

**FINANCIAL SERVICES TRIBUNAL**

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

**BETWEEN:**

SUDARSHAN RANA

**APPELLANT**

**AND:**

REAL ESTATE COUNCIL OF BRITISH COLUMBIA

**RESPONDENT**

**APPEAL BY WRITTEN SUBMISSIONS**

**BEFORE:**

JOHN B. HALL

PRESIDING MEMBER

**DATE OF LAST SUBMISSION:** JUNE 14, 2005

**APPEARING:**

LARRY W.O. SMEETS

FOR THE APPELLANT

DAVID P. BERGER

FOR THE RESPONDENT

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

## INTRODUCTION

Mr. Rana has appealed a September 15, 2004 decision by a Hearing Committee of the Real Estate Council (the "Council") which found he was not suitable to be licensed as a real estate salesperson under Section 3(4) of the *Real Estate Act*\*. The Council's decision followed a July 9, 2004 request by Mr. Rana for a pre-licensing determination as to his suitability to be licensed. The Council additionally held that no further application from Mr. Rana will be considered until June 14, 2007 which is the date he will be eligible to apply for registration as a sub-mortgage broker under the *Mortgage Brokers Act*.

## ISSUES

Mr. Rana maintains his appeal raises the general issue of the extent to which the Council is entitled to rely on evidence of character that does not relate directly to an individual's future performance as a realtor to deny that individual's application for a real estate license. He says the appeal also raises the specific issue of the extent to which the Council is entitled to rely on evidence led about an application to a different licensing body (in this case, an application for a sub-mortgage broker's license) as a relevant consideration in determining an applicant's suitability as a realtor.

## BACKGROUND

Mr. Rana's appeal challenges the Council's reliance on past proceedings before certain regulatory and administrative bodies. However, he does not dispute their various findings. For that reason, and because certain passages are integral to Mr. Rana's appeal, I intend to quote

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\* The delay since the decision under appeal is due largely to requests by Mr. Rana for extensions of time.

extensively from the Council's decision. The "history" begins on page 2 (references to exhibits omitted):

Mr. Rana was first licensed as a real estate salesperson in British Columbia on June 4, 1992. He had previously been licensed in Ontario. In 1998, Harjinder Johl, a director of Amex-Delridge Realty, Mr. Rana's employer, wrote a letter to the Financial Institutions Commission requesting that FICOM investigate certain dealings of Mr. Rana in relation to two residential transactions in which he was involved.

Rudy Linke, an investigations manager with the Financial Institutions Commission investigated the allegations made by Ms. Johl. In the course of his investigation, he reviewed Mr. Rana's licensing history in Ontario. This review raised concerns that Mr. Rana had not been candid in his 1992 application for licensing in British Columbia about the reason he was no longer licensed in Ontario.

Mr. Linke also investigated the allegations made by Ms. Johl concerning Mr. Rana's conduct in British Columbia as a salesperson in relation to a transaction in which Mr. Rana purchased the property of a client without making the appropriate disclosures.

As a result of Mr. Linke's investigation, a hearing was conducted pursuant to Section 31 of the *Real Estate Act* to consider whether Mr. Rana had:

1. adequately disclosed in his pre-screening application to Council in 1992 the licensing matters which had led to the denial of his application for re-licensing in Ontario; and
2. breached the *Real Estate Act* or been negligent in relation to two transactions in which he was involved.

In a decision dated February 26, 2001, the Hearing Committee found that Mr. Rana had misconducted himself. As a result of that determination the panel decided to suspend Mr. Rana for one year from April 18, 2001 to April 17, 2002. The Committee ordered that as a condition of relicensing he successfully complete Chapters 9 to 12 of the Real Estate Salesperson's Pre-Licensing Course. The Committee restricted his licence to his employing agent for one year from the date of licence reissuance and directed that he be under the supervision of the employing nominee.

Both Mr. Rana and the Superintendent of Real Estate appealed this decision and it was originally scheduled to be heard on August 1 and 2, 2001. On August 1, 2001, Mr. Rana requested an adjournment of the appeal. The Commercial Appeals

Commission agreed to adjourn the matter on the condition that as of August 1, 2001 Mr. Rana begin to serve his one year suspension pursuant to the Real Estate Council's decision. The Commission rescheduled the hearing of the matter for November 19, 2001.

The hearing proceeded on November 19, 2001 in relation to the Superintendent's appeal only. The Commercial Appeals Commission issued its decision on January 11, 2002 in which it allowed the Superintendent's appeal, in part, under Section 18 of the *Commercial Appeals Commission Act* in that the Commission directed that Mr. Rana's licence be cancelled and that he be barred from making an application for relicensing for a period of three years. The Commission reiterated that Mr. Rana was to complete Chapters 9 to 12 of the Real Estate Salesperson's Pre-Licensing course before his real estate licence could be reissued.

By virtue of this decision Mr. Rana was unlicensed from August 1, 2001 to August 1, 2004 at which time he would be eligible to apply for relicensing as a real estate salesperson.

Mr. Rana appealed the decision of the Commercial Appeals Commission but he took no steps to perfect the appeal and it was ultimately dismissed for want of prosecution.

On June 14, 2002 Mr. Rana applied for registration as a sub-mortgage broker under the *Mortgage Brokers Act*. A hearing was held on March 6 and 7, 2003 pursuant to Section 4 of the *Mortgage Brokers Act* to determine if Mr. Rana was suitable to be registered under that *Act* and whether such registration would not be objectionable. The issues before the Commission were twofold. The first issue was whether or not Mr. Rana had failed to provide complete details of a legal proceeding against him in his application for registration dated June 14, 2002 and whether or not Mr. Rana, having had his real estate licence cancelled by the Commercial Appeals Commission on January 11, 2002, and barred from making an application for three (3) years, was suitable for registration as a sub-mortgage broker under the *Act*.

The Deputy Registrar found that Mr. Rana was not suitable for licensing as he had failed to provide complete disclosure in his application for registration under the *Mortgage Brokers Act* and in doing so he displayed the lack of insight about his conduct that has been an ongoing concern to regulatory bodies as evidenced by the cancellation of Mr. Rana's licence by the Commercial Appeals Commission. The Deputy Registrar decided that the Registrar of Mortgage Brokers would not consider an application from Mr. Rana for registration under the *Mortgage Brokers Act* for a period of five years, ending June 14, 2007 and that Mr. Rana would have to complete the educational requirement of registration under the *Mortgage Brokers Act* in place at the time he applied. Mr. Rana was also directed to pay to the Registrar of Mortgage Brokers the sum of \$1,950.00 being the costs for the inquiry and his

application for registration would not be considered until these costs were paid. Mr. Rana appealed this decision but abandoned this appeal four days before the date set for hearing. The Deputy Registrar varied her order to suspend the order for costs until such time as Mr. Rana applies for a licence under the *Mortgage Brokers Act*. (pp. 2-4)

As recorded above, the investigation which preceded the Hearing Committee decision of February 26, 2001 reviewed Mr. Rana's licensing history in Ontario. The investigation revealed "a lengthy history of professional conduct issues ... in that province" described at pages 4-7 of the decision under appeal. Among other things, the Ontario Commercial Registration Appeal Tribunal found Mr. Rana had "deliberately misrepresented the material facts to third parties [in three real estate transactions] where he knew that he would benefit personally if he could induce them, by his falsehoods, to act to their detriment" (decision under appeal, at p. 6). The Ontario Tribunal also referred to the fact Mr. Rana had been convicted in 1986 of obtaining unemployment insurance benefits by illegal means, and had failed to disclose this conviction on his application to renew his registration as a salesperson in Ontario. The Ontario Tribunal determined a proposal by the Registrar of Real Estate and Business Brokers to refuse to register Mr. Rana as a salesperson in Ontario was appropriate. The Hearing Committee concluded in its February 2001 decision that Mr. Rana had failed to fully disclose the circumstances under which his real estate license in Ontario had been revoked. It commented that Mr. Rana's application in 1992 to the Real Estate Council "was extremely well crafted to avoid the detection by the Council of [his] ongoing problems in Ontario" (*ibid*, at p. 7).

The 2001 Hearing Committee also heard evidence regarding the sale and purchase of two properties in Surrey. It noted the transactions were complicated and "not easily understandable". Nonetheless, the Hearing Committee found Mr. Rana misconducted himself for several reasons: he did not disclose to his client he was the ultimate purchaser; he did not complete the notice and disclosure required by Section 38 of the *Real Estate Act*; he did not turn in the contract of purchase and sale to his agent in a timely manner; he was not candid with the lender as to the true purchase price of the property; and, in order to obtain 100% financing, he submitted a gift letter

which he knew was at best misleading. The Hearing Committee also found Mr. Rana was negligent for not looking after the best interests of his client.

The Council's decision also records Mr. Rana's testimony during the proceeding now under appeal:

Throughout the evidence given by Mr. Rana before this Hearing Committee, he remained adamant that he had done little wrong and that much of the difficulties he had had with licensing authorities was because his educational background and his willingness to stand up for himself and challenge the authorities, who responded by prosecuting him even more vigorously. In relation to the issue of disclosure to his client, he testified that he believed that the law was based on common sense. He stated that if he was dealing with a principal who knew he was a licensee then he did not need to complete a formal disclosure of that fact.

In response to a question from the panel as to what Mr. Rana thought about the requirement that he complete a portion of the Real Estate Salesperson's Pre-Licensing Course, he testified that he found the suggestion that he needed educational upgrading "insulting". He stated that because of his experience and enthusiasm for the profession he was seen as a mentor and that, instead of having to take courses, he should himself be sought as an educator. When asked what he would do differently, he stated that he would be extremely cautious, he would not buy any more properties, and he would have an authority figure check his documents.

In relation to his failure to disclose his background to the Council in his 1992 application, he acknowledged that the decision of the Ontario Tribunal should have been attached to the application. Mr. Rana testified that he was basically honest but he sometimes did not "dot the Is and cross the Ts". He stated that it was never his intention to be dishonest or mislead anyone.

Mr. Rana testified that his problems arose when he was buying real estate and he asserted that in his dealings, his clients had not lost money. He testified that in relation to the client involved in the transaction that was dealt with by the 2001 Hearing Committee, he had achieved the desired result for that client and the client was happy. He maintained this view despite the fact that that client had sued Mr. Rana and his insurer had settled the lawsuit by way of the payment of \$17,000 to this client. He suggested that the lawsuit had been brought on because of the disclosure of documents to the client by counsel for the Council. (p. 8)

## DECISION UNDER APPEAL

The Council's decision at pages 8-11 summarizes the submissions it received and reviews four earlier decisions presented for its consideration. Its reasons begin by noting "trustworthiness and honesty are fundamental qualities required of licensees and that they are particularly important given the trust placed in licenses by other licensees and the public generally" (p. 11). The Council found the decision of the Commercial Appeals Commission in *Vijesh Kumar Khosla* (September 13, 2000) was "most constructive". In determining whether Mr. Rana was "presently suitable" to be licensed as a salesperson under Section 3(4) of the *Real Estate Act*, the Council considered "whether he is now of good reputation pursuant to Section 4.01(c) of Regulation 75/61 under the *Act*". After noting various other matters, the Council began its assessment of Mr. Rana's suitability:

A very disturbing pattern emerged from a review of Mr. Rana's licensing history. The Hearing Committee concluded that Mr. Rana either does not understand or is indifferent to his professional obligation to fully disclose, be it in relation to his applications submitted to various professional bodies or in relation to real estate transactions he conducts in which he has some interest.

In terms of his professional obligations to governing bodies, the evidence before this panel is that as early as 1988 he failed to advise the Registrar in Ontario of his conviction for obtaining unemployment insurance benefits. Having been chastised for that in the decision of the Ontario Tribunal he then, within months of that decision, applied for licensing in British Columbia and failed to fully disclose the circumstances under which his licence was not renewed in Ontario. The timing of the decision issued in Ontario and the date of the application in British Columbia is of significance to this Committee.

On June 14, 2002, only months after the decision of the Commercial Appeals Commission upholding the previous decision of the Council on January 11, 2002 in which he was roundly chastised again for his failure to disclose, Mr. Rana applied for registration as a sub-mortgage broker pursuant to the *Mortgage Brokers Act* and failed to provide complete information with respect to a material matter in that application.

Finally, Mr. Rana clearly fails to understand the issue of disclosure and ethical issues in relation to his dealings with his own clients. The Ontario Tribunal found that in

the transactions they reviewed, Mr. Rana had "flagrantly" breached his duty to his own clients and showed a "complete lack of appreciation of his responsibility as an agent to his principals" and questioned his knowledge as to the specific legislative requirements of his profession. In the decision of the Council in 2001 the Hearing Committee concluded, "what should have been simple transactions were complicated by Mr. Rana's misconduct and deception". As with the Ontario Tribunal, the Hearing Committee found Mr. Rana's testimony "to be extremely unreliable and concluded that where Mr. Rana's testimony differed from other witnesses, the other witnesses were to be preferred". They noted that Mr. Rana was quick to blame others for his misfortune in that he criticized his nominees' competence and the adequacy of the advice they gave him.

The pattern of professional conduct noted by the Ontario Tribunal in 1991 in its conclusions are most unfortunately repeated in the decision of the Council in 2001 and the decision of Deputy Superintendent of Mortgage Brokers in 2002. (pp. 12-13; references to exhibits omitted)

The Council later concluded, based on Mr. Rana's testimony during the hearing, that he "had not developed insight about his own role in bringing about the problems that have beset him" (p. 13).

Then -- in a passage which is particularly significant to present appeal -- the Council wrote as follows:

Mr. Rana still displays the lack of appreciation of his responsibilities as an agent to his principals as noted in 1991 by the Ontario Tribunal. In his evidence Mr. Rana did not appear to understand either the statutory or ethical obligations of a licensee to disclose to his or her client. His approach to the truth was often self-serving. An example of this thinking was his approach to the issue of the gift letter [considered in the Hearing Committee's February 26, 2001 decision]. Mr. Rana adduced evidence to show that Mr. Cheema owed Mr. Rana money at the time that Mr. Cheema signed the gift letter. Further, Mr. Rana pointed out to [us] that the lender had given evidence that while the gift letter had been one of the factors upon which the funding had been advanced the fact that it was not a true gift letter did not matter to the bank because both Mr. Rana and the other registered owner were jointly and severally liable for the entire debt. Mr. Rana did not address the critical issue of his own integrity and honesty in obtaining and using the false gift letter in the first place.

Mr. Rana's approach to this issue as well as many other issues did not provide any comfort to the Hearing Committee that Mr. Rana would approach such issues differently should he be licensed again. As the Commercial Appeals Commission pointed out in *Khosla*, "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". (p. 13)

The Council considered a number of personal and professional references provided by Mr. Rana. However, it questioned whether the individuals giving the references had full knowledge of his background; further, Mr. Rana acknowledged one of the individuals had not personally signed the letter submitted on his behalf. The Council found the reference letters were not sufficient to meet the burden placed on Mr. Rana to demonstrate his suitability to be licensed. It ultimately concluded that Mr. Rana "in his history and in his evidence given at this hearing, has shown himself to be a person who is willing to stretch the truth and take ethical shortcuts if it suits his purpose" (p. 14). As recorded at the outset of this decision, the Council found Mr. Rana was not a suitable person to be licensed, and determined no further application will be considered until June 14, 2007 when he is eligible to apply for registration as a sub-mortgage broker.

### **SUBMISSIONS ON APPEAL**

The main thrust of Mr. Rana's appeal is his contention that the Council relied on past events for which he had already been disciplined and gave "no heed" to assessing his future conduct based on present indicators. He states most of the evidence led at the hearing concerned his record before he stopped working as a realtor in 2001; thus, although the proceeding was a suitability hearing, it resembled in many ways a disciplinary hearing. Mr. Rana says the only "new fact" before the Council was the determination by the Deputy Superintendent of Mortgage Brokers that he had not made full disclosure on his application for registration as a sub-mortgage broker.

Mr. Rana submits the Council's reasons disclose that its assessment of whether he is of "good reputation" was based primarily on what is called character evidence. He relies on cases from the criminal context which hold the prosecution may not attempt to prove guilt by calling evidence that an accused is a person of bad character. He proceeds to argue that the Council exceeded its

mandate by deciding his application for a realtor's license should be denied because of his business and personal reputation.

Mr. Rana allows the Council may take into consideration the extent to which an applicant may have departed in the past from industry standards. However, he submits its decision must be based on an appraisal of future behaviour; otherwise, denying a license becomes little more than additional punishment for past disciplinary breaches. In the case, Mr. Rana says the Council accrued to itself a power not expressly provided in the *Real Estate Act* or Regulations; namely, the power to impose additional discipline for a past wrong. Moreover, in imposing an additional period during which he is not permitted to reapply, the Council relied on "the irrelevant consideration" that he is prohibited from reapplying for a sub-mortgage brokers license for three years.

A recurring theme in Mr. Rana's appeal is reflected by these paragraphs from his written submission:

49. In formulating this conclusion about the 'pattern' in Mr. Rana's character that was detected, the Hearing Committee placed the greatest emphasis on events which happened over one-and-a-half decades ago.
50. Additional weight in support of such a conclusion was placed on other events that had happened seven years ago, and in respect of which Mr. Rana already had been discipline – by a one-year suspension, initially, which was increased to a three-year suspension subsequently.
51. No heed was given to assessment of Mr. Rana's future conduct based on present indicators.
52. In assessing suitability, it is submitted, it is implicit in the mandate granted the Real Estate Council that it limit its assessment of an applicant's personal suitability to the extent to which he or she can be counted upon to conform in the course of performing his duties as a licensed realtor within the standards set by the industry.

Mr. Rana also contends the practical effect of the Council's decision "is the delegation to the

Superintendent of Mortgage Brokers of responsibility for assessing [his] suitability as a realtor". In the result, he submits the Council wrongly gave itself jurisdiction and exceeded its powers, such that the decision should be overturned.

The Council submits that it made a proper finding of unsuitability against Mr. Rana to be licensed as a real estate person having regard to all the circumstances in question. After reviewing at some length the regulatory scheme and the decision under appeal, as well passages from *Kosla, supra*, the Council argues:

38. It is submitted in determining whether an applicant has reestablished a good reputation, the Respondent can consider whether he has been forthright with respect to disclosure issues such as in an application to be registered as a sub-mortgage broker as this goes to his "good reputation". It is further submitted that the Respondent came to a proper conclusion that the applicant had not reestablished a good reputation during the period of time the Respondent gave the Appellant to change his ways or rehabilitate himself. He did not provide complete information on the pending legal action launched against him ... as required in question 7(c) of the application. He did not disclose that there had been a supreme Court of British Columbia action commenced against him and he did not provide details of the claim.

The Council submits Mr. Rana did not meet the onus of demonstrating he had qualities such as honesty, reliability, integrity and professionalism that would make an applicant suitable for licensing. Therefore, the appeal should be dismissed.

## ANALYSIS

This appeal was brought and continues substantively under the *Real Estate Act* (the "Act"). The operative provision is Section 3(4):

- (4) If it appears to the superintendent that the applicant is not a suitable person to be licensed, or that the person nominated by the applicant under section 4 is not a

suitable person to exercise the rights and privileges under the licence, and that the application should be refused, the superintendent must, after a hearing if a hearing is requested, refuse to issue the licence.

Regulation 10/85 under the Act allows the Council to perform the Superintendent's duty pursuant to the above provision. Section 4.01(c) of Regulation 75/61 requires that every person who applies for a license must, among other things, be of "good reputation". The Guidelines in the Licensee Practice Manual state that the general business and personal reputation, along with criminal convictions and charges, will be reviewed when considering an applicant's "good reputation".

Section 3(4) of the Act and Section 4.01(c) of Regulation 75/61 were expressly considered by the Council in determining whether Mr. Rana should be licensed (see pp. 1, 12 and 13 of the decision). The same provisions were addressed by the Commercial Appeals Commission in *Khosla, supra*. The Commission held that, where there has been conduct impugning an applicant's suitability, "the onus will be on the applicant to reestablish themselves"; further, apart from asserting rehabilitation, the only way an applicant can reestablish suitability is by conduct shown over a period of time (p. 7). The Commission stated earlier in *Khosla* that the suitability required by the Act refers to the qualities or attributes 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. (p. 6)

Mr. Rana notes the governing legislation does not say expressly that an applicant must demonstrate honesty, reliability, integrity and professionalism. However, no quarrel is taken with the Commission's approach in *Khosla* or the Council's reliance on that decision. I observe as well that the Commission accepted in *Khosla* the "good reputation" guidelines found in the Licensee Practice Manual which take into account an applicant's general business and personal

reputation.

In my view, the Council's conclusion that Mr. Rana was not suitable to be licensed as a real estate salesperson fell squarely within the foregoing framework. The Council was entitled to consider his "history" when determining whether he met the onus of re-establishing suitability -- particularly when that history disclosed "a very disturbing pattern" extending over many years in two Canadian provinces. I will not repeat the evidence recorded in the Council's decision which amply supports this description of Mr. Rana's conduct. And contrary to Mr. Rana's submission, the most recent proceeding under the *Mortgage Brokers Act* was not an irrelevant consideration. It was not a matter of imposing additional discipline as he contends; rather, the proceeding was directly relevant to the question of whether Mr. Rana had re-established suitability during the period since past findings of misconduct by the Commercial Appeals Commission. The Council would likewise have been entitled to consider whether an intervening criminal conviction affected his suitability to be licensed.

But the complete answer to Mr. Rana's appeal lies in my further view that his arguments are premised on a selective and unfair reading of the Council's decision. Once again, the main thrust of his appeal is that the Council "placed greatest emphasis on events which happened over one-and-a-half decades ago" and placed additional weight "on other events that had happened seven years ago [for which he] already had been disciplined", while giving "*no heed*" to his current reputation as a present indicator of his future conduct. In addition to paragraphs 49-52 quoted earlier, virtually the same contentions are found in paragraphs 40-42 of Mr. Rana's written submission. These and similar arguments are refuted by paragraphs reproduced above from pages 12-13 of the Council's decision. I will only highlight some of the excerpts which demonstrate the Council independently considered Mr. Rana's present and future suitability, and did not rely unduly on past suspensions and penalties.

To begin, the Council framed the first issue before it in the present tense; i.e. "*Is Mr. Rana suitable to be licensed?*" (p. 2; emphasis added) The nature of the inquiry was explicitly

recognized on page 12 where the Council set out what it considered in determining whether Mr. Rana was “*presently* suitable” to be licensed as a salesperson (emphasis added). Other statements reveal assessments of his present suitability:

- “... Mr. Rana either does not understand or is indifferent to his professional obligation to fully disclose ... .” (p. 12)
- “... Mr. Rana clearly fails to understand the issue of disclosure and ethical issues in relation to his dealings with his own clients.” (*ibid*)
- “... Mr. Rana has not developed insight about his own role in bringing about problems that have beset him.” (p. 13)

The Council had the benefit of hearing directly from Mr. Rana. This led, among other things, to its conclusion that “Mr. Rana *still displays* the lack of appreciation of his responsibilities as an agent to his principals as noted in 1991 by the Ontario Tribunal” (p. 13; emphasis added). The Council found moreover that “Mr. Rana, in his history and *in his evidence at this hearing*, has shown himself to be a person who is willing to stretch the truth and take ethical shortcuts if it suits his purpose” (p. 14; emphasis added). These and other observations confirm a far more searching inquiry than what Mr. Rana suggests was a narrow reliance on past incidents and “character evidence”. Lastly, the Council considered the future based on the testimony it heard:

Mr. Rana's approach to this issue as well as many other issues did not provide any comfort to the Hearing Committee that Mr. Rana would approach such issues differently should he be licensed again. ... (p. 13)

The Council did not ignore evidence favourable to Mr. Rana. However, it gave cogent reasons for finding the letters of reference he provided were not of themselves sufficient to meet the burden of demonstrating suitability.

I accordingly confirm the Council's decision that Mr. Rana was not a suitable person to be licensed as a real estate salesperson under Section 3(4) of the Act and Section 4.01(c) of Regulation 75/61. None of his arguments persuade me that the Council exceeded its jurisdiction or otherwise erred in reaching this conclusion.

On the other hand, I must admit to having some hesitation over whether the Council made an independent assessment about when Mr. Rana should be eligible to re-apply for a license under the *Real Estate Act* -- as opposed to effectively delegating authority for this aspect of its decision by adopting the date he is eligible to apply for registration as a sub-mortgage broker. My hesitation arises from the absence of any reasons for selecting the same date.

This aspect of the Council's decision arises from the second issue:

2. If the Committee determines that Mr. Rana is not now suitable, should the Committee permit Mr. Rana to make a subsequent application to coincide with June 14, 2007, the time set out in the decision under the Mortgage Brokers Act, *or some other time?* (p. 2; emphasis added)

It is implicit from this framing of the second issue that the Council understood it was required to determine when Mr. Rana should be allowed to apply for a license under the Act if it found he was presently unsuitable. The transcript from the proceeding indicates Mr. Berger made the following argument in the event of a ruling against Mr. Rana on the first issue:

... And if you do find that [Mr. Rana] is not suitable at this time, you might consider perhaps making him wait for a period of at least two years, which would be the same time that he could reapply for a mortgage broker's licence, so he doesn't have this problem of going to one regulatory body after the other. Because if you go past -- you know, if you found that he wasn't suitable, and he went past that date, then he could go back and apply for a mortgage broker's licence in 2007. So that's just if you don't find that he's suitable, you may want try and equalize the -- so that he has an equal chance to apply to all -- for all licensing at the same time. (transcript, at p. 231)

Two of the decisions referred to by Mr. Berger in his closing submissions before the Council supported not considering an application for an even longer period. One of those decisions was *Khosla, supra*, where the Commercial Appeals Commission held the appellant's past conduct had damaged his general business and personal reputation, as well as his suitability for licensing, to such an extent that an application would not be considered for a period of five (5) years from the date of the hearing.

It would only be speculation to infer that the Council accepted Mr. Berger's submissions on this point. Equally, I am not prepared to infer that the Council improperly delegated its authority for assessing suitability to the Superintendent of Mortgage Brokers as Mr. Rana submits. But regardless of the Council's actual (unstated) reasons, I am satisfied that the date it identified should not be disturbed on appeal. The date is reasonable based on the rationale advanced by Mr. Berger. More importantly, having regard to all of the circumstances (including the three year bar imposed by the Commercial Appeals Commission in January 2002), the outcome is sufficiently within range of the periods found appropriate in past decisions. I therefore confirm the Council's decision that no further application from Mr. Rana for licensing under the *Real Estate Act* will be considered until June 14, 2007.

## CONCLUSION

Mr. Rana's appeal is dismissed and the Real Estate Council's decision of September 15, 2004 is confirmed. As the Council did not request costs, no order is made under Section 47 of the *Administrative Tribunals Act*.

DATED AT VANCOUVER, BRITISH COLUMBIA, this 22<sup>nd</sup> day of AUGUST, 2005.

FOR THE FINANCIAL SERVICES TRIBUNAL

  
JOHN B. HALL  
PRESIDING MEMBER

