

THE REAL ESTATE COUNCIL OF ALBERTA (RECA)

A Hearing Under Part 3 of the *Real Estate Act*, R.S.A. 2000, c. R-5

AND IN THE MATTER OF a Hearing regarding the conduct of **ERIC ANDREW DRINKWATER**, currently unlicensed as a real estate associate and was previously registered with **4th Street Holdings Ltd. O/A Re/Max Real Estate (Central) and Bryken Investments Ltd. O/A RE/MAX Complete Realty**

Hearing Panel Members: [K.S], Chair
[C.R]
[B.W]

Appearances: A. Bone, Counsel for the Registrar of the Real Estate Council of Alberta

Eric Andrew Drinkwater

Hearing Date: May 22, 2025

Introduction

1. Hearings under Part 3 of the *Real Estate Act* (the *Act*) involve two phases. In the first phase, the Hearing Panel determines whether the Licensee has engaged in conduct deserving of sanction. If the Hearing Panel finds that the Licensee engaged in conduct deserving of sanction, the matter proceeds to the second phase, where the Hearing Panel determines the appropriate sanction and/or costs.
2. This Decision addresses the appropriate sanctions and costs in respect of the conduct deserving of sanction of the Licensee, Eric Andrew Drinkwater (Drinkwater). For the reasons set out below, the Hearing Panel imposes the following sanctions and costs:
 - a. Any and all licences of any category or class issued to Drinkwater are hereby permanently cancelled.
 - b. Drinkwater is prohibited from reapplying to RECA for a licence of any category or class for the remainder of his natural life; and

- c. Drinkwater shall pay costs in the amount of \$9,500 to RECA.

Background Facts

3. Drinkwater and the Registrar for the Real Estate Council of Alberta (the Registrar) entered into an Agreement on Conduct Deserving of Sanction (the Agreement) pursuant to Part 3, section M(d) of the *Hearing and Appeal Practice and Procedure Guidelines*.
4. At the hearing of this matter, the Registrar reviewed the Agreement, line by line, with the Hearing Panel. Drinkwater confirmed that he admitted each of the facts set out in the Agreement, except those set out in paragraph 8 of the Agreement. In light of this, the Hearing Panel adjourned to allow Drinkwater and the Registrar to consider their positions regarding the calling of evidence. Following the adjournment, Drinkwater and the Registrar agreed to verbally revise paragraph 8 of the Agreement.
5. The Hearing Panel then adopted the contents of the Agreement (as revised per paragraph 4 above) as the Hearing Panel's findings.

Phase 1: Conduct Deserving of Sanction

6. Based on the above, the Hearing Panel finds:
 - a. Drinkwater has traded in real estate since 2005. He was first licensed as an associate with RE/MAX Real Estate (Central). From February 23, 2011 until February 22, 2024, he was licensed as the Associate Broker for RE/MAX Real Estate (Central). From February 23, 2024, until April 19, 2024, Drinkwater was licensed as the Associate Broker for Bryken Investments Ltd. o/a RE/MAX Complete Realty.
 - b. On June 18, 2024, the Residential Real Estate Industry Council suspended Drinkwater's licence pursuant to s. 53(1)(a) of the *Real Estate Act*.
 - c. During all material times, Drinkwater was licensed with RE/MAX Real Estate (Central) or RE/MAX Complete Realty.
7. The Hearing Panel also finds that Drinkwater engaged in the following conduct deserving of sanction (the Misconduct):

- a. Between approximately September 2021 and April 2024 Drinkwater induced individuals to invest large sums of money with him for use in fictitious short-term loans (the Fraudulent Scheme).
- b. The Fraudulent Scheme worked as follows:
 - i. Drinkwater or other parties at Drinkwater's direction, would contact past real estate clients, or other real estate licensees, or members of the public regarding the possibility of investing in short term loans that would receive significant returns. Initial contact was done through email, phone or in person.
 - ii. Some or all of the following representations were made to potential investors:
 - 1. Certain real estate purchasers who Drinkwater was representing, or was aware of, could not afford to close their real estate transactions because the funds required to complete the transaction were tied up in the equity of an existing property;
 - 2. The purchasers needed short term financing (Bridge Financing) to close their real estate transactions;
 - 3. Such Bridge Financing could not be obtained from traditional sources such as banks for various reasons that were individual to each purchaser;
 - 4. The investors, through Drinkwater and for a considerable profit in return, could provide capital for the requisite Bridge Financing to a purchaser, which would be returned once the transaction closed. Alternatively, the investment could be on an ongoing basis;
 - 5. The purchasers needed the Bridge Financing and were willing to pay high rates of return so that the real estate transactions would close;
 - 6. Drinkwater would pay, or cause to be paid, the monies, including capital advanced and the profit thereon, owing to the potential investors;

7. The investment had essentially no risk and a promissory note would be entered into between Drinkwater personally and the investors; and
 8. A lawyer would administer the bridge loan funds on behalf of Drinkwater.
- iii. Each individual who invested with Drinkwater understood the investment to be for an individual real estate transaction or as part of an ongoing investment in multiple Bridge Financing transactions.
 - iv. In most instances, Drinkwater secured investment funds in the form of a personal loan, issuing a promissory note to guarantee repayment of the principal and a substantial return on the bridge loan investment.
 - v. Unknown to the investors at the time, the funds provided to Drinkwater were in fact used in furtherance of the Fraudulent Scheme rather than for Bridge Financing.
 - vi. Drinkwater created false and misleading bank statements, e-transfer verification receipts, and promissory notes to support the Fraudulent Scheme.
 - vii. Drinkwater used some of the proceeds from newly defrauded investors to pay previous investors. Some individuals invested multiple times with each new loan being incrementally greater than the last.
 - viii. Many investors never received payments.
- c. Over the material period, there were 71 investors identified in the investigation. A list of these investors is attached hereto in Schedule "A". The total number of investors in the scheme may have exceeded 100.
 - d. Over the material period, the total amount invested into the Fraudulent Scheme was approximately \$3,533,167 (the Total Investment). Drinkwater used approximately \$1,100,000 of the Total Investments for debts related to the Fraudulent Scheme and a small amount for personal expenses.
 - e. None of the investments made into the Fraudulent Scheme were used for actual Bridge Financing.

8. The Hearing Panel agrees with the admission that Drinkwater participated in fraudulent or unlawful activities in connection with the provision of services or in any dealings, contrary to section 42(b) of the *Real Estate Act Rules*. Specifically, between approximately September 2021 and April 2024, Drinkwater used false and misleading representations to induce individuals to invest in fictitious bridge loans.

Phase 2: Sanction and Costs

9. With respect to the appropriate sanction considering Drinkwater's Misconduct, the Hearing Panel finds:
 - a. The following facts are relevant as mitigating factors:
 - i. Drinkwater has agreed to forego the time and expense of a hearing, saving witnesses the inconvenience and stress of appearing by making the above admissions;
 - ii. Drinkwater has expressed remorse for his conduct and admitted to all his aggrieved conduct; and
 - iii. There is no disciplinary history for Drinkwater.
 - b. The following facts are relevant as aggravating factors:
 - i. Drinkwater is very experienced in real estate. He was licensed with RECA for approximately 19 years. He should have known that his conduct was far from acceptable;
 - ii. The breadth of the Fraudulent Scheme was vast as the number of victims was at least 71; and
 - iii. The nature and gravity of Drinkwater's aggrieved conduct is extremely high.

The Parties' Positions on Sanction

10. The Registrar began by stating that, given the serious nature of this matter, the Registrar is not seeking a specific sanction and, instead, leaves the determination of the appropriate sanction to the discretion of the Hearing Panel.
11. The Registrar then reviewed the mitigating factors in this case:

- a. Drinkwater has acknowledged his conduct in this matter and taken full responsibility for it. He has neither hidden nor downplayed his conduct and has been transparent with RECA. With the exception of failing to attend an earlier hearing regarding his request for an adjournment, Drinkwater has cooperated in this process;
 - b. Drinkwater's admissions set out in the Agreement have saved significant resources. The hearing of this matter could have been a month long or more and would have involved more than 60 witnesses;
 - c. Drinkwater's admissions set out in the Agreement also saved the potential witnesses significant stress and inconvenience. The Registrar notes that many of the victims / potential witnesses in this matter did not want to be involved in the hearing process at all; and
 - d. Drinkwater's licence has been suspended, pursuant to section 53 of the Act, since June 2024. Thus, he has already suffered a penalty.
12. At the same time, however, the Registrar asserts that there are very serious aggravating factors in this case:
- a. Drinkwater is 42 years old and has dealt in real estate for nearly 20 years. For the last 13 years, he was licensed as an Associate Broker. It would have been abundantly clear to Drinkwater that his conduct, as described in the Agreement, was unacceptable. Given his age and experience, he ought to have known better than to engage in the Misconduct which was well outside the range of permitted conduct as a Licensee;
 - b. Drinkwater engaged in at least 71 breaches of rule 42(b) of the *Real Estate Act Rules*. This is unprecedented in terms of the scale of the Misconduct;
 - c. The nature and gravity of the Misconduct is serious. Drinkwater engaged in an extensive fraud;
 - d. Drinkwater's Misconduct was calculated and deliberate;
 - e. Drinkwater's Misconduct strikes at the heart of RECA's mandate, which is to protect against fraud. It similarly compromises RECA's efforts to maintain public confidence in the industry. A profession's most valuable asset is its collective reputation and Drinkwater's Misconduct undermines that public confidence and the integrity of the industry; and
 - f. Drinkwater's conduct had a significant impact on his victims who faced substantial financial losses as well as stress and anxiety.

13. Finally, the Registrar discussed the need for specific and general deterrence. The Registrar noted that Drinkwater has admitted his conduct and expressed remorse, suggesting the need for specific deterrence is moderate in this case. However, given the nature and extent of the Misconduct, and the potential impact of such conduct on the integrity of the industry, a high degree of general deterrence is required. The Registrar says that the Hearing Panel must send a clear message that fraudulent schemes such as the one enacted by Drinkwater will not be tolerated.
14. The Registrar cited cases dealing with breaches of section 42(b) of the Real Estate Act Rules. While such precedents are not binding on the Hearing Panel, they can assist the Hearing Panel in imposing sanctions consistently for comparable conduct. At the lower end of the range, the Registrar pointed to the following cases:

- a. *Re Dhaliwal, 2023 ABRECA 29 (Dhaliwal)*

The Licensee intentionally forged a mortgage commitment letter. He had no prior disciplinary history and did not personally benefit from the fraud. There was no impact on the victim and the Licensee accepted responsibility for his actions.

The Licensee's licence was cancelled with no ability to reapply for 12 months. No costs or fines were directed.

- b. *Re Voth, 2023 ABRECA 23 (Voth)*

The Licensee forged a signature on an exclusive buyer representation agreement so that he could be paid a commission. While under investigation in relation to this forgery, the Licensee forged a subsequent document to avoid consequences in relation to the first forgery. Although the Licensee did not cooperate in the investigation, he ultimately entered into an Agreement of Conduct Deserving of Sanction thereby avoiding the need for a lengthy hearing.

The Hearing Panel took into account the fact that the Licensee's misconduct was intentional, repeated, and undermined the public confidence in the industry. The Registrar also noted that the Licensee was an experienced and mature realtor who had no exceptional explanation for his misconduct.

The Licensee's licence was cancelled with no ability to reapply for three years. The Hearing Panel imposed a \$5,000 fine for each forgery, as well as a \$5,000 fine for failing to cooperate with the investigation (for a total

of \$15,000). Modest costs of \$1,500 were awarded on the basis that, while the Licensee's misconduct (including failing to cooperate with the investigation) was serious, his admissions avoided a lengthy hearing.

c. *Re Peresta, 2024 ABRECA 35 (Peresta)*

The Licensee forged three invoices and altered a credit card statement to support a false claim for expenses. The Licensee had no prior discipline, took responsibility for his misconduct, and agreed to a joint submission on sanction avoiding the necessity for hearing. There was no harm to the victim who did not pay the forged invoices. At the same time, however, the offence – fraud – was serious, deliberate, and repeated four times.

The Licensee's licence was cancelled with no ability to reapply for four years. No costs or fines were imposed.

15. At the higher end of the range, the Registrar referred to:

a. *Wolf 2002 RECA, unreported (Wolf)*

The Licensee breached the *Real Estate Act Rules* multiple times over the course of three years in relation to 11 separate real estate transactions. He breached his fiduciary duty by arranging to purchase (or have a related third-party purchase) a property which he would then arrange to sell to another party at a higher price. He concealed the previous owner's identity and lower purchase price, created false and misleading documents, and traded outside the scope of his brokerage. He took advantage of buyers who were unsophisticated in real estate transactions and personally profited at the expense of his clients.

Additionally, he failed to cooperate in RECA's investigation and provided inaccurate or misleading information to the investigator. He insisted on a hearing but then called no evidence in his defence. He was contemptuous towards RECA, its staff, and the disciplinary process generally.

Notwithstanding the fact that the Licensee had no prior disciplinary history, the Hearing Panel cancelled his licence with no ability to reapply for seven years. The Hearing Panel also imposed a \$25,000 fine and awarded costs in the amount of \$49,816.

b. Hahn 2025 RECA, unreported (*Hahn*)

The Licensee breached the *Real Estate Act Rules* 18 times, including 10 incidents of fraud, in relation to 11 real estate transactions over seven years. He was extremely experienced, having dealt in real estate for over 40 years and ought to have known his conduct was unacceptable. His conduct also significantly harmed the victims. While he made some restitution, some of the funds remained unrecovered at the time of the hearing. On the other hand, he admitted his wrongdoing and cooperated with RECA, avoiding the expense of a hearing.

The Hearing Panel cancelled his licence with no ability to reapply for eight years and imposed \$15,000 in fines. Costs in the amount of \$3,000 were awarded.

c. *Re Singh*, 2023 ABRECA 10 (*Singh*)

The Licensee forged preapproval letters, paycheques, work permits, and other documents in furtherance of a mortgage fraud. His misconduct resulted in financial loss for two clients. While he cooperated with the RECA investigation, he did not enter into an agreement regarding conduct or sanction and a four-day hearing was required.

Taking into account the impact that the Licensee's deliberate and repeated dishonest conduct would have on the integrity of the industry, the Hearing Panel cancelled the Licensee's licence with no ability to reapply for 10 years. Fines totalling \$80,000 were imposed and costs in the amount of \$23,465 were imposed.

d. *Re Golshani*, 2025 BCSRE 13 (*Golshani*)

The Licensee breached the *Real Estate Services Act*, SBC 2004, c 42 as well as the *Real Estate Services Rules* by referring at least 14 buyer clients to a mortgage broker that she knew was unlicensed, providing false and misleading information to lenders, and failing to act honestly and with reasonable care and skill. Her conduct resulted in financial losses for her clients.

Pursuant to a settlement agreement with BC Financial Services Authority, the Licensee's licence was cancelled, and she was required to pay \$75,000 in fines and \$7,000 in costs.

e. *Re Adel*, 2010 CanLII 150875 (AB RECA) (*Adel*)

The Licensee participated in mortgage fraud by recruiting a straw buyer, failing to disclose that he was related to the seller of a piece of property, and forging documents. The Licensee exploited his client, who was not fluent in English, for personal gain and caused the client financial loss. The Licensee also failed to cooperate with the RECA investigation, made a scene at the RECA offices, and did not take responsibility for his misconduct, resulting in a lengthy hearing.

The Licensee's licence was cancelled with no ability to reapply for 10 years. He was also directed to pay \$63,500 in fines and costs in the amount of \$152,584.

f. *Re Fraser*, 2024 ABRECA 41 (*Fraser*)

This case was included as an illustration of the authority of a hearing panel to order a lifetime licence cancellation, and not for factual similarities.

The Licensee engaged in misconduct by sexually harassing and assaulting a client. He made inappropriate sexual gestures, touched the client without consent, sexually assaulted the client, used inappropriate sexual language in texts with the client, and exposed his naked body during a video call with the client. He did not take responsibility for his actions and a hearing was required. At the last minute, the Licensee sought an adjournment, further adding to the time and complexity of the hearing.

While the Licensee had no prior discipline, the Hearing Panel took into account the fact that his misconduct was extremely serious, repeated, and had significant negative consequences for his victim. The Licensee also failed to take responsibility for his actions, attempted to justify his inappropriate comments to the client, and blamed her for his actions.

The Licensee's licence was cancelled for the remainder of his natural life. Costs in the amount of \$17,950 were ordered.

16. While acknowledging that the sanctions tended to be lower where the licensee cooperated with RECA and acknowledged wrongdoing, the Registrar referred to Drinkwater's Misconduct as the most serious example of conduct deserving of sanction that has ever been before RECA.
17. Drinkwater did not challenge the Registrar's submissions at the hearing. He acknowledged that the victims participated in the Fraudulent Scheme because

they trusted him. He also agreed that protecting the industry's reputation was important and that, in that context, his conduct was "confusing and disappointing". He concluded stating that he wanted to apologize to his colleagues and the victims.

Decision on Sanction

18. Section 43 of the *Real Estate Act* sets out the powers of the Hearing Panel in respect of a finding of conduct deserving of sanction:

43(1) If a Hearing Panel finds that the conduct of a licensee was conduct deserving of sanction, the Hearing Panel may make any one or more of the following orders:

- (a) an order cancelling or suspending any licence issued to the licensee by an Industry Council;
- (b) an order reprimanding the licensee;
- (c) an order imposing any conditions or restrictions on the licensee and on that licensee's carrying on of the business of a licensee that the Hearing Panel, in its discretion, determines appropriate;
- (d) an order requiring the licensee to pay to the Council a fine, not exceeding \$25 000, for each finding of conduct deserving of sanction;
- (d.1) an order prohibiting the licensee from applying for a new licence for a specified period of time or until one or more conditions are fulfilled by the licensee;
- (e) any other order agreed to by the parties.

19. The parties agree that the relevant factors to consider in assessing the appropriate sanction in this case are set out in *Jaswal v Newfoundland (Medical Board)*¹ (the *Jaswal Factors*):

- a. The nature and gravity of the proven allegations;
- b. The age and experience of the Licensee;
- c. The previous character of the offender and, in particular, the presence or absence of prior complaints or convictions;

¹ *Jaswal v Newfoundland (Medical Board)*, 1996 CanLII 11630 (NLSC) at para 35.

- d. The number of times the offence was proven to have occurred;
 - e. The role of the Licensee in acknowledging what occurred;
 - f. Whether the Licensee had already suffered serious financial or other penalties as a result of the allegations having been made;
 - g. Impact of the incident on the victim, if any;
 - h. Mitigating circumstances;
 - i. Aggravating circumstances;
 - j. The need to promote specific and general deterrence and thereby protect the public and ensure the safe and proper conduct of the profession;
 - k. The need to maintain the public's confidence in the integrity of the profession;
 - l. The degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct; and
 - m. The range of sentence in similar cases.
20. Having considered the *Jaswal* Factors, including the range of sentences set out in the cases cited by the Registrar, and the parties' submissions, the Hearing Panel concludes that a lifetime licence cancellation is the appropriate sanction in this case for the following reasons.
21. First, the nature and gravity of Drinkwater's Misconduct was more threatening to the public confidence in the industry and further outside what would generally be considered permissible conduct by a licensee than the conduct in the cited fraud cases. The Fraudulent Scheme involved at least 71 victims and a total investment of approximately \$3,533,167. The number of victims and the amount of money involved is unprecedented in RECA's history. Drinkwater's Misconduct was deliberate and repeated at least 71 times over a period of three and a half years. These are extremely aggravating factors and justify a substantial sanction.
22. Second, while Drinkwater is relatively young (42 years old), the Hearing Panel also notes that he had been licensed for nearly 20 years at the time of his suspension in June 2024. He was an Associate Broker, a position that is held to a higher standard than an associate, for 13 of those years. Given his years of experience,

particularly in a more senior role, Drinkwater ought to have known what was expected of him as a licensee and that his conduct was unacceptable.

23. Third, Drinkwater's misconduct had a substantial negative impact on his victims. Many investors never received any repayment and the majority of the funds collected in the Fraudulent Scheme remain unaccounted for. Drinkwater himself acknowledged that his Misconduct was significant violation of his victims' trust.
24. Fourth, RECA's mandate is to:
 - protect consumers
 - protect against, investigate, detect, and suppress fraud as it relates to the business of licensees
 - set and enforce standards of conduct for licensees and the business of licensees to promote the integrity of, and confidence in, the industry
 - provide, or support the provision of, services that promote regulatory compliance by licensees.
25. Fraud by a licensee strikes at the heart of RECA's mandate and requires substantial general deterrence. Similarly, it is crucial to the integrity of and confidence in the industry that licensees can be relied upon to act in accordance with the *Real Estate Act* and the *Real Estate Act Rules*. Fraud by a licensee is extremely serious because it directly undermines the confidence that the public places in individuals licensed by RECA. As the Law Society Tribunal has noted: "A profession's most valuable asset is its collective reputation and the confidence which that inspires."²
26. Fifth, while the Hearing Panel accepts the Registrar's assessment that Drinkwater's admission of his Misconduct and expression of remorse suggests that the need for specific deterrence is modest, we likewise agree that the need for general deterrence, along with the importance of promoting public confidence, in the industry in this case is extremely high. Drinkwater himself acknowledged that, in his own career, he had battled negative perceptions of the industry and sought to justify his and the industry's value. He admitted that this context made his Misconduct that much more confusing and disappointing. Given the nature and extent of Drinkwater's Misconduct, a significant sanction is required to achieve general deterrence and restore public confidence in the industry.
27. Sixth, while Drinkwater entered into the Agreement, thereby saving the cost and disruption of a hearing, and expressed some remorse, which are mitigating

² *Law Society of Upper Canada v Lambert*, 2014 ONLSTH 158 at para 17, quoting *Bolton v Law Society*, [1994] 1 WLR 512 at p. 519

factors, the Hearing Panel finds them insufficiently mitigating in the context of the cases presented by the Registrar to warrant a lesser penalty than a lifetime licence cancellation.

28. We begin with the cases where, as is the case here, the licensee admitted responsibility for their misconduct. *Dhaliwal* involved a single instance of fraud. *Voth* involved three instances and *Peresta* involved four. *Wolf* involved multiple breaches related to 11 transactions and resulted in a seven-year licence cancellation. *Hahn* involved 18 breaches of the *Real Estate Act Rules* over a period of seven years and resulted in a cancellation with no ability to reapply for eight years. Notably, given Hahn's age at the time (75 years old), the inability to reapply for eight years may have had the same effect on the licensee as a lifetime licence cancellation. The Hearing Panel cites these examples not to minimize the misconduct in the prior cases, but to make two observations. First, the frequency and extent of the misconduct in those cases pales in comparison to Drinkwater's Misconduct and, second, the misconduct in the earlier cases still resulted in significant periods of licence ineligibility.
29. Turning to the cases where the licensee did not accept responsibility – *Singh* and *Adel* – three observations are important. First, both involved lengthy periods of licence ineligibility (10 years in both cases). Second, substantial fines (\$80,000 and \$63,500 respectively) were imposed. Third, and again, the extent of the misconduct in those cases paled in comparison to Drinkwater's Misconduct. Both involved financial losses for two clients. In contrast, Drinkwater's Misconduct has harmed at least 71 individuals. In this context, where the scale of Drinkwater's Misconduct greatly exceeds that in *Singh* and *Adel*, the fact that Drinkwater accepted some responsibility for his conduct is not sufficiently mitigating to warrant a lesser penalty or even similar penalty to what was imposed in those cases.
30. Seventh, although Drinkwater had no prior discipline, the Hearing Panel finds this to be of limited value as a mitigating factor. Drinkwater engaged in fraud and violated the *Real Estate Act Rules* at least 71 times over three and a half years. The absence of prior discipline in this case is simply a function of the fact that he hid his fraud for some time and not evidence that his Misconduct was a single, isolated act, unlikely to be repeated.
31. Finally, this brings us to the Hearing Panel's decision in *Fraser* where a lifetime licence cancellation was imposed. While the misconduct in that case (sexual harassment and sexual assault) was admittedly different from Drinkwater's Misconduct, the observations of the Hearing Panel in that case are nevertheless apt here:

Based on the totality of the evidence, the Hearing Panel has found almost no mitigating circumstances in this matter. The proven

allegations and the Licensee's conduct are among the most severe type of misconduct. Accordingly, the sanction needs to be severe to maintain the public's confidence in the profession. A lifetime licence cancellation is appropriate based on the nature and severity of the misconduct...

The Hearing Panel is aware that this sanction does not recognize the possibility of rehabilitation of the Licensee. However, in the Panel's view, the Licensee's misconduct in this case is such that a lifetime cancellation is required to maintain the integrity of the profession, including the public's trust and confidence in the profession. The Licensee is not precluded from earning a living as a result of the sanction...

The Registrar is not seeking fines, and a lifetime cancellation is among the most severe sanctions that a hearing panel can impose. The Hearing Panel is confident that not imposing fines in this case will not undermine the integrity of the profession, as a lifetime licence cancellation sends a very strong message.³

32. While Drinkwater ultimately cooperated with the RECA investigation, entered into the Agreement, and took some responsibility for his actions, the mitigating factors in this case end there. Drinkwater's actions did not relate to a single transaction or error in judgement. There was no evidence that they arose while he was suffering from a medical condition that impaired his judgment. Rather, the evidence before the Hearing Panel demonstrated a long-standing, premeditated pattern of misconduct, including significant dishonesty.
33. As in *Fraser*, Drinkwater's Misconduct was "among the most severe type of misconduct" addressed by RECA. Protecting against, investigating, detecting, and suppressing fraud as it relates to the business of licensees is a core aspect of RECA's mandate. Not only did Drinkwater's conduct go to the core of RECA's mandate, but it did so on a scale the Registrar referred to as "unprecedented" in the history of RECA. The breadth of the negative impact that Drinkwater's conduct has had on his victims and the public confidence in the industry cannot be understated.
34. Like *Fraser*, the Hearing Panel acknowledges that a lifetime licence cancellation does not recognize the possibility of rehabilitation by Drinkwater even though he has taken some responsibility for his actions and expressed some remorse and the need for specific deterrence is modest. Nevertheless, the Hearing Panel is satisfied that the nature and extent of Drinkwater's Misconduct is such that no

³ *Fraser* at paras 107-109

other result will adequately restore the public confidence in the industry. Quite simply, to maintain public confidence in the industry, there can be no room for a licensee who defrauds at least 71 people, takes steps to cover-up that fraud over the course of three and a half years, and fails to address the financial and other harms flowing from his actions.

35. Finally, the Hearing Panel notes that, similarly to *Fraser*, the Registrar has not sought a fine in this matter and Drinkwater did not suggest that one should be imposed in support of a more limited licence cancellation.
36. Taking the above into account, the Hearing Panel finds that a lifetime cancellation of Drinkwater's licence is an appropriate sanction for his Misconduct.

The Parties' Positions on Costs

37. Turning to the question of costs, at the hearing, the Registrar cited the Alberta Court of Appeal decision in *Jinnah v Alberta Dental Association and College*⁴ and submitted that there were compelling reasons to award costs against Drinkwater.
38. Following the hearing but before the Hearing Panel had issued its decision, the Alberta Court of Appeal revisited its reasoning in *Jinnah* and provided additional guidance regarding costs awards in professional discipline cases in *Charkhandeh v College of Dental Surgeons of Alberta*.⁵ In light of the Court's comments in *Charkhandeh*, the Hearing Panel sought further submissions from the parties regarding costs in this matter.
39. The Registrar acknowledges that *Charkhandeh* departs from the framework previously set out in *Jinnah* and submits that the *Charkhandeh* framework should apply to RECA costs awards going forward.
40. The Registrar states that, while Drinkwater was generally cooperative with the hearing process, he also engaged in unreasonable litigation conduct. In accordance with *Charkhandeh*, the Registrar asserts that it is appropriate for Drinkwater to bear a portion of the hearing-related costs.
41. Applying the *Real Estate Act* and the Bylaws, the Registrar provided the following "very conservative estimate of the hearing costs":

⁴ *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 (*Jinnah*)

⁵ *Charkhandeh v College of Dental Surgeons of Alberta*, 2025 ABCA 258 (*Charkhandeh*)

Item	Hours	Amount/hr	Total
Hearing			
Legal Costs – Registrar’s Counsel’s time only	50.00	\$150	\$7,500
Investigation Costs – Investigator time only	175.00	\$40	\$7,000
Hearing secretary salary (two half days)	8.0	\$15	\$120
Hearing Panel Honoraria – not including decision writing costs (two half days)	two half days	Chair and two Panel Members	\$2,000
GRAND TOTAL			\$16,620

42. The Registrar did not seek a specific quantum of costs, leaving the matter to the Hearing Panel’s discretion.
43. Drinkwater provided no submissions regarding costs, including post-hearing submission on *Charkhandeh*.

The Law on Costs

44. In *Charkhandeh*, the Court of Appeal signalled a new approach to costs awards in professional disciplinary cases:

What principles should be followed when allocating the costs of disciplinary proceedings? This appeal offers an opportunity for this Court to address the issue of costs in professional disciplinary proceedings in a fresh manner. It is necessary to do so for two reasons. First the guiding principles have become unclear with some inconsistent jurisprudence from this Court. Second, while this Court has historically shown deference to the disciplinary tribunals on costs, it appears that the awards of costs in this context have become so large and disconnected from first principles that intervention is warranted.⁶

45. The Court then set out the following guiding principles⁷:
 - a. The starting point for any costs award is the relevant statute. While the awards of costs is a discretionary matter, such discretion must be exercised in the context of the enabling legislation;

⁶ *Charkhandeh* at para 129

⁷ *Charkhandeh* at paras 137-148

- b. Absent a statutory presumption, in each case, the decision maker must first consider whether costs are warranted and, second, the quantum of costs;
- c. There is no exhaustive list of factors that will be relevant to the question of whether costs should be awarded in a particular case. However, the decision maker should bear in mind:
 - i. The number of allegations and overall success are relevant. A licensee who successfully defends some of the charges should not be overburdened with costs. A licensee who is substantially successful should not expect to pay any costs; nor can that member recover costs from the regulator;
 - ii. Costs are not intended to be a form of sanction. Costs relate to the process of the hearing, not the substance of the charges;
 - iii. The Licensee should not be expected to contribute to the infrastructure or "background expenses" required to support a regulator's legislative mandate;
 - iv. While the quantum and type of costs will likely be impacted by the seriousness of the allegations, the length and extent of the hearing and the conduct of the parties at the hearing are what is relevant, not seriousness *per se*;
 - v. An important factor is whether costs have been increased due to the unreasonable or inefficient litigation conduct of either party. This includes things like introducing unnecessary or irrelevant evidence, overcharging by the regulator, refusing to admit uncontested facts, bringing unnecessary applications, delaying proceedings, or failing to meet reasonable deadlines. The party who wastes costs can expect to be held accountable;
 - vi. Both the licensee and the regulator have an obligation to streamline the hearing. In the Panel's view, this means that cooperative behaviour is a neutral factor, as opposed a factor that calls for reduced costs; and
 - vii. Any other factors considered must be relevant to the costs issue itself, and the competing alternatives of allocating costs between the regulator and the licensee.

- d. The quantum of any costs awarded must be reasonable and proportionate:
 - i. The expenses claimed must be reasonably incurred having regard to the nature of the investigation, the allegations and the hearing process;
 - ii. The quantum paid by the regulator must be fair and reasonable;
 - iii. It must also be reasonable to transfer the burden of reasonably incurred costs to the licensee; and
 - iv. The costs award must be proportionate to the issues involved, the circumstances of the licensee, and the overall burden it places on him or her.
- e. Full indemnity is neither the starting point nor the default award;
- f. The practice of calculating total expenses and taking a percentage is inappropriate;
- g. The decision maker need not know the details of every dollar spent, but they need to pay attention to the components of the costs award, and they must have a reasonable idea of the expenses that are included and some idea of whether those expenses were reasonably incurred; and
- h. Regardless of how the costs are calculated, the ultimate award cannot be an unduly onerous or “crushing” burden on the licensee. It should not be of such a magnitude that there is no realistic prospect that the licensee will be able to pay the costs.

Decision on Costs

- 46. The Parties have left the matter of costs in the Panel’s hands. Taking into account the estimate provided by the Registrar, the Hearing Panel finds that an award of costs in the amount of \$9,500 is reasonable.
- 47. The Hearing Panel agrees that *Charkhandeh* outlines the current state of the law with respect to costs awards in professional disciplinary matters. With the above principles in mind, we turn to the enabling legislation in this matter. Section 43(2) of the *Real Estate Act* authorizes the Hearing Panel to award costs:

(2) The Hearing Panel may, in addition to or instead of dealing with the conduct of a licensee under subsection (1), order the licensee to pay all or part of the costs associated with the investigation and hearing determined in accordance with the bylaws.

48. Section 10.1 of the Bylaws states:

10.1 Where ... a licensee ... is ordered to pay costs under section 43(2) of the Act ..., the costs payable shall be determined in accordance with the following:

(a) Investigation costs

- (i) investigators' costs at a minimum of \$40 per hour to maximum of \$80 per hour;
- (ii) general investigation costs including but not limited to disbursements, expert reports and travel costs in accordance with Council policy guidelines;
- (iii) transcript production including but not limited to interview transcripts;
- (iv) legal costs not to exceed \$250 per hour; and
- (v) other miscellaneous costs.

(b) Hearing and appeal costs

- (i) investigators' costs at a minimum of \$40 per hour to maximum of \$80 per hour;
- (ii) general hearing and appeal costs including but not limited to disbursements, process service charges, conduct money, expert reports, travel expenses including but not limited to witnesses and Council representatives in accordance with Council policy guidelines, expert witness fees to a maximum of \$1,000 per diem;
- (iii) transcript production;
- (iv) hearing or appeal administration costs including but not limited to location rental, hearing secretary salary to a maximum of \$15 per hour, honoraria of hearing panel members;
- (v) legal costs not to exceed \$250 per hour;
- (vi) adjournment costs; and
- (vii) other miscellaneous costs.

49. Section 10.4 of the Bylaws further provides:

10.4 The following factors may be considered by a panel in determining any cost order:

- a) the degree of cooperation by the licensee;
- b) the result of the matter and degree of success;
- c) the importance of the issues;
- d) the complexity of the issues;
- e) the necessity of incurring the expenses;
- f) the reasonable anticipation of the case outcome;
- g) the reasonable anticipation for the need to incur the expenses;
- h) the financial circumstances of the licensee and any financial impacts experienced to date by the licensee; and
- i) any other matter related to an order reasonable and proper costs as determined appropriate by the panel.

50. Based on the above, the Hearing Panel observes that there is no statutory presumption with respect to the payment of costs. Accordingly, the Hearing Panel must first consider whether an award of costs against Drinkwater is warranted. We find that it is for two reasons.
51. First, this is not a case where the licensee was substantially, or even partially, successful in challenging the allegations made against them. Rather, the Hearing Panel has found that each of the 71 alleged breaches of Rule 42(b) of the *Rules* was substantiated. On that basis alone, an order of costs is appropriate.⁸
52. Adding to this, while he cooperated with the RECA investigation and largely avoided the need for a lengthy hearing by entering into the Agreement, Drinkwater did engage in conduct during the hearing that caused delays, waste hearing time, and increased hearing costs. The hearing was originally scheduled for March 21, 2025. On March 17, 2025, Drinkwater advised that he was not able to attend the hearing and sought an adjournment. The Registrar consented and the matter was rescheduled to April 9, 2025.
53. Late in the day on April 8, 2025, Drinkwater sought a further adjournment. The Registrar did not consent. Given the timing of the request and the fact that the Registrar did not consent, the Hearing Panel directed the parties to make their submissions regarding the adjournment request on the morning of April 9, 2025, immediately prior to the start of the hearing. Drinkwater did not attend on the morning of April 9, 2025, either to speak to his adjournment request or to participate in the hearing. No reason for his absence was provided.
54. The Hearing Panel reluctantly adjourned the matter to the next available day – May 22, 2025. In doing so, the Hearing Panel noted several of Drinkwater’s victims had taken time to attend the hearing scheduled that day as observers and that the adjournment resulted in their time having been wasted, which was

⁸ *Law Society of Alberta v Cameron and Carpay*, 2025 ABLS 24 at paras 93-94 (Cameron)

inappropriate. Additionally, the late adjournment meant that the time spent by the Registrar's counsel preparing for the day and attending the hearing, as well as the Hearing Panel's attendance on the hearing day, was wasted.

55. Finally, when the hearing proceeded on May 22, 2025, the Registrar sought to enter the original draft of the Agreement, which had been signed by Drinkwater, into evidence. At that point, Drinkwater resiled from one of the admissions set out in the Agreement. As noted above, a further adjournment was required to allow Drinkwater and the Registrar to discuss next steps. When the parties returned to the hearing, more hearing time was spent orally revising the Agreement before it could be entered as an exhibit. Given that Drinkwater had already signed off on the Agreement, his decision to resile during the hearing resulted in additional and inefficient hearing time. It further added to the complexity, length, and cost of the hearing.
56. Given these circumstances, the Hearing Panel concludes that it is appropriate for Drinkwater to bear some of the costs of the hearing process. We now turn to the question of the quantum of the costs.
57. Looking at the factors set out in *Charkhandeh*, we are satisfied that the expenses identified by the Registrar were reasonably incurred having regard to the nature of the investigation, the allegations, and the hearing process. While the Registrar has included a significant number of investigator hours (175), the Hearing Panel accepts that a lengthy investigation was necessary in this matter given that there were at least 71 fraudulent transactions identified and dozens of victims to interview. Given the extent and seriousness of the conduct deserving of sanction, the Hearing Panel is satisfied that the number of legal hours (50) are also reasonable.
58. We are also satisfied that the 5 extra hours of legal time required as a result of Drinkwater not attending the April 9, 2025 adjournment application are reasonable.
59. Likewise, the hourly quantum claimed with respect to these expenses (investigator and legal costs) is reasonable. The Registrar has estimated both at the low end of the range prescribed in section 10.1 of the Bylaws.
60. The Hearing Panel is also satisfied that it is reasonable to transfer at least some portion of the burden of these reasonably incurred costs to Drinkwater having regard to the principles in *Charkhandeh* and the factors set out in section 10.4 of the Bylaws. In particular, while we acknowledge that Drinkwater did largely cooperate, as set out above, we have also found a lack of cooperation during the hearing that added to its cost. More significantly, we find that each of the factors

set out in section 10.4 of the Bylaws justifies transferring at least some of the costs associated with this matter to Drinkwater:

- a. The degree of cooperation by the licensee: Drinkwater was cooperative for the most part, which is a neutral factor in the award of costs. However, there were some inefficiencies caused by Drinkwater. This factor justifies awarding discrete costs for these wasted expenses.
- b. The result of the matter and degree of success: Drinkwater was found to have engaged in 71 counts of conduct deserving of sanction. This suggests an order of costs is appropriate.
- c. The importance of the issues: Drinkwater's conduct, and the deterrence and denunciation of it, is an important issue. It is therefore reasonable for RECA to spend time investigating and preparing. The amount of time spent was more than "background expenses," resulting in some portion of the cost being transferred to Drinkwater.
- d. The complexity of the issues: The nature of the Fraudulent Scheme was complex. It is therefore reasonable to spend time investigating and preparing. The amount of time spent was more than "background expenses," resulting in some portion of the cost being transferred to Drinkwater.
- e. The necessity of incurring the expenses: None of the expenses claimed by the Registrar were unnecessary in the context of the matter being investigated and the hearing conducted.
- f. The reasonable anticipation of the case outcome and the reasonable anticipation of the need to incur expenses: Drinkwater's conduct was well outside what would reasonably be expected of a licensee. He ought to have reasonably anticipated the outcome of this case and the fact that the investigation and hearing process would be involved. That he did anticipate this is illustrated by his decision to sign the Agreement, thereby reducing the amount of hearing expense incurred by RECA and therefore the cost beyond "background expenses" that is fairly transferred to him.
- g. The financial circumstances of the licensee and any financial impacts experienced to date by the licensee: We heard no evidence about Drinkwater's financial circumstances that demonstrate the proposed costs award would be "crushing" financially.

61. The “very conservative” estimate of the total costs submitted by the Registrar is \$16,620. The additional 5 hours at \$150 per hour for adjournment costs is an additional \$750, bring the total to \$17,370.
62. The Hearing Panel must determine the fair allocation of the hearing costs between the Registrar and Drinkwater. As explained above, background expenses properly fall on RECA. In the Hearing Panel’s view, this includes the expenses for the Hearing Secretary and a portion of the Investigation, Legal and Hearing Panel costs. The Hearing Panel notes that the Registrar’s costs estimate above does not include any fees associated with the writing of this Decision, nor the Hearing Panel’s decision regarding the April 9, 2025 adjournment. Thus, a substantial portion of the costs associated with this matter have already been attributed to RECA as part of its background expenses.
63. With respect to the Investigation Costs and the Legal Costs, given the unusual magnitude of the investigation and the scope of the Agreement that the Registrar ultimately negotiated, the Hearing Panel finds only a portion of the Investigation Costs and Legal Costs would be considered standard background expenses. There were at least 71 transactions to consider and at least 71 victims to identify, numerous false bank statements and promissory notes to review, and complex legal questions relating to misrepresentations and fraud to address. These circumstances differentiate this matter from the investigation and legal analysis involved in a “typical” RECA complaint. The Hearing Panel finds that at least 50% of the estimated Investigation and Legal Costs flow from the extraordinary magnitude and complexity of this matter. Accordingly, the Hearing Panel considers it reasonable to allocate 50% of these costs to Drinkwater. That is, the Hearing Panel allocates 50% of the \$7,000 in Investigation Costs and \$7,500 in Legal Costs to Drinkwater, for a total of \$7,250.
64. With respect to the Hearing Panel’s honoraria, the Hearing Panel finds that Drinkwater should bear the full cost of the wasted half-day on April 9, 2025 (\$1,000). Having already been granted one adjournment relatively late in the process, Drinkwater then sought a second adjournment at the very last moment and, without a reasonable explanation, failed to attend the hearing to speak to his adjournment request.
65. Similarly, the Hearing Panel finds it reasonable to pass the entire extra or wasted Legal Costs resulting from the April 9, 2025 adjournment (\$750) to Drinkwater.
66. Finally, turning to the Hearing Panel honoraria for the hearing itself, the Hearing Panel acknowledges that a portion of this expense is properly considered a background expense of RECA. The Hearing Panel also notes that, once the matter reached the hearing stage, matters had been narrowed and refined, in part due to the Agreement, thereby reducing the cost associated with the hearing.

Nevertheless, the Hearing Panel finds the reduction in cost associated with this narrowing of the issues to be a neutral (or non-aggravating) factor in considering the portion of the costs to be attributed to Drinkwater. All parties have an obligation to streamline these proceedings and, to the extent that cooperation by Drinkwater reduced the costs associated with the hearing, he benefits from that by the reduction in the quantum of the costs overall.

67. Further, there was some wasted Hearing Panel cost associated with the brief adjournment requiring an amendment to the Agreement, which resulted in about a quarter of a day of wasted time on May 22, 2025, or about \$500. The Hearing Panel finds this wasted expense reasonable to transfer to Drinkwater. The remaining hearing honoraria cost in this case was part of the background expenses of RECA.
68. The amounts described above total \$9,500 (\$7,250+\$1,000+\$750+\$500). While we acknowledge that this is not an insubstantial amount, we are satisfied, on the available evidence, that this is not a crushing or disproportionate amount.
69. The Hearing Panel orders costs against Drinkwater in the amount of \$9,500.

Order

70. In accordance with section 43 of the Act, the Hearing Panel orders the following sanctions and costs in respect of Drinkwater's Misconduct:
 - a. Any and all licences of any category or class issued to Drinkwater are hereby permanently cancelled.
 - b. Drinkwater is prohibited from reapplying to RECA for a licence of any category or class for the remainder of his natural life; and
 - c. Drinkwater shall pay costs in the amount of \$9,500 to RECA.

Signed and dated this 22nd day of September 2025 at the City of Edmonton in the Province of Alberta.

"Signature"

[K.S], Hearing Panel Chair