

MINISTRY OF FINANCE  
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**FINANCIAL SERVICES TRIBUNAL**

**IN THE MATTER OF  
THE REAL ESTATE ACT  
R.S.B.C., 1996, c. 397, as amended**

MINISTRY OF FINANCE  
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**BETWEEN:**

RONALD PATRICK THOMSON

**APPELLANT**

**AND:**

THE SUPERINTENDENT OF REAL ESTATE

**RESPONDENT**

**SUPPLEMENTAL DECISION**

**BEFORE:**

JOHN B. HALL

PRESIDING MEMBER

**DATE OF FINAL  
SUBMISSION:**

MAY 6, 2005

**APPEARING:**

RONALD THOMSON

FOR THE APPELLANT

SANDRA A. WILKINSON

FOR THE RESPONDENT

THE DECISION AND REASONS OF THE TRIBUNAL ARE DELIVERED BY THE  
PRESIDING MEMBER.

## INTRODUCTION

I issued a decision on April 4, 2005 concerning an appeal brought by Mr. Thomson under Section 79 of the *Real Estate Act* against the suspension of his license by the Superintendent of Real Estate. My decision found the Superintendent had reasonably concluded the reputation and status of licensees generally would be undermined by Mr. Thomson's conviction for serious drug-related offences, but erred by suspending Mr. Thomson's license indefinitely. I decided the appropriate remedy was to remit the matter to the Superintendent for reconsideration with directions.

As the particular outcome had not been anticipated by the parties in their appeal submissions, I decided they should have an opportunity to address the form of directions. I have since received additional written submissions and canvassed certain points in two telephone conferences. This supplemental decision contains my final directions made under Section 242.2(11) of the *Financial Institutions Act*.

## ANALYSIS

Mr. Thomson questions whether the duration of his suspension should be determined by the Superintendent or by the Real Estate Council. He suggests the Council might be the more appropriate forum given the issues to be decided. The Respondent disputes this Tribunal's jurisdiction to refer the matter to a new body.

The immediate answer is that the question has already been determined. The Tribunal's initial decision remitted the duration of Mr. Thomson's suspension "back for reconsideration ... to the person or body whose decision [was] under appeal" in accordance with Section 242.2(11). In any event, there is no basis for contemplating a different forum. The presumption that public officers will carry out their duties in good faith and according to law has not been disturbed. There is no evidence the Superintendent has reached any conclusion about the duration of Mr.

Thomson's suspension (indeed, that was the flaw in the original Order). Nor is there any indication the matter has been prejudged. Ms. Wilkinson advises her submissions on appeal were made on behalf of the Superintendent's staff, and her instructions did not come from the Superintendent himself. Directing the Superintendent to reconsider a point is also consistent with past authority: *Re Wasmuth*, [1984] B.C.C.O. No. 5 (CAC).

As for other points raised in the last round of submissions, I agree with Ms. Wilkinson that this appeal continues substantively under the *Real Estate Act* in accordance with procedures under the new *Real Estate Services Act*, insofar as the latter can be adapted: Section 36(1) of the *Interpretation Act*. See also Sara Blake, *Administrative Law in Canada*, Third Edition (Butterworths), at p. 112. Additionally, and based largely on the parties' common submissions, I make these specific directions:

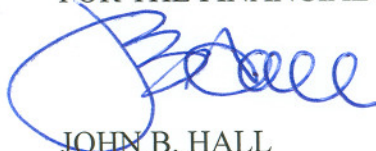
1. The oral hearing should be convened within one month of this decision and, absent agreement, it should only be adjourned if necessary to ensure a full and fair determination of the outstanding issue.
2. The parties may tender documents and may call witnesses to testify under oath or affirmation, subject to cross-examination; however, no evidence may be led to contradict findings of fact made by the Tribunal.
3. The Superintendent should:
  - (a) consider mitigating factors including, without limitation: the period of time since the criminal offences occurred; the length of the suspension Mr. Thomson has served already; and his history and record as a licensee;
  - (b) be guided by the Tribunal's reasons in considering the public interest, including

prior rulings by the Commercial Appeals Commission cited at pages 6 and 13 of the initial decision; and

- (c) issue a decision with written reasons no later than two weeks after the hearing.

DATED AT VANCOUVER, BRITISH COLUMBIA this 16<sup>th</sup> day of MAY, 2005.

FOR THE FINANCIAL SERVICES TRIBUNAL



JOHN B. HALL  
PRESIDING MEMBER