant information and documents.

[36] On July 20, 2014, the RECBC asked [the Applicant] to provide explanations for the exceptions identified by [the Brokerage]'s accountants. The RECBC also requested that [the Applicant] provide a subordination agreement in respect of a shareholder loan. A response was requested by July 31, 2014.

[37] The RECBC followed up with [the Applicant] on October 7, 2014 in respect of the subordination agreement, which had still not been received. The RECBC followed up with [the Applicant] again on December 5, 2014. Finally, on December 12, 2014, [the Applicant] provided a copy of the subordination agreement, almost five months after it had been requested.

**(b) [The Brokerage]'s Year-Ended January 31, 2015**

[38] In 2015, [the Brokerage] again failed to file its Accountant's Report (which was due May 31, 2015). After the RECBC wrote to [the Applicant] on June 3, 2015 to advise him of this breach, [the Applicant] filed the Accountant's Report that day.

[39] [The Brokerage]'s accountants identified fundamental bookkeeping and record keeping deficiencies, including:

- a. Again, accounting records for the trust and general accounts were not updated on a monthly basis, and reconciliations were not prepared on a monthly basis;
- b. Monthly trust liability and asset reconciliations were still not being prepared in a timely fashion;
- c. The brokerage was not retaining all banking records relating to account transactions, including deposit slips, cancelled cheques, and withdrawal and transfer documentation; and
- d. Again, trade deal files did not include all relevant information and documents.

[40] On September 7, 2015, [the Applicant] provided his responses to the exceptions noted in the Accountant's Report. Among other statements, [the Applicant] noted that he would start preparing accounting records on a monthly basis "right away", that "in the future" he will prepare monthly trust liability and asset reconciliations, and that he will retain the missing records in the future.

[41] When asked on cross-examination, [the Applicant] could not provide any example of steps he took to ensure compliance with the Rules going forward despite the assurances he provided.

[42] The Council again conducted an inspection of [the Brokerage]'s books and records on November 17 and 27, 2015. The scope of the inspection was from February 1, 2015 to the date of the inspection. The inspection noted that:

- a. The brokerage had not prepared and maintained a general ledger for either the trust or general accounts recording all receipts and disbursements;
- b. Deposit slips were not retained for either brokerage bank account and there was no transfer documentation identifying to which deals transfers related;
- c. The brokerage had not prepared monthly reconciliations for either brokerage bank account for any month in the period under review;
- d. The brokerage did not keep a complete record of the deals it had engaged in;
- e. The trade record sheets did not include or accurately address the deal number, the amount of remuneration paid or payable to any licensee and the name of the person who has received or is to receive remuneration, and for many trades there were no trade record sheets;
- f. For some of the deals the listing agreements were not correctly modified to reflect a limited engagement and were potentially full-service agreements. The Working with a Realtor brochure was also not correctly completed for some of the deals; and
- g. Commissions were paid to brokerage licensees from the brokerage operating account, rather than the trust account.

**(c) [The Brokerage]'s Year-Ended January 31, 2016, and the July 27, 2016 Incident at the RECBC Offices**

[43] On May 31, 2016, [the Applicant] filed the Accountant's Report for the year ended January 31, 2016. This was the first and only time [the Brokerage] filed its Accountant's Report within the deadline under the Rules. [The Brokerage]'s accountant noted, among other things, that:

As a result improper maintenance of sales invoices, we were unable to complete our review of revenues totaling \$50,066 included in the financial statements. Had we been able to complete our review, we might have determined adjustments to be necessary to accounts receivable, sales, income taxes and net income.

Except for the effect of adjustments, if any, which we might have determined to be necessary had we been able to complete our review of the accounts receivable, as described in the preceding paragraph, nothing has come to our attention that causes us to believe that these financial statements are not, in all material respects, in accordance with Canadian Accounting Standards for Private Enterprises.

[44] An inspection of [the Brokerage]'s books and records by the RECBC was scheduled for July 2016. The scope of the inspection was from February 1, 2016 to the inspection date. During this inspection, numerous deficiencies were again identified, including:

- a. [the Applicant] was preparing handwritten reconciliations for the brokerage trust and general accounts. The reconciliations were not dated or initialed;
- b. the brokerage did not retain copies of the monthly bank statements, cancelled cheques provided by the bank, deposit receipts, or copies of bank drafts received;
- c. the general account ledger maintained in Excel spreadsheets lacked detail. Additionally, receipts and disbursements descriptions lacked detail;
- d. the general account ledger contained calculation and accounting errors throughout, and the descriptions of transactions lacked details;
- e. there were deficiencies in the trust account reconciliations, including that there was no trust liability listing to identify each trade for which the brokerage was holding trust money, and the trust journal did not include deal number references or a running balance;
- f. the trade record sheets were missing information; and
- g. for two deals there were differences in the amount of commission disclosed to the buyer and the actual amount received by the brokerage.

[45] On July 27, 2016, an exit interview was conducted with [the Applicant] to review the findings of the inspection and corrective actions required. The meeting was held in a boardroom at the Council's offices.

[46] [Witness 1] explained that she and an RECBC auditor were present at the meeting. [Witness 1] recalled that in the course of the meeting, [the Applicant] became agitated by their requests for information and inquiries. [Witness 1] requested that [redacted], who was the RECBC's Director, Legal Services at the time, accompany her and the auditor at the meeting.

[47] [Witness 1] recalled that in the boardroom there was a printed phone list that showed the names of RECBC staff and their office phone numbers. [The Applicant] explained that he had taken notes on the staff phone list, and [Witness 1] recalled that at some point during the meeting, [the Applicant] sought to leave the boardroom with the staff phone list. When [the Applicant] was confronted and told to return the phone list, he became further agitated and he called the police.

[48] [Witness 1] described the incident as highly concerning, and she had not experienced a licensee acting in such an erratic manner during an interview in her over 20-year history at the RECBC.

[49] On September 22, 2016, [the Applicant] was provided with a copy of the Office and Records Inspection Report from the July 2016 inspection and he was asked for a written response by October 13, 2016.

[50] On December 2, 2016, [the Applicant] provided some records to the Council by email. On December 29, 2016, the RECBC wrote to [the Applicant] to advise him that his letter was insufficient as it did not address the issues identified in the Office and Records Inspection Report. A written response was requested without further delay. In addition, the Council noted that copies of the trust account bank statements for July and August 2016 and deposit slips/receipts for both bank accounts had not been received as requested. It does not appear that a written response to the issues identified was ever received.

***(d) [The Brokerage]'s Year-Ended January 31, 2017***

[51] For the fourth time in five years, [the Applicant] failed to file [the Brokerage]'s Accountant's Report within the required deadline.

[52] On June 3, 2017, the RECBC wrote to [the Applicant] to request the Accountant's Report without delay. As the Report had still not been received by June 15, 2017, the RECBC followed up again with [the Applicant] again by email.

[53] On December 27, 2017, almost seven months after the deadline under s. 7-7 of the Rules (which is already set at 120 days after the fiscal year-end), the RECBC received the Accountant's Report for [the Brokerage].

[54] The accountant's report again noted:

As a result of improper maintenance of sales invoices, we were unable to complete our review of revenues totaling \$46,818 included in the financial statements. Had we been able to complete our review, we might have determined adjustments to be necessary to accounts receivable, sales, income taxes and net income.

Except for the effect of adjustments, if any, which we might have determined to be necessary had we been able to complete our review of the accounts receivable, as described in the preceding paragraph, nothing has come to our attention that causes us to believe that these financial statements are not, in all material respects, in accordance with Canadian Accounting Standards for Private Enterprises.

[55] Despite [the Applicant]'s prior assurances that he would correct his practices, [the Brokerage]'s accountant noted the same numerous exceptions with respect to the books and records.

[56] On March 6, 2018, the RECBC contacted [the Applicant] to draw his attention to issues in respect of the Accountant's Report and to seek explanations for the exceptions identified in the report. A

response was requested by March 27, 2018. [The Applicant] did not respond by that deadline, and the RECBC followed up again with [the Applicant] on April 4, 2018. It does not appear that a written response to the exceptions identified was ever received.

**(3) [The Applicant] is Charged with Uttering Threats and Assaults**

[57] On September 21, 2017, [the Applicant] was charged with uttering threats to cause death or bodily harm against family members, which alleged conduct occurred on September 12, 2017. These charges were stayed on June 4, 2018.

[58] The evidence that this Hearing Committee heard, including in an essay prepared by [the Applicant] for the Downtown Community Court as part of an Alternative Measures Program, establishes that:

- a. [the Applicant] recalls that his siblings had their mother take a mortgage on her property, which upset him;
- b. he was “outraged, drinking heavily and this resulted in [him] making some threatening remarks in attempt to have this group remove the mortgage”;
- c. on September 12, 2017 [the Applicant] says he “was intoxicated but [he does] not remember threatening ... and in fact [he says that he] was threatened”; and
- d. [the Applicant] acknowledged in his essay “the alleged victims probably did feel stress and anxiety from my actions and I regret my actions. At that time I was absolutely enraged”. However, in his testimony on cross- examination, he explained that he no longer regretted his actions.

[59] On October 17, 2017, [the Applicant] was charged with assaulting two security guards on July 21, 2017. These charges were also stayed on June 4, 2018.

[60] [The Applicant]’s evidence in respect of this incident was as follows:

- a. he stated in his Alternative Measures Program essay that he was at the Grand Villa Casino in Burnaby on July 21, 2017, and that he was “heavily intoxicated probably drinking in the vicinity of twenty five beers that night. I was still deeply affected by the family incident. For no reason at all, I broke a glass at the wall of an empty part of a casino and went to leave the Casino”;
- b. [the Applicant] denied in his testimony that he was upset because the Casino would not refund him money that he had lost. However, [the Applicant] provided no cogent explanation for why he threw a glass against the wall of the Casino;
- c. during a struggle with the security guards, [the Applicant] stated in his essay that he “was struggling to breath and one of the security team members twisted my finger, and at that time I bit” the security officer; and
- d. [the Applicant] acknowledged in his Alternative Measures Program essay “this incident was completely unnecessary and completely [his] fault”.

[61] On February 4, 2018, [the Applicant] was charged with assaulting a jail guard on February 4, 2018. The incident involved [the Applicant] allegedly biting the security guard. This charge was also stayed on June 4, 2018.

[62] With respect to this third incident, [the Applicant] has acknowledged that:

- a. he was arrested for being publicly intoxicated;
- b. after being arrested, he acknowledges that he was not cooperating with the jail guards and that he was being rude and making things difficult. On cross-examination, [the Applicant] denied tampering with the camera in the jail cell, but he provided no explanation for why the jail guards entered his jail cell and why a struggle ensued;
- c. he does not recall biting the jail guard, and says that he thinks one of their strikes may have connected with his braces. [The Applicant] did not have a clear recollection of the events that morning; and
- d. he previously acknowledged that his “actions created a lot of undue stress and worry. I also feel very disgraced creating this situation”.

[63] As part of the Alternative Measures Plan required to have his charges stayed, [the Applicant] attended counselling sessions at Raven Song Community Health Centre, attended five Alcoholics Anonymous sessions, participated in Moose Anger Management Group Sessions for Men, and completed an essay on the consequences of his behaviour and what he was doing to make meaningful changes.

[64] When [the Applicant] submitted his application to renew his Managing Broker licence on February 9, 2018, he disclosed the September 21, 2017, October 17, 2017 and February 4, 2018 charges to the RECBC for the first time.

#### **(4) [The Applicant]’s Unprofessional Communications with RECBC Staff**

[65] On multiple occasions, [the Applicant] was requested by the RECBC to limit his communications to the individual RECBC staff member with conduct of his matter. On repeated occasions, [the Applicant] blatantly disregarded these demands and proceeded to email numerous other RECBC staff members, ultimately requiring the RECBC to take the extraordinary step of blocking [the Applicant]’s emails to RECBC staff other than its legal counsel as his communications with RECBC staff exhibited serious concerns in respect of his judgment, civility, temperament, and professionalism. For example:

- a. On May 7 and 17, 2019, the Compliance Officer, [Witness 2], told [the Applicant] to discontinue the practice of emailing others at the RECBC and instructed that he contact only her with respect to his matter.
- b. On May 24, 2019, [Witness 2] emailed [the Applicant] again to remind him that he should just be contacting her, and that he should refrain from any contact or correspondence that does not provide relevant new additional information (Book of Documents, Tab 72). However, just days later, on May 31, 2019, [the Applicant] emailed the RECBC’s practice standards advisors, legal counsel, and Senior Manager of Communications to provide what he believed was “a simple example of rampant corruption which exists in your industry”, which was entirely irrelevant to his suitability for licensing.
- c. [The Applicant] was reminded again on June 3, 2019 that he should be sending his emails only to [Witness 2].
- d. Despite these prior requests, on August 16 and August 24, 2019, [the Applicant] sent emails to the RECBC’s Senior Manager of Communications and the RECBC Director, Compliance and Investigations, among other things, requesting a conversation on “facebook live”.

- e. On January 21, 2020, [Witness 2] again advised [the Applicant] that he should not contact others at the RECBC (Book of Documents, Tab 86). Nevertheless, just days later at 1:06 and 3:53 am on January 23, 2020 and on January 25, 2020, in direct violation of the RECBC's request, [the Applicant] sent a series of emails to the RECBC's CEO and other staff with irrelevant accusations, including among other things, accusing the CEO of being the "Worst CEO in History" and stating, "Harvey Weinstein? These are [the CEO]'s friends...".
- f. On January 27, 2020, the Director, Compliance and Investigations emailed [the Applicant] to re-iterate the request that he correspond only with [Witness 2] and that he limit his communications to matters new and relevant to his application for licensure.
- g. After [the Applicant] sent an email to other RECBC staff on May 26, 2020, [the Applicant] was advised on May 27, 2020 that he should now be directing his communications with respect to this matter to the RECBC's legal counsel and he was again warned that he should not be contacting or copying other RECBC staff on his emails. [The Applicant] was specifically advised that doing so would not expedite his matter and could lead to a further assessment of his governability.
- h. After [the Applicant] was advised on June 3, 2020 that the RECBC had concerns about his suitability but would licence him as an Associate Broker subject to enhanced supervision conditions, [the Applicant] nevertheless proceeded to emails others at the RECBC on June 3 and June 10, 2020, including the CEO, with the subject line "example or rape with a realtor and rcmp member", making statements irrelevant to his application for licensing.
- i. Despite the past requests not to contact others at the RECBC, on July 14, 2020 [the Applicant] again sent numerous emails to Council staff and its CEO, making irrelevant allegations against RECBC staff. [The Applicant] stated, among other things, "I request you renew my real estate licence without conditions. I can transfer my licence to The Firm. If not, we will meet in October, have a debate, get 1,000,000 online impressions, and let the public decide". The Council did not agree to his demand for a licence without conditions.
- j. As the qualification hearing scheduled for October 4-5, 2020 approached, [the Applicant] agreed to accept the enhanced supervision licensing conditions proposed by the Council. [The Applicant] was given six months to find a brokerage with which to be licensed under the agreed upon enhanced supervision conditions.
- k. Unprompted, on December 3, 2020 at 10:14 pm, 11:01 pm, 11:13 pm, 11:40 pm and 11:51 pm, [the Applicant] sent a series of emails to the Council's CEO and other Council staff, as well as the Attorney General, with subject lines including, "Profits to Hezbolah [referencing a property in Maple Ridge]" (Book of Documents, Tabs 106 to 110). [The Applicant] again emailed the Council's CEO on December 14 and 16, 2020.
- l. On December 16, 2020, RECBC's legal counsel emailed [the Applicant] advising that he had been requested several times not to contact others, including by copying other Council staff on his emails. [The Applicant] was again warned that failure to follow that request could lead to a determination that he is no longer governable or suitable for licensing. [The Applicant] responded by stating "OK ... I won't email anyone again".

- m. Despite this assurance, on March 8 and 10, 2020, [the Applicant] sent further emails to the Council's CEO (Book of Documents, Tabs 116, 117 and 118). On March 10, 2020, at 1:05 pm, RECBC's legal counsel again wrote to [the Applicant] to advise that, as previously stated and reinforced several times, he must cease from including other Council staff on emails.
- n. Directly flouting the demand from the RECBC's legal counsel that he cease from contacting other Council staff, [the Applicant] immediately proceeded to send numerous emails to other Council staff over the next several hours. Between 1:31 pm and 4:12 pm, [the Applicant] sent 25 emails to the Council, 18 of which were directed to or copied other RECBC staff (Book of Documents, Tabs 120-142). [The Applicant] also called the Council's reception around 25 times in that period, which calls were disconnected after he started making accusations about "rape".
- o. Finally, on March 11, 2020, the RECBC's legal counsel advised [the Applicant] that the organization had now taken the extraordinary step of blocking his emails to all RECBC employees other than the legal counsel with conduct of the matter.
- p. Despite this, [the Applicant] still copied the Council's CEO on further emails.

[66] In addition to [the Applicant]'s refusal to abide by the repeated requests not to contact other Council staff, [the Applicant]'s communications with the Council regularly contained irrelevant, and potent displays of incivility that went beyond mere rudeness. His remarks were at times shocking for a professional setting. For example:

- a. In a May 10, 2018 email to the RECBC's legal counsel, [the Applicant] called her a "piece of shit";
- b. In an April 1, 2019 email in response to be advised that an investigation was underway into his suitability to be licensed, [the Applicant] stated "The real estate council is under investigation with the competition bureau of Canada. Yet you as women support rape and child pornography";
- c. On April 1, 2019, in response to the same email, [the Applicant] also responded with the subject line "rape" stating, "as a compliance officer is raping a women [sic] a serious charge?";
- d. On a call with a Compliance Officer on May 16, 2019, in response to a request that he provide the Council with documentation in relation to the Alternative Measures Program, he repeatedly called the request "stupid";
- e. On August 16, 2019, in response to a scheduling email that merely confirmed the date for an interview with the Compliance Officer, [the Applicant] responded with the following, irrelevant response which stated in its entirety: "[Legal Counsel] and [Witness 1] are lying. Below is a follow up. Why is this ok? Hello, Her response is full of lies. I am willing to take a polygraph test at my expense. Why is she lying?";
- f. Rather than focusing on establishing that he was of good reputation and suitable to be licensed, [the Applicant] instead repeatedly made baseless accusations against Council staff. For example:
  - i. On January 23, 2020 at 1:06 am, [the Applicant] wrote "Harvey Weinstein + Enron + Uber = E. Seeley (Worst CEO in History)", and accused the CEO of being friends with Harvey Weinstein. [The Applicant] noted that "I will start public

- protests starting March 2 outside [sic] CP Pacific Center [sic]. The sign will read RECBC (with logo) Seeley #1billionstolen #fraud #rape”;
- ii. On January 23, 2020 at 3:53 am, in an email with the subject line “Please DO NOT TELL THE PUBLIC YOU ARE WORKING HARD”, [the Applicant] accused the RECBC’s Legal Counsel of having “corporate interests”;
  - iii. On July 14, 2020 at 2:45 am, in response to being provided with a Notice of Qualification Hearing, [the Applicant] wrote: “THIS IS DISGUSTING...IF SOMEONE CAN WITNESS THIS...IGNORE IT...AND GO ON VACATION WELL THEY SHOULD BE IN JAIL. THIS IS FRUAD [sic]...YOU SHOULD LOOSE [sic] YOUR CAREER AND PENSION FOR THIS FRAUD...SIMPLE FRAUD. If Ghislaine Maxwell is an accomplice to Jeffrey Epstein...what is the RECBC...I look forward to October. (...) so disgusting...[the CEO] should allow my recording at Oct 5 meeting...1,000,000 views”;
  - iv. On December 3, 2020 at 10:14 pm, in [the Applicant]’s email to the Attorney General with the subject line “Profits to HEzbollah?...” , he stated, [the CEO] enjoys many months of vacation. [Council staff members] approve of this fraud. I would love to have a debate with you about the Council acceptance of this fraud”;
  - v. Another email on December 3, 2020 at 11:51 pm to the Attorney General had the subject line, “so after the recbc was made aware of fraud? Possibly supporting nuclear enrichment programs in iran...what did they do...ofcours [sic] multiple weeks of vacation”;
  - vi. On March 10, 2021, [the Applicant] alleged that the RECBC’s CEO “essentially ... co-opted in a raped [sic] of a woman” (Book of Documents, Tab 121) and accused the RECBC of “accomodat[ing] the rape of a young women [sic];
  - vii. On March 10, 2021, [the Applicant] asked to compare income tax statements with Council staff and made accusations that Council staff “witness fraud and rape accept it and take a long weekend”;
  - viii. On March 10, 2021, [the Applicant] accused the Manager of Communications at the Council of accepting fraud;
  - g. On March 10, 2021, [the Applicant] wrote that “...the RECBC worked the company to conceil [sic] the rape to save the company because the company works with the RECBC who works with women. And every member of the RECBC accepts pay and takes long weekends and is ok with thism” [sic].
  - h. On March 10, 2021, in response to a reiterated request that he not email other staff members at the Council, [the Applicant] wrote to the RECBC’s legal counsel stating, *inter alia*, “What was Hitler’s army called? You would’ve been a good member”.
  - i. On March 10, 2021, in response to an email from RECBC’s legal counsel advising him that if he was no longer prepared to accept the conditions to which he had previously agreed another qualification hearing could be set down, [the Applicant] responded stating, *inter alia*, “You should be disbarred from practicing law. I will be contributing a fraction of my life resources to make this happen”.

- j. On April 28, 2021, in response to being provided with materials for a pre-hearing conference, [the Applicant] wrote, *inter alia*, "I am in Brazil at the moment. You should visit Brazil, there is a lot of opportunities for bureaucratic lawyers that can lie and oppress people".
- k. In response to an email advising him of the date for the Pre-Hearing Conference that he had requested, [the Applicant]'s response on May 13, 2021 contained irrelevant and baseless accusations that Council staff had a "testosterone imbalance".
- l. On May 13, 2021, in response to the same email about the date of the Pre-Hearing Conference, [the Applicant] wrote, "my 2013 taxable income 223,000k 80k tax [sic] paid producing goods. My brokerage 2014 8000 after ebita profit, RECBC spends 100,000 thousands investigating me while fraud of hundreds of millions if no kore [sic] occurs. Now I am 6 weeks full time trying to fix the fraud. system for free. Thank you. This is the swamp, drain the swamp.".
- m. [The Applicant] has repeatedly suggested that Council staff should be jailed (Book of Documents, Tabs 83, 91, 100, 131), and repeatedly challenged Council staff to "debates".

[67] [The Applicant]'s correspondence with third parties was also replete with irrelevant information. After the Law Society of BC advised him that they would neither provide a lawyer to represent him nor send a lawyer to observe his hearing, [the Applicant] wrote (bolding original):

I worked for [redacted] for 4 years owned by Sinopec, I lived in Tianjian, China when I was younger as an English Teacher. Also, I attended the Canton Fair and I import equipment from China and spent time in Macau.

I owned a Real Estate Brokerage with over 200 transactions, only once did the RECBC request to view a copy of a certified bank draft, the bank draft was from [redacted]. A Canadian educated young woman, who paid hundreds of thousands of dollars in tuition fees to UBC, and is now a Permanent Resident.

**The upcoming hearing will deal with concealed rape and concealed fraud.** Usually, these hearings are open to the public, but likely the RECBC will shut this one down. Both of the lawyers involved will not speak.

No worries of the Law Society of BC does not want to attend the hearing. No worries if [former Legal Counsel to the RECBC] will not cooperate.

Thank you

F. **REASONS FOR DECISION**

[68] The onus is on the Applicant to demonstrate that he is, on a balance of probabilities, currently of good reputation, and suitable to be licensed. Evidence must be scrutinized with care and must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.

[69] We are guided by the Council's "Good Reputation, Suitability and Fitness" Guidelines, which is a Council-approved document that provides guidance to applicants, and to Qualification Committees, about what Hearing Committees may consider when assessing an applicant's past and their current reputation, suitability, and fitness.

[70] The Council's Good Reputation Guidelines ("Guidelines") reiterate that every applicant for a licence must, among other things, be of "good reputation." General business and personal reputation...

and/or whether an applicant has been disciplined by a professional body will be reviewed when considering an applicant's "good reputation".

[71] The Guidelines also provide rehabilitation factors that may be considered by a Hearing Committee when determining whether an applicant has fully rehabilitated himself or herself and is currently of good reputation and suitable to be licensed within Section 10 of the RESA. These rehabilitation factors include:

- Change in attitude from that which existed at the time of the Conduct as evidenced by any or all of the following:

- testimony of applicant;
- evidence from persons familiar with the applicant's Conduct and with the applicant's subsequent attitudes and behaviour patterns; and
- evidence from probation or parole officers or law enforcement officials competent to testify as to the applicant's social adjustments.

[72] These Guidelines do not bind the Council or this Hearing Committee, but they provide notice of how Hearing Committees will generally approach issues of good reputation, suitability and fitness. Likewise, the Notice of Hearing is provided to applicants to give notice of the issues giving rise to a qualification hearing but cannot restrict the Hearing Committee's jurisdiction to consider whether the Applicant has met the requirements for a licence under Section 10 of the RESA.

[73] The Council provided to the Committee a general principle set out in *Khosla v. RECBC* (Commercial Appeals Commission, Sept. 13, 2000), where the former Commercial Appeals Commission held as follows:

...the suitability required by the statute refers to qualities or attributes that a person should have in order to be licensed. The qualities that make a person suitable for licensing include such things as honesty, reliability, integrity and professionalism. ... Where an applicant's conduct has shown an absence of one or more of these qualities, the applicant is not suitable and should not be licensed. These qualities are questions of character which are often enduring. (emphasis by Council)

[74] The Council also referred the Committee to a decision of an RECBC qualifications committee in *Re Alexander* (September 30, 2010), where the committee concluded that an applicant was suitable for licensure, given his conduct at the proceeding, where the committee found that his demeanour, manner and conduct was "unprofessional, rude, and at times that he appeared to have a belief that there was a conspiracy against him or that the Council, the Committee and all of Council staff were biased or racist towards him." The Committee also noted that the applicant's behaviour was erratic, his evidence was unreliable, and he was unwilling to properly respond to questions asked of him on cross-examination. That committee ordered that no application from the applicant be considered for a period of five years from the date of decision.

[75] As noted by a committee in *Re Ehmann*, 2019 CanLII 31578 (RECBC), a tribunal is not bound to rely solely on the law as presented by the parties: *International Woodworkers of America, Local 2-69 v. Consolidated-Bathurst Packaging Ltd.* [1990] 1 S.C.R. 282 (S.C.C) (at para. 32). The Hearing Committee may therefore note that the good reputation, suitability and fitness requirement under the RESA are similar to the "good character" and "fitness" requirements of other professions in British Columbia and elsewhere in Canada.

[76] A hearing committee of the Law Society of British Columbia summarized good character and fitness principles in *Applicant 3 (Re)*, [2010 LSBC 23](#). Fitness encompasses good character, and in the context of the legal profession quoted the principle that “a lawyer must not only show that he or she has all the attributes of good character – honesty being one of them – the lawyer must also show that he or she has other attributes from which a forecast of future integrity can be made” (at para. 19). The panel noted that the standard is not one of perfection, but an applicant must establish good character at the time of the hearing (at para. 19), and that the determining factor is the public interest (at para. 23).

[77] Section 15(1) of the RESA empowers the Council to impose conditions and restrictions on a licence, or to vary a condition or restriction applicable to a licence. In deciding to exercise this power, however, a regulatory body should not utilize terms and conditions to permit applicants to be licensed where they have failed to prove, on the balance of probabilities, they are currently of good reputation and suitable to be licensed. Where, however, the Hearing Committee finds that an applicant is of good reputation and suitable, it may still exercise discretion to protect the public against recidivism. This basis for imposing conditions or restrictions on someone found to be of good character was noted by a hearing panel of the Law Society of Upper Canada (now the Law Society of Ontario) in *Law Society of Upper Canada v. Levenson*, [2009 ONLSHP 98](#). In rejecting a previous approach that disapproved of conditions upon a successful applicant for a licence, the hearing panel reasoned that proof of good character is no guarantee against recidivism:

“[81] ... (5) Contrary to the Hearing Panel's reasoning in *Re Preyra*, issues that might prompt the imposition of terms and conditions do not mean that the applicant has necessarily failed to prove his or her good character. First, terms and conditions may address concerns about public confidence in the regulation of licensees arising from the applicant's prior misconduct. Second, it is acknowledged that **proof of good character on a balance of probabilities provides no guarantee against recidivism. Terms and conditions can both assist the applicant, and protect the public.** Third, while hearings under s. 27 are directed to the issue of good character, it is untenable to say that terms and conditions cannot be imposed upon an applicant who is of good character to also ensure competency, particularly when the applicant is seeking to be readmitted or restored after a long absence from practising law.” (emphasis added)

[78] The hearing panel in *Levenson* recognized that a regulator should never address concerns about whether an applicant is of good character by imposing terms and conditions: “[82] ... We cannot emphasize strongly enough that terms and conditions should never be utilized to permit applicants to be licensed who have failed to prove, on a balance of probabilities, that they are currently of good character. That would erode this precondition for licensing in an unacceptable way.” The panel further reasoned, however, that, “[82] ... terms and conditions might be imposed where the hearing panel is satisfied that the applicant is currently of good character, but that public confidence in the regulation of lawyers and paralegals would be enhanced through such terms and conditions.”

[79] Another law society tribunal reiterated this reasoning more recently, in *Sheps v. Law Society of Upper Canada*, [2016 ONLSTH 124](#): “[85] Terms and conditions should not be used to ‘bootstrap’ good character. That is, terms and conditions cannot be used to enhance or improve the panel's consideration of whether the applicant has good character. Rather, only after the hearing panel determines that the applicant is of good character, may it consider whether terms and conditions are nevertheless required to ensure public confidence in the regulation of lawyers.”

[80] [The Applicant]'s evidence was seen by the Hearing Committee as evasive to an extreme by his refusal to answer basic questions for which he easily had the ability to answer, often dismissing the questions by asking questions of the Hearing Committee or other participants in the hearing, not answering or with the words, "I don't know, I just don't know". His testimony lacked credibility, contradicted itself at times and was inherently unbelievable.

[81] The Hearing Committee found [the Applicant]'s demeanor, manner and conduct throughout the proceeding to be unprofessional, rude, and showing a complete disregard for the participants or process in this Qualification Hearing.

[82] We note that the Applicant failed to express remorse or acknowledge even the slightest amount of responsibility for his actions. Throughout the hearing, [the Applicant] used his testimony, his cross-examination of witnesses and his interruption of the other participants as an opportunity to attempt to discredit individuals and to express his believed views regarding a conspiracy amongst the participants. He expressed repeatedly his view that there was fraud, corruption and rape within the industry and that the Council and its employees were participants.

[83] [The Applicant] provided no evidence in his testimony or letters of support / character references via oral testimony or written submission for the Hearing Committee's consideration on his good reputation and suitability to be licensed. When asked why he chose not to provide such supporting information, he elected to incorrectly place the blame on the Counsel for the Council.

[84] The Hearing Committee concluded that no evidence showed [the Applicant] had changed his behaviour or attitude as a result of completing the Alternative Measures Program required by the courts. In fact, in his evidence at this hearing, [the Applicant] maintained that the counseling sessions, anger management and Alcoholics Anonymous sessions were "a complete waste of time" and that he did not learn anything from these programs. [The Applicant] also explained that he has not completed any other counseling on his own initiative since then.

[85] [The Applicant] failed to identify a Brokerage which was prepared to employ him, should the Hearing Committee consider licensing him as a Managing Broker or Associate Broker.

**G. DISPOSITION**

[86] This Hearing Committee finds that based on the evidence in this hearing, [the Applicant] has NOT established, on a balance of probabilities, that he is of good reputation and suitable for licensing.

[87] This Hearing Committee further finds that a period of three years is a reasonable minimum period of time for [the Applicant] to re-establish his suitability and good character, gain insight into why his recent conduct has been concerning, and show that he can engage in a professional setting in a civil and respectful manner before re-application for licensure.

DATED at VANCOUVER, BRITISH COLUMBIA this 28<sup>th</sup> day of July 2021.

“LEN HRYCAN”

Len W Hrycan, Chair  
Qualification Hearing Committee

“NEAL NICHOLSON”

Neal Nicholson  
Qualification Hearing Committee

“RUTH HANSON”

Ruth Hanson  
Qualification Hearing Committee

LIST OF EXHIBITS

- Exhibit 1 Amended Notice of Qualification Hearing and Pre-Conference Orders  
Exhibit 2 Book of Documents