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DECISION NO. 2015-RSA-001(c)

In the matter of an appeal pursuant to section 54 of the *Real Estate Services Act*, S.B.C. 2004, c. 42

BETWEEN:	Superintendent of Real Estate	**APPELLANT**
AND:	Real Estate Council of British Columbia	**RESPONDENT**
AND:	Richard Thomas Valouche	**RESPONDENT**

BEFORE: Patrick F. Lewis, Vice-Chair

DATE: Conducted by way of written submissions concluding on August 24, 2015

APPEAL DECISION

OVERVIEW

[1] The Appellant, Superintendent of Real Estate ("Superintendent"), appeals a February 5, 2015 decision of the Respondent, Real Estate Council of British Columbia. The decision was made particularly by the Consent Order Review Committee within Council, and was to discipline the Respondent, Richard Thomas Valouche ("Mr. Valouche"), a licensee under the *Real Estate Services Act*, S.B.C. 2004, c. 42 ("*RESA*"), for professional misconduct. The appeal is brought pursuant to section 54(1)(d) of *RESA* which permits a licensee or the Superintendent an appeal to the Financial Services Tribunal ("this tribunal" or "the FST") from an order of a discipline committee made under Division 2, Part 4 of *RESA*. The consent order below of February 5, 2015 ("Consent Order") was such an order and it is not disputed that the Superintendent thereby enjoys a right of appeal to this tribunal.

[2] In its capacity as the decision-maker below, I will refer to the Real Estate Council of British Columbia by the acronym "CORC", as a descriptor of its sub-body, the Consent Order Review Committee that pronounced the Consent Order. In its capacity as a party to this appeal I will refer to it as "Council".

[3] The Consent Order provided that Mr. Valouche:

(a) be reprimanded;

(b) pay a discipline penalty of $10,000 within ninety days of the date of the order;

(c) at his own expense, register for and successfully complete the Broker's Remedial Education Course in a time period to be directed; and

(d) pay enforcement expenses of $1,250 within sixty days.

[4] The Superintendent appeals the Consent Order on two grounds:

(a) the CORC erred in law in failing to provide adequate reasons in support of its decision on penalty, such that the Consent Order is unreasonable; and

(b) the CORC erred in law by relying on improper records and information, particularly a proposal by Mr. Valouche that had previously been rejected and the minutes of its deliberations in that regard, when deciding on whether to accept a subsequent proposal by Mr. Valouche that led to the Consent Order.

[5] Council opposes and has fully participated in this appeal, as is its right. Mr. Valouche, I am advised, though served with the Notice of Appeal and later submissions, has not participated in the appeal, which of course is his right.

[6] The Superintendent seeks the following relief from this tribunal:

(a) an order pursuant to section 242.2(11) of the *Financial Institutions Act*, S.B.C. 1996, c. 141 ("*FIA*"), remitting the matter of penalty back to the CORC for reconsideration, with directions as appropriate, and for a decision on penalty with supporting reasons; and

(b) an order for costs.

[7] Within its opposition to the appeal Council seeks an order permitting it to adduce new evidence in the form of an Affidavit of Robert O. Fawcett, Executive Officer of Council. The Affidavit discusses historic procedures in connection with the review of consent order proposals by licencees. While not consenting to the addition of this evidence, the Superintendent does not oppose it.

[8] I have carefully reviewed all submissions made on this appeal, the record below including the portion of it challenged by the Superintendent as inappropriately considered by the CORC, and the many authorities cited by the parties. The facts, issues and authorities I think necessary for disposition of the appeal are as reflected below.

STANDARD OF REVIEW

Introduction

[9] The matter of the degree of deference to be accorded the CORC sits on the threshold of this appeal. The Superintendent submits that the questions of whether the CORC erred in law by failing to provide adequate reasons, and further by relying on improper records and information, should be reviewed on a standard of correctness, while the issue of whether the decision on penalty was unreasonable should be reviewed on a standard of reasonableness. Council argues that the standard of review applicable to both grounds of appeal is reasonableness and that, as the Superintendent has not appealed the penalty imposed below, no submission on the standard of review applicable to the penalty decision itself need be made.

[10] As both the Superintendent and Council acknowledge, there is no statutory direction as to the standard of review applicable to decisions made under *RESA*, with the result that the issue is to be determined in accordance with the common law as applied to the circumstances of the appeal.

[11] This tribunal has previously regarded as instructive the general considerations laid out in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, being a leading decision on the standard to be applied by a Court when reviewing the decision of a tribunal. Because appeals to the FST are not judicial reviews, this tribunal has also recognized that it is not bound by the *Dunsmuir* approach to standards of review: *Chinweobi Anoliefoh v. Real Estate Council of British Columbia*, 2012-RSA-001. In my view the decisions of this tribunal on the point can fairly be harmonized by observing, as I do, that *Dunsmuir* is an important resource for general considerations touching on standards of review but is not to be applied by this tribunal where judicial review principles are not reasonably adaptable to the tribunal review context. There are various aspects of the *Dunsmuir* decision that can be usefully applied by an appellate tribunal, including the need to first look to legislative direction around standards of review; in the absence of such direction, to then consider any prior decisions of the tribunal on the matter; the definitions of reasonableness and correctness; and, generally but with a careful eye toward reasonable adaptation, considerations around the extent of deference that need be paid. It is in this latter area where departure from *Dunsmuir* by a tribunal would be most likely to occur.

[12] If the decision of the Federal Court of Canada, Trial Division in *Huruglica v. Canada (Minister of Citizenship and Immigration)* [2014] F.C.J. No. 845, is any guide, the present posture of the law is to sharply contrast the deference to be paid by reviewing tribunals and reviewing courts, respectively. To the extent I have just described, however, I remain of the view that the *Dunsmuir* principles may be quite illustrative for a reviewing tribunal. I note that one of the reasons given in *Huruglica* for applying a correctness standard to the tribunal review in those proceedings was that the tribunal's remedial powers as conferred by statute were decidedly broad. The same may be said of the powers of this tribunal in

rendering an appeal decision: in accordance with section 242.2(11), the FST may confirm, reverse or vary a decision under appeal, or may send the matter back for reconsideration, with or without directions. I have considered this and the balance of the reasoning in *Huruglica*, which decision, together with the analysis set out below, has contributed to the view I take here on the standard of review to be applied.

Standard of Review Applicable to the Alleged Absence or Inadequacy of Reasons

[13] As stated, the legislation does not indicate the standard of review to be applied to an appeal to this tribunal from a decision of the CORC. While sections 54 and 55 of *RESA* deal with appeals to the FST, nothing is said there concerning standard of review. Nor does the *FIA* touch on the issue.

[14] As the Superintendent submits, this tribunal in *Brewers' Distributor Ltd. v. Superintendent of Pensions et al.*, 2010-PBA-001, applied a standard of correctness to an issue regarding the adequacy of reasons provided by the Superintendent of Pensions, holding as follows:

> [39] I would also apply a standard of correctness to the additional issue raised by the Appellant regarding the adequacy of the Superintendent's reasons. That is a pure issue of general law on a threshold question, and one on which it would be illogical and paradoxical to pay deference to the reasoning employed by the Superintendent, where it is a void of such reasoning that is being asserted.

[15] The Superintendent urges the same approach in the present case.

[16] Council responds by relying on the Supreme Court of Canada decision in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)* [2011] 3 S.R.C. 708, decided in the year following *Brewers'* and in light of which, it submits, the decision on the point in *Brewers'* should attract little weight. Council relies further on two other post-*Brewers'* decisions, *Giang v. Manitoba (Minister of Labour)* 2014 MBCA 27 and *2172423 Manitoba Ltd. (cob London Limos) v. Unicity Taxi Ltd.*, 2012 MBCA 75, for the proposition that an assessment of the adequacy of reasons must be undertaken on a reasonableness standard.

[17] The Supreme Court of Canada in *Newfoundland Nurses* drew a clear distinction between an absence and an inadequacy of reasons in the context of the applicable standard of review:

> [20] Procedural fairness was not raised either before the reviewing judge or the Court of Appeal and it can be easily disposed of here. *Baker* stands for the proposition that "in certain circumstances", the

> duty of procedural fairness will require "some form of reasons" for a decision (para. 43). It did not say that reasons were *always* required, and it did not say that the *quality* of those reasons is a question of procedural fairness. In fact, after finding that reasons were required in the circumstances, the Court in *Baker* concluded that the mere notes of an immigration officer were sufficient to fulfil the duty of fairness (para. 44).
>
> [21] It strikes me as an unhelpful elaboration on *Baker* to suggest that alleged deficiencies or flaws in the reasons fall under the category of a breach of the duty of procedural fairness and that they are subject to a correctness review. As Professor Philip Bryden has warned, "courts must be careful not to confuse a finding that a tribunal's reasoning process is inadequately revealed with disagreement over the conclusions reached by the tribunal on the evidence before it" …
>
> [22] It is true that the breach of a duty of procedural fairness is an error in law. Where there are no reasons in circumstances where they are required, there is nothing to review. But where, as here, there are reasons, there is no such breach. Any challenge to the reasoning/result of the decision should therefore be made within the reasonableness analysis.

[18] Citing *Newfoundland Nurses*, the Manitoba Court of Appeal held in *Giang* that, while the issue of whether a decision-maker need give reasons at all is one of procedural fairness in accordance with the Supreme Court of Canada decision in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, a challenge to the *adequacy* of those reasons "is analyzed within the reasonableness analysis" (at para. 34). In *London Limos*, in which the parties agreed that the reasonableness standard applies to an alleged lack of reasons, the Manitoba Court of Appeal quoted without comment paragraph 22 of the Supreme Court of Canada's decision in *Newfoundland Nurses* (as set out above), which distinguishes between an absence and an inadequacy of reasons and holds that, where there *are* reasons, there is no breach of procedural fairness and a reasonableness analysis is to be applied on review.

[19] *Newfoundland Nurses*, *Giang* and *London Limos* were all cases of judicial review. In *Newfoundland Nurses*, the Court analyzed whether the arbitrator's reasons fulfilled the principles of "justification, transparency and intelligibility" described in *Dunsmuir*. But for these recent appellate authorities relied upon by the Respondent, and absent any compelling submission or other authority suggesting a contrary direction, I expect I would readily arrive at the same answer on this issue as given in *Brewers'*. These subsequent decisions, however, and in particular *Newfoundland Nurses*, are authoritative and require close consideration, even though involving judicial rather than tribunal review.

[20] Distinguishing between an absence and an insufficiency of reasons is, as noted in *Newfoundland Nurses*, consistent with the Court's decision in *Baker v.*

Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817, which recognized that, in certain circumstances, a duty of procedural fairness requires the provision "of a written explanation for a decision" (at para. 43). *Baker* dealt with the fundamental question of whether reasons were required at all[1].

[21] That a metric of reasonableness should be applied to a question of adequacy (rather than existence) of reasons is explained in *Newfoundland Nurses* on the basis that the sufficiency of reasons and the result flowing from them do not give rise to discrete analyses, but rather are to be combined in one organic exercise of review:

> [14] Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses – one for the reasons and a separate one for the result (Donald J.M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at §§12:5330 and 12:5510). It is a more organic exercise – the reasons must be read together with the outcome and *serve the purpose of showing whether the result falls within a range of possible outcomes*. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47). (emphasis added)

[22] Particularly with the latter passage in mind, I am of the view that *Newfoundland Nurses* does not govern the approach to be taken on the present appeal, the circumstances of which are materially different than in that case. This tribunal is not asked to assess the reasonableness of the outcome at all – or, at least, not in the sense of "whether the result falls within a range of possible outcomes", to track the language from *Newfoundland Nurses*. The Superintendent has made no submission on that score, and indeed emphasizes its point that it cannot determine whether to challenge the result in the absence of proper reasons. While in its Notice of Appeal it asks that the Consent Order be set aside as unreasonable (and acknowledges in its submission that this question attracts a reasonableness review), this is strictly in the sense that the reasons are said to be inadequate and therefore the decision cannot stand. While at one stage of its submission it expresses concern that perhaps the penalty should have included a suspension, it continues in this way:

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[1] A 2005 decision of this tribunal, *The Superintendent of Real Estate v. Real Estate Council of British Columbia and Kenneth Spong*, FST 05-007, holding that a failure by the tribunal below to provide "any explanation" for a suspension order amounted to a breach of the duty of fairness, was, as it happens, consistent with these later decisions of the Supreme Court of Canada.

> However, with inadequate or absent reasons, the Appellant has no way of addressing the appropriateness of the penalties and as such, it cannot properly exercise its supervisory function over the Council (at para. 48).

[23] For its part, Council logically states the following in response:

> 62. As the Superintendent has not appealed the penalty contained in the Consent Order, Council makes no submission at this time about the standard of review that would be applicable to the (Council's) decision.

[24] In the result, this tribunal has received no submissions and been cited no authorities regarding the appropriateness of the penalty *per se,* and is not asked to decide the point. The only contention is that the outcome cannot stand because of the lack of reasons and the wrongful consideration of certain information. Accordingly, the organic exercise called for by *Newfoundland Nurses*, spanning the adequacy of reasons and the merit of the outcome itself, cannot be performed in this case. As the target of the first appeal ground here is purely the existence or adequacy of reasons, the rationale for a reasonableness standard of review described in *Newfoundland Nurses* therefore does not apply.[2]

[25] Even if *Newfoundland Nurses* were to be applied here, a remaining question would be whether this case concerns an alleged absence or inadequacy of reasons. Following all of *Baker*, *Newfoundland Nurses*, *Brewers'* and *Spong*, *supra*, an utter absence of reasons can be characterized as a breach of a duty of procedural fairness giving rise to a correctness standard of review, assuming (as per *Baker*) that reasons were in fact required. If reasons are present and the true issue is whether they go far enough, *Newfoundland Nurses* would dictate a reasonableness standard where the merits of the result are also in the frame of analysis. In the unusual circumstances of this case, whether the true issue on appeal is one of absence or adequacy of reasons could depend on the outcome of the second ground of appeal, concerning the inclusion of certain documents in the record below. Perhaps, if *Newfoundland Nurses* were to be applied, one standard of review would need to be applied to the order below on the premise of inclusion of those documents, and another on the premise of exclusion of them.

[26] I do not find it necessary to grapple further with that question. I am of the view that, given the particular issues raised on this appeal, a standard of correctness is to be applied to the Superintendent's attack on the reasons of Council. I regard the issue to be one of general law over which Council, with respect, has no unique expertise and on which this tribunal is well placed to apply the requirements that the common law has forged.

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[2] It may be queried whether a stand-alone challenge to the adequacy of reasons is a tenable ground of appeal, at all, given the point made in *Newfoundland Nurses* at para. 14, but as that submission has not been made on this appeal, I will say no more on the point.

Alleged Wrongful Reliance on Documents

[27] In its brief submission regarding the standard of review to be applied to the second ground of appeal, the Superintendent argues that this is a pure question of law and, indeed, of jurisdiction, which as per *Dunsmuir* should be reviewed on a standard of correctness. It relies on this tribunal's decision in *Vikram Atwal v. Real Estate Council of British Columbia*, 2010-RSA-001(a), where a standard of correctness was applied to an appeal from a decision of the Real Estate Council on grounds including the alleged improper admission into evidence of records of secretly recorded telephone conversations. The FST reasoned there that the appropriateness of the admission of such evidence was a pure question of law with at least a general (if not central) importance in the legal system, that did not fall within the particular expertise of the tribunal below.

[28] Council disputes the Superintendent's characterization of the second appeal ground as one of jurisdiction, arguing that the documents in issue are not evidence and, presumably, that the assertion of procedural error from a wrongful admission of evidence cannot therefore be made. Council observes that, as acknowledged by the Superintendent, even on questions of law courts have generally deferred to administrative tribunals. Council seeks to distinguish *Atwal* on the facts, particularly given that the challenged documents in this case were submitted to the CORC voluntarily for the purpose of resolving the matter consensually, which is very different than the acceptance into evidence of transcripts of secretly recorded conversations. It says that deference should be shown here as the inclusion of the documents relates to its choice and design of consent order procedures, for which process it is responsible under *RESA*. Citing *Dunsmuir*, Council urges caution that an issue not be branded as jurisdictional where it is doubtfully so.

[29] It is of course the case here as well that there is no legislative direction on the standard of review to be applied. Nor, based on the submissions made on the appeal, does it appear that the standard of review applied to a challenge to the composition of the record below has been dealt with by this tribunal previously, though the Superintendent seeks to analogize *Atwal*. No authority on all fours with the issue raised here has been cited by the parties.

[30] I have looked to *Dunsmuir* for guidance regarding the approach to be taken to this unusual ground of appeal, and having done so note the following factors:

(a) there is no privative clause in *RESA*;

(b) it is doubtful that the issue is truly one of jurisdiction, given the narrowness of that concept (*Dunsmuir, supra*, at para. 59);

(c) whether the challenged documents properly formed part of the record below, in my view, involves a pure question of law, rather than of fact, discretion or policy;

(d) it is not a question of law, however, of central importance to the legal system; and

(e) while Council is a specialist tribunal, mandated to regulate the realty profession in this province, the issue of whether it was entitled to consider certain documents in a disciplinary proceeding does not fall within its special expertise. Given the dearth of case law in this area, and applying a common sense view, it would not be surprising if the Real Estate Council (including the CORC) has never previously wrestled with the question of whether such documents as in issue here can form part of its considerations (regardless of whether, as a practical matter, they may actually have been so considered). This appeal may well be the first occasion upon which the point will be squarely considered and adjudicated.

[31] While I am somewhat drawn to Council's argument that, given its control of the statutorily mandated process, the CORC's composition of the record before it should be accorded deference, I am nonetheless inclined on balance and weighing the factors set out in the previous paragraph to view the matter as does the Superintendent. The situation is not conceptually dissimilar from an alleged wrongful consideration of evidence, as was the issue in *Atwal* where this tribunal applied a correctness standard, and in my considered view the CORC must be correct about the documents eligible for consideration within its decision-making process.

Summary on Standard of Review

[32] I therefore hold that both the challenge to the reasons of the CORC and to the documents and information it considered are to be reviewed on a correctness standard. I consider that approach to suit the circumstances I have described and to be consistent with the recent Federal Court of Canada decision in *Huruglica, supra*.

[33] As I have stated, the Superintendent submitted that a reasonableness standard should be applied to the question of whether the Consent Order was reasonable, after applying correctness to the first ground of appeal. Its point concerning application of the reasonableness standard was not developed in submissions and Council has declined to make a submission regarding the appropriateness of penalty, observing that the point was not raised by the Superintendent. In any case, given my disposition of this appeal, and in the absence of submissions on the matter, I do not find it necessary to consider further this limited concession by the Superintendent.

APPLICATION TO ADDUCE NEW EVIDENCE

[34] As I have stated, Council seeks to adduce the evidence of Robert O. Fawcett on this appeal, which asserts numerous facts and appends various documents

pertaining to, in the main, the establishment and history of the CORC's consent order process. The Superintendent takes no position on the application.

[35] Subsection 242.2(8) of the *FIA* provides as follows:

> **242.2** …
>
> (8) On application by a party, the member considering the appeal may do the following:
> …
> (a) permit the introduction of evidence, oral or otherwise, if satisfied that new evidence has become available or been discovered that
>
> (i) is substantial and material to the decision, and
> (ii) did not exist at the time the original decision was made, or, did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.

[36] Neither counsel has referred to that provision or to any other authority regarding the adducing of new evidence on an appeal to this tribunal, presumably because the application to do so here is not contentious. Nonetheless, I must have regard to the circumstances in which I am permitted to allow such a request. Having read the Fawcett Affidavit, I do consider it to include facts substantial and material to the decision below, and am therefore satisfied on that ground. As to the second statutory requirement set out above, the facts contained in the Affidavit did exist at the time of the proceeding before the CORC, but at the risk of straining the language of the provision, I am prepared in these uncontroversial circumstances to consider that this branch of the test is also met because *the significance* of those facts could not through reasonable diligence have been discovered by the time the matter was decided by the CORC. This, of course, is because it is only on this appeal that the Superintendent has asserted a deficiency in the reasons of the CORC, which is precisely what has prompted the motion to introduce the evidence of Mr. Fawcett. In regarding the matter that way, I have in mind that, given the broad powers of the FST in rendering appeal decisions but also in making interlocutory or related orders within the appeal process, all surely intended to facilitate a fair and just resolution of an appeal, it does not make sense that reasonable unawareness of facts could be a ground for adducing new evidence but an utter inability to perceive at first instance the relevance of known facts cannot, where in both circumstances (and on application of the first leg of the test) the facts are substantial and material to the decision. I also have in mind section 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, which requires construction of an enactment as being remedial, and the giving of "such fair, large

and liberal construction and interpretation as best ensures the attainment of its objects". I am, accordingly, prepared to allow the application, and I have therefore considered the Fawcett evidence on this appeal.

ANALYSIS OF THE GROUNDS OF APPEAL

[37] That brings me to the merits of the appeal, and I will deal with the two grounds advanced in sequence.

(a) First ground of appeal: Alleged lack of reasons

[38] As regards this ground of appeal, I will first consider whether reasons of the CORC were required at all, before turning to analysis of the decision made.

(i) Necessity of Reasons

[39] The Superintendent submits with some adamancy that reasons were required in this case. While the decision resulted from a consensual process between the CORC and Mr. Valouche, the Superintendent was not part of that process and, as it now emphasizes, it has its own right of appeal under *RESA*, as follows:

> **Appeals**
>
> **54** (1) Appeal to the financial services tribunal may be made as follows:
>
> …
>
> (d) the person subject to the order, *or the superintendent*, may appeal an order of a discipline committee under Division 2 [*Discipline Proceedings*] of this Part; (emphasis added)
>
> (e) the person subject to the order may appeal an order of the superintendent under Division 3[*Authority of Superintendent*] of this Part.
>
> …
>
> (3) The superintendent is entitled to be a party to an appeal under subsection (1)(d) or (e).

[40] As I stated at the onset, the Consent Order was in fact an order of a discipline committee under Division 2 of the applicable part of *RESA*, having been made pursuant to section 41(4) of that division. The excerpts from section 54 set out above establish both that the Superintendent enjoys its own right of appeal from such an order and that, where the person subject to the order brings an appeal, the Superintendent is entitled to be a party thereto.

[41] The Superintendent in effect argues that its right of appeal is illusory if there are no reasons, or no sufficient reasons, from the CORC enabling it to assess the appropriateness of the penalty imposed. It submits it is particularly important that it have the opportunity to make that assessment and thereby decide whether an appeal is warranted, given its statutorily mandated role as a regulator and protector of the public interest.

[42] The Superintendent relies on *Baker, supra*, for the proposition that in certain circumstances a duty of procedural fairness will require the provision of a written explanation for a decision, such as where there is a statutory right of appeal. It relies further on *Spong, supra*, which held that a duty to provide "some form of reasons for penalty is no less vital than the duty to provide reasons for a finding of misconduct" (at page 14), and on *Superintendent of Financial Institutions v. Special Risk Insurance et al*, FST 06-026, which varied a decision found to have provided inadequate reasons for penalty, as the decision had set out "no line of analysis" between findings of fact and conclusions on penalty (at page 18).

[43] In its submission the Superintendent also discusses the decision of this tribunal in *The Superintendent of Real Estate v. Moallem*, FST 04-003. Like the present case, *Moallem* involved an appeal by the Superintendent of a decision based upon a consent order between the Real Estate Council and a licensee. Unlike in this case, the Superintendent made a substantive appeal submission there that the resulting penalty, being a fourteen day suspension, was inadequate in the circumstances. The cited grounds of appeal in *Moallem* did not include an attack on the adequacy of the reasons, the point being taken up by the Superintendent only in submissions, but the FST was nonetheless sympathetic to the argument, agreeing that no reasons had been provided as the CORC moved directly from factual findings to its decision on penalty. The FST distinguished, however, its earlier decision in *Spong, supra*, on the basis that *Moallem* featured a consent order process, holding that, "the failure to provide reasons is of lesser importance given the consent order" (*supra*, at p. 22). After noting that there was (limited) evidence in the record to indicate some level of discussion relating to penalty, this tribunal went on to state:

> This is not intended to imply that the Council need not give reasons when the case relies on a consent order, as the Superintendent has the right to appeal. However, I am reluctant to delay proceedings further while the Council provides the Appellant reasons for the verdict and penalty (at page 22).

[44] The FST in *Moallem* did not remit the matter back to Council for the provision of reasons, and did not set aside the decision for the failure to give them, but rather allowed the Superintendent's appeal in part by increasing the suspension to three weeks.

[45] Despite the result in *Moallem,* I agree with the Superintendent that the case generally supports the need to give reasons even as part of a consent order disposition, at least where the Superintendent has a right of appeal. Clearly there were other factors at work that led the FST in that case to prefer adjudication based on the substantive merits of the appeal.

[46] Without conceding the point, Council in the present case does not press an argument that no reasons below were required. Its primary position is that sufficient reasons were provided, whether the challenged documents were included in the record or not, but on the threshold question argues only that there are factors pointing to "a reduced likelihood" that reasons are required where the CORC issues a consent order. The balance of its submission on appeal is based on an assumption (but not a concession) that some form of reasons was required in this case.

[47] In submitting that the need for reasons is less compelling within a consent order process, Council points to its power to establish an internal body – the CORC – with procedures minded to cost-effective and timely justice. Following *Baker, supra*, Council also submits that allowance must be made for the day-to-day realities facing the administrative decision-maker. The Fawcett Affidavit shows that for a considerable time the Real Estate Council has each year resolved approximately one hundred disciplinary matters by consent order, in contrast to a very small number being adjudicated at a discipline hearing.

[48] Council also emphasises the salutary nature of the consent order process, which it says (a) obviates third party witnesses and thereby confines the impact of the process to the licensee and the CORC (b) enables the CORC to determine a fair and appropriate penalty in accordance with its duty to protect the public interest, and (c) conserves adjudicative resources. All of that is undoubtedly true.

[49] I am of the view that reasons from the CORC were required here, despite the setting of a consent order. To conclude otherwise would be to undermine the appeal right of the Superintendent, a non-party to the Consent Order process, which right the legislature has seen fit to confer. I note here that there is nothing in the broad language of section 54(1)(d) of *RESA* to suggest that the Superintendent does not have a right of appeal from a consent order, and Council does not suggest any such limitation.

[50] If a decision appealable by the Superintendent does no more than state facts and penalty, without linkage of some reasoning between the two, the result is unsatisfactory. First, the fairness of the decision, and particularly why the tribunal below thought it fair, cannot be evaluated. Second, without some explanation for the decision Superintendent appeals may be taken from consent orders which otherwise would not have been taken, had the CORC's reasons only been set out. The failure to provide sufficient reasons may thereby trump the efficiency and other salutary effects of a consent resolution which Council on this appeal has fairly described. I agree with the Superintendent's submission in reply that, even in a consent order process the CORC clearly conceives some reasons for

accepting the eventual result, and it would not be burdensome or unreasonable to expect those reasons to be put on paper.

[51] I consider that view of the matter to accord with *Baker, supra*, insofar as that authority notes the existence of a statutory right of appeal as promoting the need for reasons by the first instance adjudicator (*supra*, at para. 43).

[52] The extent of reasons required is another matter, and here I think there is significance in the number of consent orders the CORC handles and the practical realities it faces as a statutory tribunal. The only decision referenced on this appeal featuring both an appeal from a consent order and a challenge to the sufficiency of reasons is *Moallem*, *supra*, where, as I have said, the circumstances were materially different and the provision of better reasons was not compelled, despite recognition of the significance of the Superintendent's right of appeal. Where a consent order is made, there is in my view a balance to be struck between, on the one hand, the need for reasons that will enable any potential appellant to fairly assess the decision, in the interests of both facilitating proper appeals and discouraging unnecessary ones and, on the other hand, recognizing that the principal parties have reached agreement (one of whom, like the Superintendent, carries a statutory mandate to protect the public) in a process intended to be efficient and which by nature will infrequently spur an appeal. Against the great number of consent orders the CORC has entered into over the years, Mr. Fawcett in his evidence refers to Superintendent appeals occurring "in a few cases". Even without that evidence I would have expected that the Superintendent seldom appeals consent order dispositions, as the duty to control that process has effectively been delegated to the Real Estate Council which, in turn, has developed broad experience in that specific function. I agree with the Superintendent that its decisions in the past not to appeal consent orders in no way amount to a general waiver of its statutory right of appeal, but the history does tend to show that practice has presumably unfolded well enough without, as Mr. Fawcett states, any "formal written reasons" ever having been given for consent orders made. While the Superintendent has every right to put the issue as it has done on this appeal, the practical imperative for the provision of reasons as part of a consent order is not as acute as it is following an adversarial hearing featuring the weighing of evidence, the finding of facts, application of law to those facts and the consideration of opposing submissions on both liability and penalty. In the consent order context, in my view, reasons need only provide a basic explanation for the decision made, sufficient for the Superintendent to determine whether it should abide the result.

(ii) Whether Adequate Reasons Were Provided

[53] The Superintendent submits that the record below without the challenged documents contains no reasons for decision at all. If those documents are seen as part of that record, it submits that the reasons are nonetheless inadequate. Council responds that in both scenarios sufficient reasons are present.

[54] I will first consider whether the Consent Order itself adequately expresses reasons, before considering whether arguably extraneous material need be considered.

[55] The Consent Order is eighteen pages in length. It refers on the first page to a review meeting of January 16, 2015 at which an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("the First Proposal") submitted by Mr. Valouche was considered by the CORC but not accepted. It carries on to say that on February 4, 2015 a revised Agreed Statement of Facts ("the ASF") acceptable to the CORC was submitted by Mr. Valouche. The ASF is then referred to as an attachment to the Consent Order, which Order enumerates the agreed discipline items and is signed on behalf of the CORC. The attached ASF sets out Mr. Valouche's consent to the terms of the Order, initially followed by sixteen pages of agreed facts, including mitigating factors and aspects of Mr. Valouche's discipline history, and then by Mr. Valouche's proposed acceptance of findings of professional misconduct against him and certain other matters, including his waiver of any right of appeal. At its end, the ASF is signed on behalf of the Real Estate Council and by Mr. Valouche.

[56] Council submits, and I agree, that the facts on which the decision is based are set out in detail as part of the Consent Order, including those giving rise to the admission of misconduct, Mr. Valouche's disciplinary history, and certain mitigating factors. I also agree with the following submission of Council:

> 97. In effect, by issuing the Consent Order, the CORC is saying "Based on the findings we have made about the facts and the related admissions of misconduct, we consider the penalty we are imposing to be appropriate". No other meaning can be reasonably ascribed to the Consent Order; nor is this meaning difficult to discern.

[57] Having said that, the Consent Order goes no farther than this. It does not convey the CORC's thought process on *why* the agreed facts call for the penalty imposed. As Council states on appeal, one can plainly discern that the CORC is indicating its view that the penalty is appropriate, but that alone is too bare, too unforthcoming, even in the setting of a consent order, in light of the Superintendent's right of appeal. That right deserves some expression of actual reasoning or explanation as to why the order was thought proper, beyond the obvious fact that the licensee and the CORC agreed to it. Without such reasoning or explanation, there is nothing to indicate how the CORC applied the facts in reaching the decision on penalty, meaning that the appropriateness of the selected penalty cannot be properly assessed. I agree, therefore, with the Superintendent that the Consent Order and ASF do not contain the required reasons for decision.

[58] I will next consider whether the challenged documents, comprising the First Proposal and the January 16, 2015 minutes of Council's meeting ("Minutes") discussing the First Proposal, reveal sufficient reasons for the decision, either on their own or together with the facts described in the Consent Order and ASF. The

answer to that question will dictate the importance of whether the former documents should properly have been taken into account by the CORC, or whether I should take them into account on this appeal.

[59] I have read the First Proposal and the Minutes. I could not refrain from doing so and yet adjudicate on the issues on this appeal, including Council's position that those documents, the ASF and the Consent Order were all part of a fluid, unified process.

[60] It appears that the First Proposal is precisely the same as the ASF and Consent Order with the exception that the initially proposed fine was $7,500 rather than the $10,000 later settled upon. The Minutes record that at the January 16, 2015 meeting Council was not prepared to accept the First Proposal but would accept a resolution in all respects identical, save and except that the fine would increase to $10,000. The Minutes then contain this passage:

> **Reasons for Penalty**
>
> The cases presented to the CORC as precedents had suspensions ranging from 21 days for more serious transgressions with no disciplinary history, to 45 days where there was a disciplinary history, and in instance (sic), a one year prohibition on acting as a managing broker. Mr. Valouche has a disciplinary history for similar failures to supervise licensees, though some of the previous disciplinary history overlaps with conduct in this matter, and so the ability and opportunity to learn from his past mistakes was taken into consideration. Due to the impact the suspension of a managing broker's licence has on the related licenses, fines are sometimes accepted in lieu of suspensions.
>
> After much consideration, the CORC was willing to accept a penalty in lieu of a suspension. However, given the disciplinary history of Mr. Valouche and the disciplinary penalties in the other cases, the CORC does not feel a $7,500 fine is consistent with the likely period he would otherwise be suspended. The CORC was willing to accept a $10,000 fine, in addition to the other terms of the penalty originally proposed by Mr. Valouche.

[61] The Superintendent argues that, on the assumption the Minutes properly formed part of the record, they nonetheless contain insufficient explanation of the decision made. It points out that the "consideration" referred to in the second paragraph above is not explained and that, as in *Spong, supra*, while the CORC refers to cases that are said to be on point, it does not say how those cases applied or what it found significant about them. Nor, the Superintendent states, is there any analysis of why $10,000 was thought an appropriate fine or why no suspension was imposed. The Superintendent asserts that there is no analysis of

the fundamental factors to be considered when assessing penalty in an occupational disciplinary matter.

[62] Continuing on the premise for the moment that the Minutes form part of the record, I consider them to adequately disclose the reasons for the decision in this case, taking into account the resolution by Consent Order and also the day-to-day realities facing an administrative body such as the CORC. I believe there to be enough in those Minutes to allow the Superintendent a basic understanding of the reasons the CORC approved a certain disposition of the matter. In particular, from the Minutes the following points clearly emerge:

(a) the cases presented as precedents had suspensions ranging from 21 to 45 days, depending on the seriousness of the transgression and disciplinary history;

(b) in one instance, where there was a disciplinary history, a one year suspension was imposed upon a managing broker;

(c) Mr. Valouche has a disciplinary history (which is detailed in the ASF) for similar failures to supervise his licencees;

(d) some of that disciplinary history overlaps with his conduct in this case, causing the CORC to conclude that his opportunity to learn from past mistakes could not be fully expected to reflect the subject conduct;

(e) a suspension of a managing broker's licence has an impact on related licences and, for this reason, sometimes fines are accepted in lieu of suspension;

(f) the CORC has given much consideration to the matter, and having done so is willing to accept a penalty in the form of a fine in lieu of a suspension;

(g) given Mr. Valouche's disciplinary history, and in light of the disciplinary penalties in other cases, the CORC does not regard a $7,500 fine as consistent with the likely period for which he would be suspended, if a suspension were to be ordered; and

(h) the CORC is willing to accept a $10,000 fine, in addition to the other terms of penalty proposed.

[63] As stated, the ASF set out the particulars of the transgressions and Mr. Valouche's disciplinary history at some length. The Superintendent may or may not be persuaded, in light of the facts, the relevant history, the general thrust of the precedent decisions and the basic reasons offered by the CORC, that a decision not to suspend was appropriate, but I believe there to be sufficient information disclosed, as between the Minutes, the Consent Order and the ASF, for it to broadly appreciate the basis for the decision and to decide whether to pursue an appeal.

[64] The issue on this aspect of the appeal is not of course whether the CORC's ultimate decision was appropriate, but rather whether its reasons for doing so are sufficiently set forth. It is my conclusion that they are if the Minutes are part of the analysis, but otherwise that they are not.

(b) Second Ground of Appeal: Alleged Improper Reliance on Records and Information

[65] In light of the foregoing discussion this issue takes on particular importance.

[66] This ground of appeal reads as follows:

> The Council erred in law by relying on improper records and information in reaching its February 5, 2015 decision. In particular, the Council erred by reviewing and taking into consideration a proposal that had previously been rejected, the minutes of the Council's own deliberations regarding that prior proposal, and the fact that it had been rejected, when deciding on whether to accept a subsequent proposal, contrary to s. 41 of *RESA* and since those documents and the related information are protected by settlement privilege from being considered or otherwise reflect statutory decision maker deliberations which did not properly form part of the Record.

[67] In essence, the Superintendent argues that the CORC erred in relying on the First Proposal and the Minutes, which it maintains did not properly form part of the record below. In support of this submission the Superintendent cites several authorities, beginning with section 41(5) of *RESA*.

[68] Section 41 of *RESA* concerns consent orders and subsection 41(5) provides as follows:

> **41** (5) Regardless of whether or not a proposal has been referred, accepted or rejected, the proposal may not be used, without the consent of the licensee who made the proposal,
>
> (a) in any proceeding under this Act with respect to the matter, other than
>
> (i) as referred to in subsection (4)(b),
>
> (ii) an appeal of the order by the superintendent under section 54(1)(d) [appeals by superintendent], or

> (iii) for the purposes of considering a claim under Part 5 [Payments from Special Compensation Fund], or
>
> (b) in any civil proceeding with respect to the matter.

[69] The Superintendent submits that the First Proposal was rejected by the CORC and yet was later relied upon and "used" in its decision to accept the ASF and Consent Order, as were the Minutes which record that initial rejection. The Superintendent argues that there is no evidence Mr. Valouche consented to the use of those documents in the CORC's decision to accept the revised proposal, and further that none of the exceptions in subsection 41(5) that could permit such use are applicable.

[70] The Superintendent also relies on *SELI Canada Inc. v. Construction and Specialized Workers' Union, Local 1611,* 2011 BCCA 353, for the exclusion of the challenged documents from the record. The question there was whether on a judicial review a party was entitled to present evidence of what transpired at the hearing but that did not form part of the official record of proceedings. There had been a lengthy inquiry before the British Columbia Human Rights Tribunal and the proposed evidence on judicial review was a legal secretary's imperfect transcript and notes of the proceedings, offered because no court reporter had been present.

[71] The British Columbia Court of Appeal ultimately held in *SELI* that the transcript and notes did not form part of the record of the hearing as they did not emanate from and were not evidence before the tribunal, but nonetheless could properly be placed before the Court on the judicial review application as being relevant to the employer's argument that the tribunal's conclusions were not supported by the evidence. In that regard, the Court of Appeal followed (as did the Judge below) the Saskatchewan Court of Appeal's decision in *Hartwig v. Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild*, 2007 SKCA 74, recognizing the right of participants in judicial review proceedings to bring forward the evidence that was before the first instance decision-maker, including by way of Affidavit.

[72] The Superintendent's point about *SELI*, however, is that it supports a conclusion that the documents in issue here did not form part of the record - even though a reviewing Court is not always constrained to consider only that record.

[73] The Superintendent also relies upon section 242.2(6) of the *FIA* concerning composition of the record before this tribunal. That subsection provides:

> **242.2** (6) For the purposes of subsection (5), the record consists of the following:
>
> (a) the record of oral evidence, if any, before the original decision maker;

(b) copies or originals of documentary evidence before the original decision maker;

(c) other things received as evidence by the original decision maker;

(d) the decision and written reasons for it, if any, given by the original decision maker.

[74] The Superintendent argues that the Minutes and surrounding documents do not fall within the narrow definition of the record as set out in the *FIA*.

[75] The Superintendent next references the *British Columbia Administrative Law Practice Manual*, published by CLE B.C., which contains what appear to be guidelines regarding the content of an administrative tribunal's record, and which content is said to include documents equating to pleadings, oral and documentary evidence, and any agreed statements of fact.

[76] Citing *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, 2011 SCC 4, the Superintendent further submits that draft decisions and similar documents emanating from an adjudicator are covered by deliberative secrecy and do not form part of the record.

[77] Having carefully reviewed Council's responses to these various submissions by the Superintendent, my view on the matter is as follows.

[78] I agree with Council that the First Proposal and the Minutes were part of a single, unified and continuous process leading to the Consent Order. I also agree that, importantly, the Minutes form part of the decision in this case and the written reasons therefor. Indeed, I consider the decision to have effectively been made on January 16, 2015 as reflected in the Minutes of the meeting on that date. That decision was to accept Mr. Valouche's proposal in all respects save one, identifying the single change required and giving reasons why, with that change, the proposal would be accepted by the CORC. February 5, 2015, being the date of the Consent Order, marked the occasion on which the final document was signed but, so far as the decision of the CORC is concerned, it flowed directly from the position taken and reasons expressed on January 16, 2015. It is true that following that date Mr. Valouche's consent to the higher fine amount was needed for any consent order to result, but for the CORC the only alternative to that was a rejection of a consent resolution and, presumably, the pursuit of a discipline hearing. The CORC's reasons as expressed in the Minutes plainly have a tone of finality, and this is reflected in the Consent Order which refers to that culminating January 16, 2015 date of review. There is no reference in the Consent Order to a meeting or decision or deliberation occurring after January 16, 2015, as there was none. It was logical that the Consent Order should make immediate express reference, as it does, to that January 16, 2015 review, which the Minutes reflect as setting out the CORC's final position on the matter.

[79] I do not, therefore, view the Minutes as falling beyond the parameters of the decision and reasons for decision given. Indeed, I consider it sensible to regard them as constituting the very reasons of the CORC while the order flowing from those reasons, with Mr. Valouche's cooperation having been secured, is that of the Consent Order signed a few weeks on. In the circumstances I would regard it as rigid and artificial to conclude otherwise:

(a) there is no denying that the Minutes summarized the CORC's reasons for disposing of the matter as it did, and indeed that they stand as the only written record of such reasons;

(b) the structural nature of a consent order process, where consideration will be given by the tribunal and its effective decision in the matter will be formed *before* the Order documents are ultimately cobbled together and signed, is quite different from an adjudication following a discipline hearing where reasons and decision will be expressed in the same document;

(c) as a potential appellant, the Superintendent would be within its rights in requesting from the CORC whatever reasons for decision were available, if not satisfied on a review of the Consent Order itself, and it would suffer no prejudice if reasons are then supplied in the form of another document, such as the Minutes in this case; and

(d) as I have said, I regard the Minutes, the ASF and the Consent Order to reflect a single, unified process, suggesting that reasons for decision may be looked for anywhere within that span of material.

[80] As to section 41(5) of *RESA*, which limits the use to which consent order proposals can be put whether or not they have been accepted, I do not regard there to have been any such improper use by the CORC in this case. It is axiomatic that the proposal directly giving rise to a consent order may be used for the purpose of that order, in which event the proposal and resulting consent order with agreed facts become intertwined. I do not think it reasonable here to consider the First Proposal as representing a proceeding separate from that which led to the Consent Order as it was the First Proposal, with a single revision, that led directly to the Consent Order. Apart from that, and noting that an otherwise prohibition against use under section 41(5) is relieved by the consent of the licensee, I agree with Council that Mr. Valouche did sufficiently provide such consent. He signed the ASF which is attached to the Consent Order making reference to the First Proposal, and he accepted the terms of that Consent Order. It would be overly technical to find in such circumstances that Mr. Valouche had not provided his consent to the use of the First Proposal.

[81] Moreover, the First Proposal itself is not particularly important on this appeal. Given the way I view the matter it is the Minutes, and in particular the passage within them that I regard as comprising reasons (at paragraph 60 above) that is vital. I appreciate that elsewhere the Minutes refer to the First Proposal,

but even if there was a difficulty in the use of the First Proposal in view of section 41(5) of *RESA*, I do not see the difficulty as extending to that vital passage in the Minutes, which makes no mention of it.

[82] Subsection 242.2(6) of the *FIA*, reproduced at paragraph 73 above, refers to "The decision and written reasons for it, if any, given by the original decision-maker" forming part of the record before this tribunal. Put simply, it is also my conclusion that the Minutes may properly be considered on this appeal as they constitute the written reasons for the decision made by the CORC.

[83] Had I not viewed the Minutes as part of the decision and reasons for decision below, I would nonetheless have considered them as extraneous material that could be looked to to cure a deficiency in the reasons. The passage below from the Federal Court of Appeal's decision in *Vancouver International Airport Authority v. Public Sector Alliance of Canada*, [2010] FCJ No. 809 promotes, in my view, a flexible approach to the matter of where reasons for a tribunal's decision may be found:

> 17 The reasons of administrative decision-makers in situations such as this must fulfil these purposes at a minimum. As courts assess whether these purposes have been fulfilled, there are a number of important principles, established by the authorities, to be kept firmly in mind:
>
> (a) *The relevancy of extraneous material*. The respondent emphasized that information about why an administrative decision-maker ruled in the way that it did can sometimes be found in the record of the case and the surrounding context. I agree. Reasons form part of a broader context. Information that fulfils the above purposes can come from various sources. For example, there may be oral or written reasons of the decision-maker and those reasons may be amplified or clarified by extraneous material, such as notes in the decision-maker's file and other matters in the record. Even where no reasons have been given, extraneous material may suffice when it can be taken to express the basis for the decision. *Baker, supra*, provides us with a good example of this, where the Supreme Court found that notes in the administrative file adequately expressed the basis for the decision. See also *Hill v. Hamilton-Wentworth Police Services Board*, [2007] 3 S.C.R. 129 at paragraph 101 for the role of extraneous materials in the assessment of adequacy of reasons. …

[84] A similarly flexible approach is apparent in *Jiang v. Manitoba (Minister of Labour)* 2014 MBCA 27, where the Manitoba Court of Appeal thought it appropriate on the question of sufficiency of reasons to consider both a letter amounting to a reconsideration decision in an immigration matter as well as the earlier letter more fully expressing reasons upon dismissal of the initial application. The decision letter on the reconsideration application, evidently terse in its content, made reference to the earlier letter, just as the consent order in this case makes reference to the January 16, 2015 review, if not to the Minutes expressly. While the *Jiang* analogy with the present case is not perfect, on review of that decision, *Vancouver International Airport, supra*, and others, including *Eng v. Vancouver (City)*, [2014] BCJ No. 1111 (at paras. 43 and 45), and *Law Society of Upper Canada v. Cunningham*, 2012 ONLSAP 15 (at para. 30), I perceive a trend in the case law permitting rectification of a deficiency in a tribunal's reasons on reference to related documents. That permissiveness is consistent with the recognition that the quality of a tribunal's reasons need not reach the standard applicable to reasons from a Court, as expressed in *Eng, supra* (at para. 52).

[85] For all of the reasons given, I am of the view that the Minutes form part of the decision below, and indeed constitute the reasons for that decision. If I am wrong in that view as they are in fact extraneous to the decision, I would nonetheless think it proper to reference them as supplying the reasons that would otherwise be lacking.

FUTURE PRACTICE

[86] To the extent it may be beneficial I wish to add the following comments relating to practice in this area.

[87] As is apparent, I have concluded that a consent order from which the Superintendent has a right of appeal requires explanation or reasons from the CORC, even if to a somewhat lower standard (as I have expressed) than applicable following a full discipline hearing. The Superintendent must be allowed a basic understanding of the analysis that led to the penalty imposed. I have agreed with the Superintendent's position that the thought process the CORC surely undergoes must to that extent be reduced to writing. All of that aside, it would be beneficial for future compositions of the CORC to have access, not only to recitations of fact and penalty in prior, similar cases (the vast majority of which cases, as it is clear from the Fawcett evidence, take the form of consent orders), but also to a record of why the particular result was thought warranted. This would not only aid future handling of the consent order process, but it would facilitate insight into results reached and an evolving consistency between decisions, taking factual differences into account.

[88] Upon careful consideration I have decided here that the Minutes may be properly viewed as providing the reasons for the Consent Order made, though physically a separate document from that Order. It would be highly preferable, less contentious and eminently more convenient to all concerned, however, if such reasons are in future appended to or incorporated within consent orders. An

appeal from such a consent order may of course still be taken, but there would be no need to search for reasons or debate how widely that search may extend.

DISPOSITION

[89] For the reasons given, I conclude on a standard of correctness that the CORC provided sufficient reasons for its decision and that in reaching that decision it did not consider documents or information beyond the scope available to it, which documents, and in particular the Minutes, are properly considered by this tribunal on appeal in any event.

[90] The appeal is therefore dismissed.

[91] My inclination is to award no costs of the appeal. The Superintendent has raised important issues of practice, not entirely settled by jurisprudence, and I have accepted some of its submissions, even while ultimately dismissing the appeal. Moreover, the resolution of these issues may prove beneficial in future both to the Superintendent and to Council. If despite my inclination Council wishes to pursue costs, it may do so in writing by October 27, 2015, in which event the Superintendent shall have a right of reply by November 10, 2015.

"Patrick Lewis"

Patrick F. Lewis, Vice- Chair
Financial Services Tribunal

October 9, 2015

[Note: A Corrigendum was released by the Panel on November 12, 2015 as follows: "Pursuant to s. 53(1)(a) of the *Administrative Tribunals Act*, the Panel has identified and corrected typographical/clerical errors at paragraphs 12, 14, and 22 of the Appeal Decision dated October 9, 2015 (Decision No. 2015-RSA-001(c)). The comma after the word "*Huruglica"* is removed from paragraph 12, the word "Distributer" in paragraph 14 should have read and is now amended to read "Distributor", and the word "the" before "*Newfoundland Nurses"* in paragraph 22 is removed."]