



# **Professional Standing Committee: Informed Decision Making in Real Estate Licensing Regulation**

March 2020

## **Summary**

The current restructuring of BC's real estate licensing regulatory framework offers strong potential for continued consumer protection and licensee professionalism. However, this transition creates a challenge in maintaining a structure for practitioner involvement under the BC Financial Services Authority (BCFSA) governance framework. Legislation, case law and experience make clear that practitioner involvement in their own regulation is important. This is particularly true for the real estate sector as there are significant professional governance issues in addition to financial, and effective regulation will require ongoing licensee input. To address this issue, we propose a model for practitioner involvement that the BCFSA can use for all of its areas of regulatory responsibility, contributing to BCFSA's achievement of its external engagement objectives as per its 2020/21 – 2022/23 Service Plan.

## **Issue**

### *BC Real Estate Context*

Since the creation of the stand-alone Office of the Superintendent of Real Estate (OSRE) in 2016, BC's real estate licensing regulatory framework has faced challenges.

OSRE's oversight of the Real Estate Council of British Columbia (RECBC) created a complicated structure, in which the roles of each organization are not entirely clear and their approaches have diverged at times. This issue is being resolved by integrating OSRE and RECBC into the BCFSA by 2021, creating a single regulator.

A significant remaining challenge is the lack of practitioner participation in decision making. In 2016, the BC Government ended self-regulation for real estate licensees. Since then, no more than four current or former licensees have served on the RECBC's governing council of 16 at any time. This is a significant difference from the way real estate licensing is regulated in other jurisdictions.

The negative impact of the lack of real estate input is clear. On June 15, 2018, significant Rule changes were made that affected how licensees make disclosures to consumers and how licensees practice agency. Notably, the practice of limited

dual agency (where one licensee represents two or more parties in a transaction; for example, both the buyer and the seller) was banned. The following difficulties could have been avoided if licensees were thoroughly involved in decision making and implementation:

- Process – The timeline and process for the Rule changes in 2018 did not account for the way licensees work. The forms were introduced shortly before the Rule changes took effect, giving licensees very little time to understand them. In addition, the education offered was not adequate and the responsibility for consumer education rested solely with licensees.
- Limited dual agency ban – Licensees know that different areas of the province and different areas of real estate practice have varying needs. Unfortunately, the outright ban on limited dual agency and the one extremely narrow exemption do not acknowledge these differences. In November 2018, more than 1,200 REALTORS® responded to a BCREA survey about the ban. Sixty per cent of respondents indicated they were seeing an increase in the number of consumers who were unrepresented; this is exactly the opposite purpose of the limited dual agency ban. As of February 2020, the exemption allowing use of limited dual agency has never been used, and this is counter to OSRE's original intention.
- Disclosures – The original forms created by RECBC in 2018 were awkward and cumbersome for consumers and licensees, causing considerable disruption. In addition, the original forms did not acknowledge the significant difference in practice between trading services and property management. In fall 2019, RECBC introduced significantly improved forms that reflected nearly all the feedback BCREA provided in July 2018.

#### *Practitioner Involvement Elsewhere*

The real estate licensing regulators in most Canadian provinces have governing councils, and most of the members of those governing councils are licensees. Even BC's Independent Advisory Group in 2016 supported the retention of a governing council, with half of the members being licensees (recommendation 19). According to the 2019 Digest of the Association of Real Estate License Law Officials, of the 31 real estate licensing regulators in the United States and Canada who reported, only three did not have industry members on their governing bodies.

Canadian case law reinforces that practitioner involvement in the regulation of their work is a best practice. In a 1982 case known as *Jabour*,<sup>1</sup> the Supreme Court of Canada acknowledged the advantages of having members of a given profession participate in its regulation—particularly in setting standards and determining

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<sup>1</sup> *Canada (Attorney General) v. Law Society of British Columbia*, 1982 CanLII 29 (SCC), [1982] 2 S.C.R. 307.

whether a professional had committed professional misconduct. In another case known as *Proprio*<sup>2</sup> the Supreme Court of Canada agreed with the Québec Court of Appeal that “the expected standards of conduct are generally better defined by people who work in the same sector and gauge both the interests of the public and the constraints of the specific economic sector.”

There are many examples where the BC Government has demonstrated similar intention. Within the BCFSA, the *Financial Institutions Act* provides for the Insurance Council of BC, which consists of 11 voting members, nine of whom are practitioners. In addition, the *Professional Governance Act* provides for governing councils for all professions that fall within its mandate. Another model is offered in the *Teachers Act*. While the government is responsible for regulating teachers, members of the teaching profession are represented on the BC Teachers’ Council. The council establishes standards for education, conduct and competence.

In 2018, in his assessment of BC’s real estate regulatory structure, Dan Perrin also noted that “the lack of industry representation on the current RECBC board reduces RECBC’s ability to provide expert industry input regarding policy development and implementation.” He suggested the creation of a “solid, industry appointed policy advisory group would provide significant beneficial advice to the policy development process and should be considered as part of the changes.”<sup>3</sup>

### **Recommendation: Create a Professional Standing Committee**

To ensure practical, knowledge-based decisions for the benefit of consumers and licensees, BCREA recommends the *Real Estate Services Act* be amended to provide for a Professional Standing Committee modeled on the BC Teachers’ Council. As a starting point, BCREA proposes the following terms of reference:

#### *Mandate*

Reporting directly to Vice President of Real Estate Licensing, the Real Estate Professional Standing Committee will:

- establish professional standards regarding licensing and relicensing qualifications, including professional competence and conduct,
- provide practical insights into all proposed changes to real estate practice, including Rules, guidelines, policies and regulations, and
- serve as a conduit for regulatory issues brought forth by the British Columbia Real Estate Association (BCREA) as provincial sector representatives.

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<sup>2</sup> *Association des courtiers et agents immobiliers du Québec v. Proprio Direct inc.*, 2008 SCC 32.

<sup>3</sup> Dan Perrin, *Real Estate Regulatory Structure Review*, (BC Ministry of Finance, 2018), 23.

In addition, members of the committee may be asked to participate in disciplinary hearings.

### *Composition*

The committee will consist of:

- up to six voting members representing:
  - all licence levels (i.e., brokerage, managing broker, associate broker, representative),
  - all licence categories (i.e., trading services, rental property management services, strata management services),
  - residential and commercial perspectives,
  - diverse geographical areas,
  - diverse brokerage models and sizes, and
- two members with backgrounds in one or more of the following fields:
  - law,
  - financial services,
  - construction or real estate development,
  - home inspection,
  - real estate appraisal,
  - economics, and
- one non-voting observer from BCREA.

The committee will be chaired by the BCFSAs staff person responsible for Real Estate Licensing.

### *Appointments and Terms*

Interested licensees will apply directly to the BCFSAs, and the Minister of Finance will choose committee members. Terms will last for two years, with reappointments possible to a maximum of six years.

### *Qualifications*

Committee members will be appointed based solely on their qualifications. Each member must:

- fulfill at least one of the representative criteria listed under Composition,
- have been licensed under the *Real Estate Services Act* for at least five years or demonstrate excellence in one of the fields described above, and
- be constructive, thoughtful and objective.

## **Implementation**

BCREA welcomes discussion on this proposal, which can be adapted for other professions under the umbrella of the BCFSAs. Please contact Vice President, Government Relations and Stakeholder Engagement Trevor Hargreaves to discuss (604.742.2798, [thargreaves@bcrea.bc.ca](mailto:thargreaves@bcrea.bc.ca)).