



Operational Review of the Real Estate Council of Alberta

ADVICE TO MINISTER

**Operations Review in Accordance with
Ministerial Order SA: 002/2019**

March 13, 2020



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Notice

This report has been prepared by KPMG LLP (“KPMG”) for the Minister of Service Alberta (“Minister”) pursuant to the terms of our engagement agreement with the Minister dated January 21, 2019 (the “Engagement Agreement”). This report was prepared in response to the Minister’s request for a review of the Real Estate Council of Alberta (“RECA”) under Section 76 of the *Real Estate Act* and the findings presented in the report address specific evaluation criteria agreed to by the Ministry of Service Alberta.

KPMG neither warrants nor represents that the information contained in this report is accurate, complete, sufficient or appropriate for use by any person or entity other than the Minister or for any purpose other than set out in Section 76 of the *Real Estate Act*. This report may not be relied upon by any person or entity other than the Minister, and KPMG hereby expressly disclaims any and all responsibility or liability to any person or entity other than the Minister in connection with their use of this report.

The procedures we carried out in performing the work that forms the basis of this report were not such as to constitute an audit. As such, the content of this report should not be considered as providing the same level of assurance as an audit. Our procedures consisted solely of inquiry, observation, comparison and analysis of information provided by the Ministry, RECA and other stakeholders. We relied on the completeness and accuracy of the information provided. Such work does not constitute an audit. Accordingly, we express no opinion on financial results, internal controls or other information.

1 Executive Summary

1.1 Introduction

The Real Estate Council of Alberta (RECA) regulates real estate agents and brokers, mortgage brokers, real estate appraisers and property managers in Alberta. In its statement on self-regulation, RECA states its mandate is "...to protect consumers and to provide services that enhance and improve the industry and the business of industry professionals." [1] RECA is established as a corporation under the *Real Estate Act* (the *Act*) and is not considered an agent of the Crown [2].

The Minister of Service Alberta (the Minister) received complaints about RECA's ability to govern itself effectively. As a result, the Ministry of Service Alberta (Service Alberta) commissioned a preliminary assessment of the complaints related to the conduct and integrity of Council. This preliminary assessment was completed by George B Cuff & Associates Ltd. in October 2018 and led to the Minister's determination to conduct a Governance Review (completed earlier in 2019), as well as an Operational Review (the Review) of RECA under Section 76 of the *Act* (the Review).

In January 2019, Service Alberta engaged KPMG¹ to conduct the Review in accordance with Ministerial Order SA: 002/2019 inclusive of its Terms of Reference; these are included in Appendix 1. KPMG worked with Service Alberta to develop evaluation criteria based on the Terms of Reference. The criteria are included with the findings in Section 5. The Review was completed in September 2019.

KPMG's role was to conduct interviews and review documentation in order to assess, at a high level, RECA's performance against the criteria, and the overall state of operations. The Review was not intended to investigate any specific decisions or actions, nor was it intended to be a legislative review of RECA's interpretation or application of legislation. While the Review included aspects of Financial Management, KPMG did not assess RECA's financial sustainability, the accuracy of financial reporting, or the appropriateness and adequacy of controls over expenditures. KPMG considered findings in light of common and leading governance practices for non-profit and regulatory entities of a similar scale, and has provided advice in this report to the Minister on recommended actions to improve RECA's operational effectiveness.

Throughout the report, references to RECA is intended as identification of the organization and its administration, while references to Council or Council members are intended as the appointed governing body.

1.2 Summary of Findings and Recommendations

Overall, RECA appears to be effectively carrying out its delegated mandate under the *Act*. It has a robust set of policies for an organization of its size and the Review did not find evidence of non-compliance with the policies. However, the Review identified areas in which RECA could improve. Specifically, RECA did not fully meet the Review criteria in the following areas:

- **Financial management:** RECA could improve its financial oversight and reserve management, proactively manage its sustainability, and not become dependent on education revenues to fund its core operations;

¹ Tim Swanson, an employee of KPMG, was appointed as Reviewer under Section 76 of the *Act*.

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- **Administration:** The span of control for the Professional Conduct Review Manager exceeds expected ranges, and RECA could achieve greater accountability and oversight from improved reporting of financial performance against the approved budget;
- **Human resources:** RECA has high employee turnover and a relatively high number of employee complaints; and
- **Education and licensing:** RECA has not identified required competencies and educational standards for the professions it regulates.

Specific findings and the evaluation of RECA against criteria in these areas is provided in Section 5: Findings by Area of Review. A summary of the key findings and recommendations are outlined on the following pages.

Findings	Recommendations
<p>Administration</p> <p>RECA’s organization structure is logical, however, the Manager of Professional Conduct has 16 direct reports, which may affect its ability to provide effective oversight and guidance to investigators.</p> <p><i>See section 4.2.1 Organization Structure for more details.</i></p>	<p>The Minister should consider requiring RECA to review the level of direct supervision required by its Professional Conduct staff in order to support the level of oversight and guidance needed to maintain the quality of investigations.</p>
<p>Reports to Council are generally thorough, however, RECA does not consistently report financial results against budget and does not report performance metrics against intended outcomes.</p> <p><i>See section 4.2.3 Planning Documents and Council Reporting for more details.</i></p>	<p>The Minister should consider requiring that RECA’s quarterly reporting of actual results be provided to Council in the same level of detail and using the same line items as the approved budget (Governance Review Recommendation 23).</p> <p>The Minister should consider requiring Council to implement a performance management framework and use it to evaluate and communicate RECA’s effectiveness in fulfilling its mandate (Governance Review Recommendation 21).</p>

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Findings	Recommendations
<p>Financial Management</p> <p>In its current fiscal year, RECA forecasts a decline in revenue and has adjusted expenses to compensate ^[14]. The decline in revenue is primarily related to an 18% decrease in course enrollments. There is a risk that this could signal a future reduction in new and renewing members that could have an impact on RECA's licensing revenues.</p> <p><i>See section 4.3.1 Financial Status for more detail.</i></p>	<p>The Minister should consider requesting that RECA prepare a financial sustainability plan.</p>
<p>RECA's current operating reserve is high compared those of its counterparts in Saskatchewan and Ontario, and in comparison to benchmarks for non-profit organizations. RECA does not have a policy governing the size of its operating reserve and what to do with amounts in excess of its reserve requirements. As a result, it may be possible that RECA has excess funds in its operating reserve that it could reinvest in operations or use to reduce long-term debt.</p> <p><i>See section 4.3.1 Financial Status for more detail.</i></p>	<p>The Minister should consider requiring that RECA develop a policy governing the use of its operating fund reserves, including the target size of the fund and what to do with funds in excess of the target. For example, excess funds could be re-invested in operations or used to reduce debt.</p>
<p>It is unclear at what level of detail RECA's budget is approved at. Variance reporting is done at a different level of detail than the budget, and as an example it was unclear how the actual legal expenses incurred by the organization were in excess of the approved budgeted amount. The Governance Review concluded that RECA did not have effective Council oversight of financial management.</p> <p><i>See section 4.3.2 Council Oversight of Financial Management for more detail.</i></p>	<p>The Minister should consider requiring Council to more clearly approve RECA's spending authority by approving a budget at a level of detail consistent with the authority granted. The Minister should consider requiring that RECA's quarterly reporting of actual results be provided to Council in the same level of detail and using the same line items as the approved budget.</p>

Findings	Recommendations
<p>In 2017, RECA's non-education expenses per member were higher than the three other real estate regulators compared and below its average non-education revenue per member. Further, RECA's surplus in 2018 from education courses significantly exceeded RECA's operating fund surplus. RECA may be partially dependent on surpluses earned from its courses to avoid an operating deficit. If current trends in decreased course enrollment and revenue continue, RECA may face challenges in meeting their operational financial obligations. Similarly, if RECA's operations are dependent on education revenues, it may not be able to consider alternative education delivery options.</p> <p><i>See section 4.3.3 Council Oversight of Financial Management for more detail.</i></p>	<p>The Minister should require that RECA set its license fees to cover its regulatory operations. This will promote more sustainable funding should there be changes in RECA's delivery of education, and will make RECA's costs to members more transparent. Changes in license fees may require a transition period to allow members to adapt.</p> <p>The Minister should consider requiring RECA to demonstrate that its regulatory operations are not dependent on revenues from education courses, and requiring RECA to revise its Education Course Pricing Policy to stipulate that surplus education revenues cannot be used to offset regulatory operations.</p>
<p>Human Resources Practices</p> <p>Notwithstanding reasonable employee engagement survey results, RECA exhibits high turnover and has received a number of human resource complaints over the last three years.</p> <p><i>See section 4.4.1 Human Resources Strategy for more detail.</i></p>	<p>The Minister should consider requiring RECA to conduct a fulsome review of its human resource practices and workplace culture to determine potential system causes for its high turnover and complaints. The review should be conducted by an independent consultant to remove potential perceptions of bias and encourage open participation. The review should include an employee survey and direct employee engagement. The Minister should also consider encouraging RECA to conduct on-going employee surveys (annual or bi-annual) to track changes in employee engagement over time.</p>

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<p>RECA's whistleblower policy and procedure rely on the internal receipt and escalation of complaints. If it is perceived that the current processes will not protect anonymity, or will not be given due diligence, employees may be reluctant to raise concerns or report complaints. Valid concerns may not be surfaced and adequately addressed for the employee, and recurrent or systemic issues may not be identified.</p> <p><i>See section 4.4.1 Human Resources Strategy for more detail.</i></p>	<p>The Minister should consider requesting RECA to enhance its whistleblower policy and procedure by using an external service to receive complaints and concerns, and provide initial process advice to employees. An external service should help to remove any perceptions of bias that may accompany an internal reporting process and encourage open reporting of concerns.</p>
<p>RECA does not have a policy governing the determination of employee compensation. This could lead to real or perceived inequities in compensation across the organization, and is inconsistent with a trend among publicly-accountable organizations towards publishing compensation.</p> <p><i>See section 4.4.1 Human Resources Strategy for more detail.</i></p>	<p>The Minister should consider requiring RECA to implement a formal compensation policy to increase transparency around how salaries and bonuses are determined. Policies should require regular comparisons of compensation levels to comparable positions in other publicly-accountable entities.</p>
<p>Implementation of Prior Recommendations</p> <p>RECA commissioned a review of its regulatory performance in 2016. Leading practice is to review the regulatory performance of regulatory bodies periodically.</p>	<p>The Minister should consider requiring RECA to conduct independent reviews of its regulatory performance on a regular, periodic basis (e.g. every five years).</p>

Findings	Recommendations
<p>Investigative and Enforcement Actions</p>	
<p>Some Council members raised concerns about a recent increase in the number of Section 54 (Voluntary Withdrawal) applications by industry members under investigation. While these seem to be in line with previous changes in the overall file volume and Section 54 applications, RECA does not have a process for individuals being investigated to raise any concerns about potential pressure to withdraw.</p> <p><i>See section 4.7.3 Administrative Actions and Investigations for more detail.</i></p>	<p>The Minister should consider requiring RECA to establish a complaints process for industry professionals who are being investigated. This process would include logging complaints lodged against investigators to better support training and development needs for all team members. Complaints should be made to an individual or department that is independent of the Professional Conduct Team.</p>
<p>According to the <i>Act</i>, hearing and appeals panels related to enforcement actions must include a Council member. As was outlined in the Governance Review, Council members expressed that it typically takes two to three years for a Council member to become an effective panel member. Council terms are three years.</p> <p>RECA's maintains a schedule of administrative penalties that has not been updated recently and may no longer reflect the seriousness of violations.</p> <p><i>See section 4.7.4 Administrative Fairness for more detail.</i></p>	<p>The Minister should consider examining the possibility of amending the <i>Act</i> to remove the requirement for a Council member to sit on hearing panels.</p> <p>The Minister should consider requiring that RECA complete its review of administrative penalties as recommended in the Field Law report, and that it establish a policy that guides future updates based on changes in circumstances or minimum timeframes.</p>
<p>Member Education and Licensing</p>	
<p>RECA has not defined competencies for the professions that it regulates. It is unable to demonstrate that its courses address required competencies and that they do not exceed what is required to cover the competencies.</p> <p><i>See section 4.8.2 Member Education for more detail.</i></p>	<p>The Minister should consider requiring that RECA develop and publish competencies for each of its professions, and evaluate its education courses against the competencies to ensure there are no missing or excess material. This should not preclude RECA from participating in the national initiative for this.</p>

2 Introduction

2.1 Background

The Minister received complaints about Real Estate Council of Alberta's (RECA) ability to govern itself effectively. As a result, Service Alberta commissioned a preliminary assessment of the complaints related to the conduct and integrity of Council. This preliminary assessment was completed by George B Cuff & Associates Ltd. in October 2018 and led to the Minister's determination to conduct a review of RECA under Section 76 of the *Act*.

In January 2019, Service Alberta engaged KPMG to conduct a Governance Review and an Operational Review in accordance with Ministerial Order SA: 001/2019 and Order SA: 002/2019 respectively. The Governance Review was completed in June 2019. This Review focuses on the Operations of RECA as outlined in the Terms of Reference included in Appendix 1. To facilitate data collection activities, the Minister appointed Tim Swanson, an employee of KPMG, as the reviewer under Section 76(1) of the *Act*. KPMG is solely responsible for the findings and recommendations of the Review. This Review was completed in September 2019.

KPMG worked with Service Alberta to develop evaluation criteria based on the Terms of Reference. The criteria are included with the findings in Section 5. KPMG's role was to conduct interviews and review documentation in order to assess, at a high level, RECA's operational performance against the criteria. KPMG considered findings in light of common and leading operational practices for non-profit and regulatory entities of a similar scale, and has provided advice in this report to the Minister on recommended actions to improve RECA's operational effectiveness.

2.2 Scope

The scope of the Operational Review, as stated in the Ministerial Order, "...shall include a full review and evaluation of the administration and day-to-day operations of the Real Estate Council of Alberta (RECA) and ensure RECA's effectiveness as the regulator for the real estate sector." This scope is defined further in the Terms of Reference (Appendix 1) and covers the following areas:

- Overall Operations;
- Administration;
- Role of Executives;
- Financial Management;
- Human Resources Practices;
- Scope and Structure;
- Implementation of Prior Recommendations;
- Investigative and Enforcement Actions;
- Member Licensing; and
- Member Education.

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In conducting the review, KPMG did not assess RECA's financial sustainability, the accuracy of financial reporting, and the appropriateness and adequacy of controls over expenditures. The Review did not investigate the skills of individual staff members. The Review was not intended to investigate any specific decisions or actions of RECA, its Council or employees, nor was it intended to be a legislative review of RECA's interpretation or application of legislation.

2.3 Conduct of the Operations Review

The Operational Review was completed over two months and included the following data collection activities:

- Formal interviews with each of the 12 Council members;
- Formal interviews with the Executive Director and four senior managers;
- Interviews with seven department managers within RECA to obtain and clarify operational information;
- Representatives from three industry associations whose members are licensed under RECA;
- Review of documentation provided by RECA, stakeholder organizations, and comparator organizations; and
- Surveys of industry members that were the subject of a complaint in the last three years, and complainants that made a complaint in the last three years.

Given the scope and nature of the review, interviews with a broader selection of staff were not necessary. Interviewees and documentation reviewed are listed in Appendices 2 and 3, respectively. Surveys are provided in Appendix 4.

3 About RECA

3.1 Overview

RECA is established as a corporation under the *Act* and is not considered an agent of the Crown [2]. RECA regulates real estate agents and brokers, mortgage brokers, real estate appraisers and property managers in Alberta.

In its statement on self-regulation, RECA states its mandate is "...to protect consumers and to provide services that enhance and improve the industry and the business of industry professionals." [1] RECA regulates the real estate industry in Alberta: educates, licenses, and regulates real estate agents, mortgage brokers, property managers and real estate appraisers [3]. RECA also contributes towards consumer protection through information sharing and investigating complaints.

RECA had 15,500 licensed members in 2018 [4, p. 17], over 80% of which were Real Estate Brokers and Associates. **Table 1** shows the composition of RECA's licensed members.

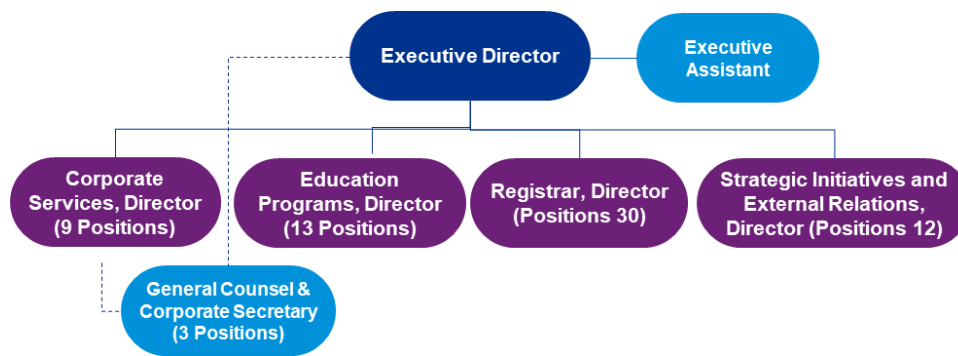
Table 1: Number of Individuals Licensed by RECA in 2018 [4]

Individuals Licensed by RECA	Total	%
Real Estate Brokers and Associates (Including Property Managers)	12,639	81%
Mortgage Brokers and Associates	2,319	15%
Appraisers and Candidates	634	4%
Total	15,592	

3.2 Organizational Structure and Major Functions

The Executive Director of RECA reports to Council and oversees the day-to-day operations of RECA. RECA's Senior Management is comprised of four Directors, specifically for the Corporate Services, Education Programs, Registrar, and Strategic Initiatives and External Relations. RECA employs about 62 individuals, including the Senior Management Team, across four main operational functions [5]. RECA's high-level organization structure is shown in **Figure 1**.

Figure 1: RECA's Organization Chart



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Corporate Services includes RECA's accounting services, human resources, information technology, general counsel and building services.

Education Programs provides regulatory training programs in the industries RECA governs. Training consists of both pre-licensing training for individuals seeking to become licensed, and ongoing training for existing licensees. RECA's training courses are mandatory for industry professionals to obtain and retain their licenses.

The Office of the Registrar is responsible for RECA's regulatory functions, including licensing, discipline (conduct reviews), trust assurance and practice reviews.

Strategic Initiatives and External Relations is responsible for RECA's planning process, communications and stakeholder engagement, and strategic initiatives critical to RECA's mandate.

3.3 Financial Comparison

Table 2 on the following page compares financial metrics of RECA with three other real estate regulatory organizations: Real Estate Council of British Columbia (RECBC), Real Estate Council of Ontario (RECO), and Saskatchewan Real Estate Commission (SREC) [6, p. 38] [7, p. 48] [8, p. 18]. Fiscal Year 2017/18 financial results were compared for all organizations.

Table 2: Comparison of 2017/18 Fiscal Year Financial Results

	RECA	RECBC²	RECO	SREC
Membership (Individuals)	15,592	25,964	86,284	1,794
Total Revenue and Expenses				
Revenue				
Total Revenue	\$ 13,844,869	\$ 12,444,842	\$ 57,348,140	\$ 1,413,706
Non-Education Revenue	9,182,874	11,143,742	53,019,468	1,413,706
Percent of total	66%	90%	92%	100%
Education Revenue	4,661,995	1,301,100 ³	4,328,672	-
Percent of total	34%	10%	8%	-
Expenses				
Total Expenses	13,423,049	10,629,937	54,573,226	1,190,566
Non-Education Expenses	12,505,097	Not Available	Not Available	1,088,880
Education Expenses ⁴	917,952	Not Available	Not Available	101,686
Revenue / Expenses per Member				
Revenue				
Total Revenue	\$ 888	\$ 479	\$ 665	\$ 788
Non-Education Revenue	589	429	614	788
Education Revenue ⁵	299	50	50	-
Pre-licensing Course Fees (Real Estate Agent) [1, p. 9]	2,050	2,069	2,625	2,398
Annual Licence Fees⁶				
First-time Application ⁷	475	800	590	355
Renewal	475	750	390	355
Cost for New Real Estate Agent ⁸	2,525	2,869	3,215	2,753
Expenses				
Total Expenses	861	409	632	664
Non-Education Expenses	802	Not Available	Not Available	607
Education Expenses	59	Not Available	Not Available	57
Operating Surplus				
Excess (deficiency) of Revenue over Expenses	\$ 8,783	\$ 1,421,291	\$ 3,612,486	\$ 243,826
Reserve Fund				
Operating Reserve	\$ 7,730,157	Not Available	\$ 3,509,105	\$ 274,977
Months of Operating Expenses	7.1		0.8	2.8

Implications from this comparison are included in Section 5: Findings by Area of Review.

² RECBC's 2018/19 data displayed.

³ RECBC introduced a new mandatory relicensing education course which contributed an additional \$747K in revenue.

⁴ RECBC and RECO have not disclosed education expenses in their respective Annual Reports.

⁵ RECBC, RECO and SREC do not deliver pre-licensing education directly.

⁶ Annual individual real estate agent fees, including both initial fees and renewal fees are provided.

⁷ RECA offers early registration at \$275 from July to September, and \$475 thereafter.

⁸ Pre-licensing education plus annual license fee. Does not include insurance premiums.

4 Observations and Recommendations

The Review identified one or more high-level evaluation criterion for each item contained within the Terms of Reference. Findings and an evaluation of operational performance against each criterion are provided in Section 5. This section presents the more significant observations with additional context, and provides recommendations. Observations and recommendations are organized by the topics in the Terms of Reference.

4.1 General

Overall, RECA appears to be effectively carrying out its delegated mandate under the *Act*. It has a robust set of policies for an organization of its size and the Review did not find evidence of non-compliance with the policies. However, the Review identified areas in which RECA could improve. Specifically, RECA did not fully meet the Review criteria in the following areas:

- **Financial management:** RECA could improve its financial oversight and reserve management, proactively manage its sustainability, and not become dependent on education revenues to fund its core operations;
- **Administration:** The span of control for the Professional Conduct Review Manager exceeds expected ranges, and Council could benefit from improved reporting of financial performance against the approved budget;
- **Human resources:** RECA has high employee turnover and a relatively high number of employee complaints; and
- **Education and licensing:** RECA has not identified required competencies and educational standards for the professions it regulates.

Specific findings and the evaluation of RECA against criteria in these areas is provided in Section 5: Findings by Area of Review.

4.2 Administration

4.2.1 Organizational Structure

RECA has clear lines of accountability and demonstrates logical groupings of functions. Most supervisory positions have a span of control that is between three and four direct reports [10]. This is on the low end of what would be considered a leading practice [11] and is likely a function of the organization's size—many of its organizational units are small. However, the Professional Conduct Review Manager has 16 direct reports [10]. Professional Conduct is a complex function that requires a high degree of quality assurance and adherence to investigation protocols. As such, it would be expected to have a higher level of supervision. There is a risk that a lower level of supervision could lead to greater non-compliance with policy and processes and inadequate training and development. This could jeopardize the fairness and adequacy of investigations.

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Recommendation

- 1 The Minister should consider requiring RECA to review the level of direct supervision required by its Professional Conduct staff in order to support the level of oversight and guidance needed to maintain the quality of investigations.

4.2.2 Executive Positions

As its sole employee, the Executive Director completes a range of responsibilities on behalf of Council, including managing the day-to-day operations of RECA. The current Executive Director is retiring in August 2019 and Council is in the process of selecting his replacement. The Executive Director has held the position for over 20 years, and understands his role and executes his duties to the satisfaction of Council. While some Council members raised concerns about the Executive Director's influence on Council Chairs and perceive that the Executive Director acts beyond the scope of his role [12], Council's performance evaluations of the Executive Director in 2016 and 2017 indicate that the Executive Director meets performance expectations [12]. Council did not perform an evaluation of the Executive Director in 2018.

RECA's Senior Management team is comprised of four directors, who appear to understand their roles and fulfill their responsibilities [12]. No significant performance concerns amongst Senior Management were identified during the Review.

Nearly half of Council expressed concerns about the responsiveness of Senior Management to Council. However, Council requests of Administration are made through the Council Chair. The current and three past Chairs interviewed in the course of conducting this Review and the Governance Review were generally satisfied with the responsiveness of Administration.

4.2.3 Planning Documents and Council Reporting

RECA has a robust strategic and business planning process and aligns its budget with the business plan to fund planned initiatives. Progress against the plan is monitored by Senior Management and reported to Council. Metrics from the Organizational Strategy and the Corporate Plan are used to guide performance management. RECA is nearing the end of its current four-year planning cycle and is preparing to develop its next strategy. Some Council members observed that four years is a long time to address significant changes in the industry, such as the emergence of on-line brokers and blockchain.

To help address this consideration, RECA facilitates Council's review and confirmation of the strategy before each annual budget process. In this planning cycle, this has resulted in new projects being added to the business plan that align with the RECA's strategic priorities. It remains Council's prerogative to change RECA's strategy at any time to reflect significant changes in the operating environment.

Two Council meeting packages reviewed demonstrated that Council appears to receive timely, comprehensive and appropriate information. One key reporting challenge, also observed in the Governance Review, is that financial information is not consistently presented against budget and performance metrics are not linked to intended outcomes [13, pp. 45, 46]. There is a risk that Council will not be able to provide effective oversight of RECA's operations without adequate information necessary to effectively monitor its financial performance and achievement of intended results.

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Recommendations

- 2 The Minister should consider requiring that RECA's quarterly reporting of actual results be provided to Council in the same level of detail and using the same line items as the approved budget (Governance Review Recommendation 23).
- 3 The Minister should consider requiring Council to implement a performance management framework and use it to evaluate and communicate RECA's effectiveness in fulfilling its mandate (Governance Review Recommendation 21).

4.3 Financial Management

4.3.1 Financial Status

RECA appears to be financially stable. It has realized surpluses in fiscal years 2017 and 2018, its most recent two fiscal years, and has accumulated an operating reserve equivalent to 7 months of its operating expenses [14]. In 2018, RECA's debt servicing capacity exceeded the minimum coverage ratio specified in its covenants [15].

In its 2019 fiscal year, RECA forecasts a decline in revenue and has adjusted expenses to compensate [15]. The decline in revenue is primarily related to an 18% decrease in course enrollments. There is a risk that this could signal a future reduction in new and renewing members, which could have an impact on RECA's licensing revenues. RECA members renew their licenses in September. Any significant changes in renewal volumes will not be known until after that time.

RECA's operating reserve relative to that of the Saskatchewan Real Estate Council (SREC) and the Real Estate Council of Ontario (RECO), comparable organizations to RECA, is sizeable. A survey of non-profit organizations in the United States shows that only 25% of non-profit organizations have an operating reserve greater than 6 months of expenditures [16], and Propel Nonprofits, an organization that helps non-profit groups, suggests a reserve of between 3-6 months is common [17].

While RECA's current operating reserve is high compared to some benchmarks, it does not have a policy governing the size of its operating reserve and what to do with amounts in excess its reserve requirements. As a result, it may be possible that RECA has excess funds in its operating reserve that it could reinvest in operations or use to reduce long-term debt.

Recommendations

- 4 The Minister should consider requesting that RECA prepare a financial sustainability plan.
- 5 The Minister should consider requiring that RECA develop a policy governing the use of its operating fund reserves, including the target size of the fund and what to do with funds in excess of the target. For example, excess funds could be re-invested in operations or used to reduce debt.

4.3.2 Council Oversight of Financial Management

In the Governance Review, it was highlighted that Council operated the first six months of its fiscal year without a Finance and Audit Committee. The Governance Review also noted that it was unclear at what level of detail RECA's budget is being approved. Variance reporting is done at a different level of detail than the approved budget, and as an example, it would appear that actual legal expenses incurred by the

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organization were in excess of the approved budgeted amount. The Governance Review concluded that RECA did not have effective Council oversight of financial management.

These findings are equally relevant and important to this Operational Review.

Recommendations

- 6 The Minister should consider requiring Council to more clearly approve RECA's spending authority by approving a budget at a level of detail consistent with the authority granted. . The approved budget should be clearly stated as such.
- 7 The Minister should consider requiring that RECA's quarterly reporting of actual results be provided to Council in the same level of detail and using the same line items as the approved budget.

4.3.3 Revenue Model

RECA's primary source of revenue in 2018 was from license fees (approximately 66%) followed by education course fees (approximately 34%) [14].

Table 2 showed that, in 2018, RECA's license fees were in line with those of three other real estate regulators. However, RECA's regulatory operations may be subsidized by funds generated through the delivery of education courses. In 2017, the last year in which all three comparators produced segmented statements, RECA's non-education expenses per member were the higher than the three other real estate regulators compared and below its average non-education revenue per member.

If RECA were to increase its license fees to offset its non-education expenses, it may need to increase them in the range of \$200 per member, before considering any possible reductions in expenditures. Such an adjustment would result in license fees that continue to be lower than those of British Columbia, but higher than those in Ontario and Saskatchewan. If RECA relies on revenue from education to subsidize operations, it would be unable to consider delivery of education through third-party organizations, such as educational institutions.

Education fees are intended to cover the full cost of delivering education, including course development and indirect costs. RECA recently conducted a benchmarking study of its course fees and determined that its pre-licensing course compares favourably with other jurisdictions [9, p. 8]. The study considered fees paid to the regulator and to any third parties that delivered courses.

Course development costs are capitalized and amortized over three years [18]. RECA's education revenue is projected to exceed its direct costs, including amortization, by over \$2 million annually from 2018 to 2022 [19, p. 36]. While RECA's Education Course Pricing Policy does not require education courses to be revenue-neutral, the amount of surplus in 2018 from education courses significantly exceeded RECA's operating fund surplus. This suggests that RECA may be partially dependent on surpluses earned from its courses to avoid an operating deficit. Such dependence may also influence future exploration of alternative delivery models, including the development and delivery of courses by third parties.

Recommendations

- 8 The Minister should require that RECA set its license fees to cover its regulatory operations. This will promote more sustainable funding should there be changes in RECA's delivery of education, and will

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make RECA's costs to members more transparent. This may require a transition period to allow RECA to realign its fees with its expenditures.

- 9 The Minister should consider requiring RECA to demonstrate that its regulatory operations are not dependent on revenues from education courses, and requiring RECA to revise its Education Course Pricing Policy to stipulate that surplus education revenues cannot be used to offset regulatory operations.

4.4 Human Resources

4.4.1 Human Resources Practices

RECA has human resource policies and procedures that are generally consistent with common practice for an organization its size. However, RECA's human resource policies lack details on compensation management (e.g. how bonuses will be assigned, job-based salary ranges, or general salary grids) [20].

RECA has a whistleblower policy, which outlines ways for employees to submit concerns and complaints anonymously [21]. The policy prohibits retaliation or any adverse employment action towards individuals, who in good faith, raised concerns or submitted complaints. Yet, the process is managed internally, which may be a deterrent for some employees submitting complaints if they perceive the process will not guarantee anonymity. If it is perceived that the current processes will not protect anonymity, or will not be given due diligence, employees may be reluctant to raise concerns or report complaints. Valid concerns may not be surfaced and adequately addressed for the employee, and recurrent or systemic issues may not be identified.

In the past three years, nine human resource complaints were filed, of which two led to disciplinary action on substantiated allegations [22]. Also, RECA's employee turnover ratio grew substantially in 2018 to 33% from 16% the previous year [20]. In some of the interviews with Management, it was suggested that the higher turnover in 2018 was in part attributable to RECA's move to the new building; this was not substantiated. One benchmark source suggests the average turnover for North American government entities with revenue less than \$100 million is 5% [23]. High turnover is often a key indicator of problems with employee engagement or morale, and can be symptomatic of more general concerns, such as perceived fairness in the work place or working conditions.

Senior Management interviews and results from an independent employee survey commissioned by RECA suggest it has a positive work culture and good employee engagement [24]. The survey reported that the majority of respondents (75%) were satisfied with their employment and perceive RECA positively [24].

RECA conducts annual performance evaluations of its staff using a standard evaluation form that promotes organization-wide consistency in evaluations. However, the process is different for Senior Management. Directors initiate their reviews by writing a letter to the Executive Director, which is then followed by an email exchange. Good practice in performance management includes having a formal process to promote consistency across employees' evaluations and over time, and to help ensure adequate documentation of performance.

Recommendations

- 10 The Minister should consider requiring RECA to conduct a fulsome review of its human resource practices and workplace culture to determine potential system causes for its high turnover and complaints. The review should be conducted by an independent consultant to remove potential perceptions of bias and encourage open participation. The review should include an employee survey

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and direct employee engagement. The Minister should also consider encouraging RECA to conduct ongoing employee surveys (annual or bi-annual) to track changes in employee engagement over time.

- 11 The Minister should consider requesting RECA to enhance its whistleblower policy and procedure by using an external service to receive complaints and concerns, and provide initial process advice to employees. An external service should help to remove any perceptions of bias that may accompany an internal reporting process and encourage open reporting of concerns.
- 12 The Minister should consider requiring RECA to implement a formal compensation policy to increase transparency around how salaries and bonuses are determined.

4.4.2 Organization Development

RECA has professional development and training policy [21]. During the annual performance review, employees are encouraged to identify professional development goals and RECA allocates funds for each department for training and skill development [20]. This Review did not identify any significant gaps in RECA's commitment to organization development and continuous improvement.

4.5 Scope and Structure

4.5.1 Size of the organization

As shown in **Table 3** below, RECA's average cost per member is higher when compared to other real estate regulators in Canada: RECBC [6], RECO [7], and SREC [8].

Table 3 Comparison of 2016/17 Expenses per Member

	RECA	RECBC	RECO	SREC
Total Expenses per Member (2017)	\$745	\$286	\$613	\$569

This is largely attributable to RECA's education programs. RECA is unique, as it develops and delivers pre-licensing education, while other jurisdictions outsource training and course delivery to educational institutions and colleges. Staffing levels for RECBC, RECO and SREC were not available, however, labour is typically a regulators' largest cost making total expenditures a reasonable proxy for overall staff effort and organizational size.

RECA has 62 employees [5], and Senior Management believe RECA's staffing level to be appropriate. RECA's organizational structure demonstrates staffing levels allocated to functions consistent with the emphasis and priorities of the organization. No significant gaps or inconsistencies were observed.

4.6 Implementation of Prior Recommendations

4.6.1 Status of Implementation

In 2016, Council commissioned Field Law to assess the regulatory performance of RECA on five main areas: Office of the Registrar, Professional Conduct Reviews, Conduct Proceedings, Administration of Hearings, and Trust Assurance and Practice Reviews [25]. Field Law based its review on the Professional Standards Authority's *Standards of Good Regulation*, and upon its own compilation of general principles of good regulation, which it refers to as Regulatory Principles. Field Law made 33 recommendations, five

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of which would require legislative changes to implement. RECA has implemented or is in the process of implementing the 28 remaining recommendations [26].

The Field Law Review provided a credible, independent perspective of RECA's regulatory performance, which is important to help ensure RECA fulfills its regulatory mandate fairly and effectively. Leading practice is to review the performance of regulatory bodies periodically. For example, the Professional Standards Authority in the UK undertakes regular performance reviews of the regulatory bodies that it oversees.

As RECA has plans to implement an Enterprise Risk Management framework, the continued quality of its regulatory performance may be a suitable risk for Council to include in this framework.

Similarly, in 2017, Watson Advisory conducted a governance review to identify opportunities for improvement [27]. The Watson Advisory made 46 recommendations based on its assessment of RECA's practices against leading governance practices that it has identified through research and experience in this area. Only about half of the recommendations from Watson Advisory are either completed or are in progress [27]. Most recommendations that are pending implementation are labelled as low or medium priority [28].

During this review, fifteen recommendations marked complete from the Watson and Field Law reviews were randomly selected and were confirmed to have been implemented [28].

Recommendations

- 13 The Minister should consider requiring RECA to conduct independent reviews of its regulatory performance on a regular, periodic basis (e.g. every five years).

4.7 Investigative and Enforcement Actions

4.7.1 Investigative and Enforcement Policies

The *Real Estate Act* provides RECA the authority to govern, regulate and enforce standards as outlined in the Ministerial Regulations, Bylaws, and Rules. These governing documents outline expectations for investigation and enforcement actions for consumers, industry professionals, associations, and other stakeholders.

It is necessary for the policies and procedures that support RECA's regulatory program areas – Professional Conduct Reviews, Professional Conduct Proceedings, and Trust Assurance and Practice Review – to be aligned with these governing documents. A review of key policies and procedures across their regulatory program areas provided no examples of inconsistent practice with the *Real Estate Act*, Ministerial Regulations, Bylaws and Rules [2, 29, 30, 31, 32, 33, 34, 35].

Further, it was noted through the Field Law Regulatory Performance Review that RECA's policies, procedures and processes were fair, transparent, and consistent with requirements of the legislation [25]. Field Law made recommendations for continuous improvement of some policies and procedures to increase transparency, for example the Good Character Policy. The Review examined the status of the implementation of the identified recommendations (Section 4.6.1), and observed that Field Law recommendations that did not require changes in legislation were implemented or in progress of being implemented [27].

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4.7.2 Compliance with Policies and Procedures

It is important for RECA to maintain clarity and consistency throughout its investigations and enforcement activities. Compliance with established policies and procedures supports RECA in achieving this objective. Investigation and enforcement cases are rooted in direction mandated by the *Act*. A review of a random selection of case files did not identify any cases of non-compliance [36, 37, 38].

Compliance with policies and procedures was demonstrated through clear and consistent documentation of issues as they relate to legislation; facts and evidence obtained; evidence that was used to support a conclusion; and the rationale supporting the conclusion or decision being made regarding the case. This clarity supports both consumers and industry professionals in understanding how the identified issue relates to legislative requirements, and how the resulting conclusions or decisions are being made. It further supports industry professionals in understanding how to maintain compliance with legislation in the future.

4.7.3 Administrative Actions and Investigations

There are many factors that need to be taken into account during an investigation that results in administrative action. While no two cases are likely to be exactly alike, consideration of all contributing factors may result in a consistent result or outcome. It is important for RECA's investigation and enforcement or administrative actions to be adequate, consistently applied, and appropriate across their regulatory programs to demonstrate neutrality in action and appearance. The table following provides a summary of the Alberta Ombudsman's principles of administrative fairness and demonstrates how RECA addresses each.

RECA's Compliance with Principles of Administrative Fairness

Alberta Ombudsman's Principles of Administrative Fairness		RECA Observations
Chain of Legislative Authority	The legislation that grants decision making authority, and to whom it grants the authority	<i>Real Estate Act</i> provides legislative authority to the Council to establish bylaws and rules regarding procedures for investigations, hearing and appeal panels, and the application of sanctions. The Bylaws and Rules, as established by Council, provide the Executive Director with specific authorities and the ability to delegate to members of staff to ensure that the RECA can carry out their duties as a regulator of the Real Estate Industry.
Duty of Fairness	The established processes to support meaningful review, and ensure a fair outcome for individuals	RECA has established formal Professional Conduct Review, and Hearing and Appeals Policies and Procedures. These documents clearly outline for RECA employees the expected processes and procedures to be followed when completing their duties. The Real Estate Act, Bylaws provide investigators processes, as well as a Schedule of Fees for administrative penalties for contraventions to specific sections of the <i>Real Estate Act</i> . There are documented processes to ensure the disclosure of an existing relationship between parties to support a fair and impartial review of a case. RECA has adopted and tailored the Jaswal Factors to consider the vulnerability of the individual affected, as well as the consequences suffered by the industry professional.
Participation Rights	Providing the individual with a full and fair opportunity to understand and participate in the decision-making process	The Professional Conduct Review Policy Manual, and the Hearing and Appeal Practice and Procedure Guidelines provide employees with expectations for the involvement of all parties throughout the investigation, hearing, and appeal processes. For Hearings and Appeals, there are established processes for the Notice of Hearing to inform parties that information contained in the investigation file will be disclosed. Further, there is an established Document Exchange Protocol that outlines the timelines within which documentation must be provided to the opposing party.
Adequate Reasons	Rationale and considerations that supported the decision-maker in reaching their conclusion	In the case files reviewed, decision-makers had outlined key factors of the case, evidence that was provided, their interpretation of the evidence, and the resulting conclusion that was drawn for the case. In case files reviewed, consideration was given to previous cases of a similar nature or outcome, and / or breach of the <i>Real Estate Act</i> , in order to determine the appropriateness of a sanction.
Apprehension of Bias	Ensuring independence in thought and appearance for both parties to ensure impartiality in the processes	The Hearing and Appeals Practice and Procedure Guidelines outline how parties can object to the composition of the hearing panel should they not be independent, neutral, and unbiased towards the parties. In addition, there are processes to advise panel members on when they should not accept appointments to a Hearing or Appeals panel.
Legitimate Expectation	Regular practice and procedures are followed in the decision-making process	Within the scope of the review, there were observed incidents of established processes or procedures that were not being followed. RECA has outlined expectations for the investigation and hearing and appeals processes on their website to support industry and the public in understanding what to expect.
Exercising Discretionary Power	The degree of discretionary powers available to decision-makers, and whether they are able to exercise those	When making a decision regarding a case, the decision-makers had outlined considerations via the Jaswal Factors, mitigating and aggravating circumstances, as well as case precedence. An explanation of how these factors supported the conclusion were provided in the cases that were reviewed.
Decision is Reasonable	Ensuring whether the correct decision was made, or whether another decision would be more appropriate	In the cases that were reviewed, decision-makers outlined what evidence was provided, how the evidence was used and interpreted, and how it supported the decision makers in drawing their conclusion(s).

RECA, like many regulators, follow principles of case precedent, whereby the findings and final outcome of a previous case is used as supporting evidence when deciding subsequent cases with similar issues or facts. Through the examination of a randomized selection of case files resulting in a variety of outcomes, documentation indicated that case decisions were based on case precedent set through similar breaches of conduct, and were further evaluated through Jaswal Factors which included an assessment of aggravating and mitigating factors in the case [37, 38].

Jaswal Factors are widely-used by Canadian regulators, and are based on the leading Court case, *Jaswal v. Newfoundland (Medical Board)* from the Newfoundland Supreme Court. The Jaswal Factors outline a set of criteria for consideration when deciding appropriateness of sanctions. RECA uses the Jaswal Factors as a framework and has modified the criteria within the framework to be applicable to the real estate industry. Consideration of Jaswal Factors are used to support investigators in determining reasonable sanctions and includes the following criteria:

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- Nature and gravity of the allegation
- Presence or absence of prior complaints or discipline
- Vulnerability of the individual affected
- Number of times the offence was proven to have occurred
- Role of industry professional in acknowledging misconduct
- Consequences suffered by the industry professional
- Impact of the conduct on the public
- Need to promote specific and general deterrence
- Maintain the public's confidence in the integrity of the industry
- Outside range of permitted conduct
- Range of sanctions in other similar cases, and
- Other mitigating or aggravating factors.

While there were no inconsistent practices observed in the case file review, interviews with some Council members highlighted concerns regarding the length of some investigations, and a perceived increase in Section 54 dispositions (i.e. lifetime withdrawal from the industry) of the *Real Estate Act*. Further there were no indications that the principles of Administrative Fairness were not followed.

There are currently 14 open files older than 30 months [39]. This compares to 96 files closed between 2016 and 2018 [40, p. 19] [4, p. 19]. Senior Management noted that when a subject leaves the jurisdiction or is uncooperative, there are limited options for RECA to pursue and resolve the case. This can lead to some investigations remaining open and unresolved.

An application for a Section 54 lifetime withdrawal may be pursued by the industry professional at any point during the investigation. Receipt of an application puts an investigation on hold and Council approval is required to formally close the investigation. A historical review of Section 54 dispositions indicates that the volume of cases resulting in a lifetime withdrawal outcome fluctuates annually. The 2017-18 increase in Section 54 applications follows a significant increase in the number of new case files opened in 2016-17. There were 17 withdrawals in 2017-18, which is much higher than 7 withdrawals during the year before, but comparable to 15 withdrawals in 2013-14.

During interviews with Council, it was stated that the increase in Section 54 dispositions might be indicative of pressure from investigators [41]. Within the Section 54 Application (Lifetime Withdrawal) Policy, RECA instructs investigators to not provide information about an application during an interview, remain neutral, and neither encourage or discourage an application.

RECA's policy states that allegations that a Section 54 application is being made under undue pressure, can be brought forward to the Professional Conduct Review Manager. However, RECA does not have a mechanism for an industry member that is being investigated to lodge a complaint regarding the process or conduct of an investigator to someone outside of the Professional Conduct Team.

Recommendations

- 14 The Minister should consider requiring RECA to establish a complaints process for industry professionals who are being investigated. This process would include logging complaints lodged against investigators to better support training and development needs for all team members.

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Complaints should be made to an individual or department that is independent of the Professional Conduct Team.

This practice, when combined with increased oversight over investigations (see Section 4.2.1) could help to promote a standard of excellence and fairness within RECA's investigations.

4.7.4 Administrative Fairness

This Review compared key policies and procedures from the Hearing and Appeals Practice and Procedures with the *Real Estate Act*, Ministerial Regulations, Bylaws, and Rules and found no examples of inconsistent practices.

The documentation reviewed demonstrated procedures for establishing hearing and appeals panels including the ability for industry professionals to request an alternate panel member, or for a panel member to excuse themselves in cases of real or perceived conflicts of interest.

As outlined in Section 4.7.3, a review of randomly-selected case files demonstrated the presence of case precedents, as well as a detailed examination of factors contributing to the presenting issue including a review of aggravating and mitigating factors as part of the Jaswal Factor analysis. There were no examples of inconsistent practice observed [37, 38].

To support continued administrative fairness, it is important that panel members are sufficiently experienced to be effective in their roles. According to the *Act*, panels must include a Council member. As was outlined in the Governance Review, Council members expressed that it typically takes two to three years for a Council member to become an effective panel member. Council terms are three years. As well, Council members indicated that the time commitment involved in serving on Council and committees, as well as on hearing panels was considerable for a volunteer board. Council members are industry professionals and have obligations to their own businesses or practices, and are at times challenged to meet the demands of their Council responsibilities.

RECA maintains a schedule of appropriate administrative penalties by contravention to promote consistency and fairness in their application across cases [30, p. 23]. However, during one industry stakeholder interview, it was noted that penalties do not always appear to be reflective of the seriousness of a violation.

This perception was partially reflected in the Field Law Regulatory Performance Review. It concluded that "the hearings process is transparent, fair, and compliant with the principles of natural justice" [25, p. 64] and noted that "while there was some variance in the severity of the sanction [in] each case, there was also variance in the facts" [25, p. 60]. However, it also identified that penalties may "no longer [be] appropriate given their relationship to, for example, average real estate commissions [25, p. 61]." RECA is currently reviewing its administrative penalties.

Of the case files reviewed as part of this Review, it was observed that each case considered the impacts of the conduct on the complainant, the public, or the industry member, as well as consideration as to whether the industry member admitted to the conduct, felt remorse, or demonstrated a commitment to preventing the action from happening again [37, 38].

KPMG conducted a survey of industry members that were the subject of a conduct review in the last three years, and a survey of complainants in the last three years. The results of both surveys showed evidence of strong bias based on the favourable or unfavourable outcome of their conduct review. Respondents that perceived the result of their case was favourable to them rated RECA's administrative fairness to be positive. Respondents that perceived the result of their case was unfavourable rated RECA's

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administrative fairness to be negative. Notwithstanding this bias, the Review noted that Respondents that perceived a favourable outcome rated the process highest in terms of fairness, and lowest in terms of awareness of rights and expectations.

Survey results are shown in the figures below. The surveys are provided in Appendix 4. Percentages shown are the number of respondents that somewhat or strongly agreed with each statement. Results are shown separately for respondents that perceived the outcome to be favourable to them or not.

Table 4: Survey of Industry Members Subject to a Complaint

Survey Question	Respondents by Perception of Outcome	
	Perceived Outcome to be Favourable % Somewhat or Strongly Agree	Perceived Outcome to be Unfavourable % Somewhat or Strongly Agree
I felt fairly treated by how RECA handled the complaint against me.	81%	14%
I felt fairly treated by how RECA handled the investigation against me.	85%	19%
I felt that RECA investigated the complaint against me in a timely manner.	81%	43%
I felt that RECA adequately considered all factors and evidence brought forward during the investigation.	90%	15%
If the investigation resulted in a hearing, regardless of the decision, I felt RECA's hearing was fair.	100%	11%
I felt RECA treated my appeal of a conduct decision fairly.	100%	9%
I felt that RECA held the hearing and / or appeals panel, if applicable, within a reasonable timeframe.	82%	31%
I felt like the decision regarding the outcome of my case (e.g., the sanctions) was made fairly.	91%	8%
Decisions regarding the outcome of my case (e.g., sanctions) were made in a timely manner.	89%	50%
I felt that I was provided adequate information from RECA regarding the outcome of my case.	83%	36%
I was provided sufficient information to understand the implications of the decision made in my case.	85%	29%
I was made aware of my rights during the Professional Conduct Review and / or Proceedings.	77%	36%
I was aware of what to expect during the Professional Conduct Review and / or Proceedings.	59%	30%

Table 5: Survey of Complainants

Survey Question	Respondents by Perception of Outcome	
	Perceived Outcome to be Favourable	Perceived Outcome to be Unfavourable
	% Somewhat or Strongly Agree	% Somewhat or Strongly Agree
I felt fairly treated by RECA while it handled my complaint.	92%	30%
I felt that RECA addressed my complaint in a timely manner.	85%	47%
I felt fairly treated by RECA while it investigated my complaint.	100%	31%
I felt that RECA investigated my complaint in a timely manner.	92%	46%
I felt that RECA adequately considered all factors and evidence brought forward during its consideration of my complaint.	92%	7%
Regardless of the outcome, I felt RECA's hearings process and any subsequent appeal was fair.	83%	6%
I felt that RECA held the hearing or appeals panel within a reasonable timeframe.	71%	21%
I felt like the decision or outcome related to my complaint was fair.	77%	3%
I felt that I was provided adequate information from RECA regarding the outcome of the case.	77%	15%

Recommendations

- 15 The Minister should consider examining the possibility of amending the *Act* to remove the requirement for a Council member to sit on hearing panels.
- 16 The Minister should consider requiring that RECA complete its review of administrative penalties as recommended in the Field Law report, and that it establish a policy that guides future updates based on changes in circumstances or minimum timeframes.

4.8 Education and Licensing

4.8.1 Member Licensing

As part of this Operational Review, key licensing policies and procedures were compared to the *Real Estate Act*, Ministerial Regulations, Bylaws, and Rules, and no examples of inconsistent practices were observed [77, 78, 79, 80, 44]. Similarly, Council and Senior Management did not raise concerns about RECA's licensing. They perceive RECA's licensing to be thorough and effective.

They reflected that they have received very positive feedback on the ease of online registration, especially for large brokerages. At the same time while it was noted that this may be a longer process for a few industry members that register under multiple professions, there were no consistent concerns expressed from industry stakeholders.

The Field Law Regulatory Performance Review report concluded that RECA's "licensing process appears to be fair, transparent, effective, reasonable, and based on RECA's standards" [25, p. 38].

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4.8.2 Member Education

RECA fulfills its mission of protecting the public partially by educating professionals on industry regulations. RECA aims to provide “innovative, leading-edge career preparation and training” [9, p. 2]. RECA offered its first course in 2011, and by 2015, was responsible for planning and delivering all the pre-licensing and re-licensing courses for its members [9, p. 3]. In 2018/19 RECA is expected to have 19,514 unique learners of which 88% will take courses for re-licensing and 12% for pre-licensing [42].

RECA has won several education awards, including the 2014 and 2016 Pre-Licensing Education Awards from the Association of Real Estate License Law Officials (ARELLO) [43]. It offers most of the pre-licensing education in an online format, while the re-licensing education is available in both a classroom and online format [44, 45]. Over the years, RECA has expanded and upgraded the content and platform of the training programs.

RECA differs from most other jurisdictions in that it develops and delivers pre-licensing education. AREA has raised this as a potential conflict of interest. The Review did not identify how a regulator responsible for establishing education standards would necessarily be in a conflict of interest position in delivering education.

As a regulator, RECA is responsible for establishing the required competencies of the professions it regulates. Defined competencies, along with the standards by which they are to be assessed, are necessary for the regulator to determine if education programs deliver the information and expectations necessary for professionals to meet standards of professional conduct. In the case of RECA, where it develops and delivers its own courses, defined competencies could also help demonstrate that course material does not cover material that is not required to meet competencies, such as commercial aspects of the industry. Defined competencies provide transparency and accountability to the profession and to the public as to the expected knowledge of the profession.

RECA has not defined competencies for its professions and set education standards beyond what can be inferred from the course material. The lack of defined professional competencies and education standards limits RECA's ability to pursue other methods of developing courses, such as through third-party educational institutions as is done in other jurisdictions. In addition, RECA cannot clearly demonstrate the relevance and necessity of its courses without references to the professional competencies they are trying to build. More generally, accredited professions typically define themselves based on a standard set of competencies, and the lack of defined competencies in RECA's case undermine the credibility of its professions.

RECA has not developed competencies as it is waiting to participate in a national initiative coordinated by the Real Estate Regulators of Canada. RECA anticipates this initiative to take two to three years. At present, RECA is unable to contribute its own defined competencies to help shape a national consensus.



Recommendations


- 17 The Minister should consider requiring that RECA develop and publish competencies for each of its professions, and evaluate its education courses against the competencies to ensure there are no missing or excess material. This should not preclude RECA from participating in the national initiative for this.

5 Findings by Area of Review



For each item identified in the Terms of Reference, KPMG developed evaluation criteria and confirmed the criteria with Service Alberta. The evaluation criteria are shown along with KPMG’s observations and an indication of whether or not RECA generally meets, partially meets or does not meet the criteria. Cross references to other items are noted in brackets.



The use of the term Council in the table refers to the appointed Council members, and not RECA as a whole.




Ref	Review Item	Criteria	Observations	Rating
1. General				
1.1	<p>Overall effectiveness of fulfilling mandate</p> <p>Review and evaluation of whether RECA is effectively carrying on its delegated mandate under the <i>Real Estate Act</i></p>	Summative evaluation based on assessment in all areas of investigation	<p>RECA met most of the defined criteria for this review. It did not meet one criterion pertaining to Council’s oversight of financial management. Other criteria in which it partially met the criteria pertained to:</p> <ul style="list-style-type: none"> — Organization structure; — Council reporting; — Financial status; — Human resources practices; and — Member education. <p>The deficiencies identified in the Review do not significantly impede RECA’s ability to effectively carry on its delegated mandate under the <i>Act</i>. However, they indicate areas in which RECA could improve its operations.</p>	<p>Partially meets</p> 
1.2	<p>Policies and procedures</p> <p>Review and evaluation of key policies and procedures for adequacy, relevancy, and consistency</p>	Key policies and procedures are relevant, adequate as compared to general practice amongst non-profit corporations	<p>This review compared RECA’s policies and procedures with the recommended practice for non-profit organizations [46, 47], and did not identify any significant gaps in policies that would impede RECA from carrying out its duties.</p> <p>RECA’s documentation did not always contain distinct policy statements and at times blended policies with procedures, however, the policy and procedural documents were generally thorough.</p>	<p>Generally meets</p> 


Ref	Review Item	Criteria	Observations	Rating
1.3	<p>Compliance with policies and procedures</p> <p>Review and evaluation of whether the key policies and procedures above are being followed</p>	<p>Key policies and procedures are being followed as intended</p>	<p>Compliance was tested across the policies and procedures of several key functions within the RECA organization including:</p> <ul style="list-style-type: none"> — Human Resources: RECA's Performance Appraisal Policy was assessed using employee performance reviews for individuals across varying levels of the organization [21, p. 38] [48]. In all cases, there were no inconsistencies observed; however, the Senior Management reviews were not captured on the standard RECA employee performance and development review form [49]. The performance discussion amongst Senior Management used other forms of documentation, including email exchanges [49]. The standard RECA performance and development review form is detailed and includes a number of components around employee performance [50] that are not necessarily reflected in the Senior Management evaluations. For example, while the form addresses attendance, this was not referenced in the Senior Management performance evaluations reviewed [49]. Although this is not a breach of policy, it could lead to incomplete or inconsistent Senior Management evaluations. — Information Technology: Compliance with RECA's Incident Response Plan Policy was reviewed [51]. This policy determines how RECA responds to cybersecurity attacks and other serious Information Technology incidents. RECA's Information Technology major incidence logs over the last 18 months were assessed, and the review did not identify any gaps [52] [53, p. 10]. — Finance: Expense policies were reviewed, including from the Policies of Council: 7.1 Reimbursement of Expenses, 7.2 Honoria, 7.18 Professional Development Policy, and from the Employee Guide: Appendix F - Travel Expense Policy [54] [21]. Ten expense reports were reviewed to assess if (a) the relevant form and supporting documents were presented, (b) the expense was approved by authorized individuals, and (c) the claim amount was within the allocated limit [55]. In all ten cases tested, there were no inconsistencies observed. — Education: RECA has five policies focusing on education and this review tested four for compliance: Refund, Course Extension, 	<p>Generally meets</p> 



Ref	Review Item	Criteria	Observations	Rating
			<p>Exam Re-write, and Exemption [56]. There was no incidence of irregularity with policy in the five cases reviewed [52].</p> <ul style="list-style-type: none"> — Licensing: Two policies, the Labour Mobility Policy and Also Known As (AKA) Policy were reviewed for compliance across four cases each, and no examples of inconsistent practice were observed [57, 58]. — Trust Assurance and Practice Review: Five cases were randomly selected, representing Real Estate and Mortgage reviews. These cases were assessed for compliance with a requirement that recommendations be made as an outcome of each review. Practice reviewers are to provide alternatives and possible strategies to prevent future problems and interpretations of relevant sections of the <i>Real Estate Act</i> and Real Estate Rules [32, p. 4, 33, p. 5]. The Real Estate Rules were created by RECA to set the standards of practice expected of professionals in Alberta. The cases reviewed were consistent with this requirement [38]. — Professional Conduct Reviews: The policy requirements for a Report to the Executive Director were tested across ten randomly selected cases that resulted in a variety of outcomes including: insufficient evidence, an advisory note, a refusal, a lifetime withdrawal, a transfer to legal, and five cases of administrative penalties [35, p. 49]. While each of the cases reviewed contained slightly different information dependent on the nature of the case and the type of evidence obtained, reports were compared with expectations outlined in the Professional Conduct Review Policy and Procedure Manual and no inconsistencies were observed [36]. — Professional Conduct Proceedings: The disciplinary process as outlined in Part 3 of the <i>Real Estate Act</i>, requires that case presenters for the Executive Director present cases to panels, and if a panel finds the industry member's conduct to be deserving of sanction, impose appropriate disciplinary sanctions and costs [34, p. 1]. This requirement was reviewed across five randomly selected cases that resulted in a variety of outcomes including: complainant appeal, insufficient evidence, 	


Ref	Review Item	Criteria	Observations	Rating
			administrative penalty, lifetime withdrawal, and hearing panel decision on a conduct hearing. There were no inconsistencies observed [37].	
2. Administration				
2.1	Organizational structure Review and evaluation of the organizational structure of RECA's administration	Organization structure promotes clear lines of accountability and effective control	RECA's organizational structure appears to have clear lines of accountability and demonstrates logical groupings of functions. The organization has four layers and most functions appear to have an appropriate span of control (e.g., between three and four direct reports per supervisor). However, the Professional Conduct Review Manager has an above average number of direct reports with up to 16 [59]. This high span of control results in a lower level of supervision in an area that has a high degree of complexity, a need for quality assurance, and strict adherence to legislation, rules and good investigative practices.	Partially meets 
2.2	Role of Executive Director Review and evaluation of the Executive Director's (ED) understanding of their roles and responsibilities	Executive Director understands role and responsibilities	Council members, the Executive Director and Senior Management indicated that the Executive Director understands his role and fulfills his responsibilities appropriately. However, some Council Members and industry stakeholders questioned if the Executive Director unduly influences the Chair and Council, or acts on behalf of Council without authority. The four current and past Chairs interviews expressly denied any undue influence from the Executive Director. Council's most recent performance evaluation of the Executive Director concluded that the Executive Director is performing at expectations [60]. Many allegations that the Executive Director overstepped his role were provided by some Council members and the Alberta Real Estate Association (AREA). Allegations pertained to his communication with the Government and AREA, his responsibility pertaining to education standards, and his communications with Council and its committees. In reviewing documents related to 54 examples of correspondence and actions over the past 18 months, no evidence of the Executive Director exceeding his authorities was identified [61].	Generally meets 


Ref	Review Item	Criteria	Observations	Rating
2.3	<p>Role of Senior Managers</p> <p>Review and evaluation of Senior Management's understanding of their roles and responsibilities</p>	Senior Managers understand their roles and responsibilities	Council members, the Executive Director and Senior Management indicated that the four Directors that comprise the Senior Management team understand their roles and fulfill their responsibilities.	Generally meets 
2.4	<p>Exercise of roles and responsibilities</p> <p>Review and evaluation of the exercise of the roles and responsibilities of the ED and Senior Management</p>	No significant exceptions or omissions are noted in the actions of the Executive Director and Senior Management in fulfilling their responsibilities	<p>Nearly half of Council raised concerns about the responsiveness of Senior Management to Council. They perceive that there have been incidents where Senior Management did not fully address Council's concerns or requests (e.g. requests to reconcile financial statements with budget) [12]. However, four current and past Chairs interviewed, through whom Council requests are made to Senior Management, were generally satisfied with the responsiveness of Senior Management.</p> <p>Council's performance evaluations of the Executive Director in 2017 indicated the Executive Director meets performance expectations [60]. No evaluation was conducted in 2018.</p> <p>Some Council Members and industry stakeholders questioned if the Executive Director unduly influences the Chair and Council, or acts on behalf of Council without authority. It was not clear from examples presented that this was the case and current and past Chairs interviewed did not feel unduly influenced.</p> <p>Some Council members noted that the newly-appointed Director of Corporate Services oversees RECA's financial reporting and accounting, but does not hold an accounting designation. Council members raising this concern were not aware of any deficiencies that stemmed from the Director not being a designated accountant. RECA's Accounting and Administration Manager, who reports to the Director of Corporate Services, is a Chartered Professional Accountant. This is a relatively common practice in organizations, particularly among public sector and non-profit organizations. For example, in many municipalities, the Controller position reports to a General Manager of Corporate Services or equivalent.</p>	Generally meets 

Ref	Review Item	Criteria	Observations	Rating
			The most recent performance evaluations of Directors that have been in their position for a year or more indicated that they are meeting performance expectations.	
2.5	Executive meeting Attendance at an Executive meeting and evaluation of the conduct of those meetings	Executive meetings are structured and attended, materials provided support decisions to be made, actions and decisions are documented, and discussion is respectful and inclusive	RECA conducts monthly Leadership Team meetings with its Executive Director, Directors and their direct reports. KPMG attended a five-hour meeting on April 24. This meeting was well attended by 13 individuals, with a few absences due to illness and a personal matter. The agenda and meeting materials were distributed in advance and consisted of matters for review, information, and training. No formal decisions were made at this meeting [62]. Two agenda items were not addressed due to timing constraints. The meeting included information sharing across the organization. Some questions were asked on most agenda items, but discussion was limited. The tone of the meeting was respectful and inclusive, but formal. In addition to Leadership Meetings, RECA uses other forums, such as ad hoc Director meetings or departmental meetings, to formulate plans and make decisions.	Generally meets 
2.6	Executive meeting preparation Review and evaluation of the process and procedures used to prepare for Executive meetings and approve Executive documents and materials	Required meeting materials are submitted to Executive are timely and adequate for Executive to make required decisions	Agenda items and meeting materials are submitted to the Executive Assistant by departments, and include any action required following the most recent Council meeting [62]. Materials reviewed provided adequate information for their intended purpose [62]. It was noted that the time required for the agenda items significantly exceeded the time allotted for the meeting and some items were deferred. The large number of attendees at the meeting may have contributed to more time being required for some items.	Generally meets 
2.7	Planning documents Review and evaluation of key planning documents	Planning documents (strategy, corporate plan, budget) are current,	RECA's 2016-2020 Strategic Plan outlines its mandate, vision, and mission, and specifies the strategic goals with outcome measures. However, the following gaps were observed:	Generally meets 




Ref	Review Item	Criteria	Observations	Rating
		comprehensive and accepted	<ul style="list-style-type: none"> — The plan does not provide information on RECA's internal and external environment (current context) [63]. As it is a four-year plan, the external environment may change rapidly. — The plan does not outline an approach to keep the document relevant. Leading practice outlines a process to maintain the plan, such as revisiting the plan annually and when external circumstances change [64] [65, p. 45]. <p>Some Council members expressed concern that emerging issues pertaining to new market entrants, recent court decisions, and emerging technologies (e.g., blockchain) will not be addressed until the next planning cycle.</p> <p>RECA's Business Plan outlines specific actions and activities that will be implemented to realize the goals outlined in the 2016-2020 Strategic Plan [66]. The annual budget is guided and organized by RECA's strategic goals [67]. The annual budget, strategic plan, and business plan are integrated, which is essential to transition goals to actions.</p> <p>The primary purpose of planning documents are to set out the scope and direction of the organization. Most Council members were satisfied with the content of the planning documents and found them to be effective at communicating RECA's scope, priorities and direction to Administration. Similarly, RECA's Executive Director and Senior Management Team found the planning documents essential to provide scope and direction for their operations [68].</p>	
2.8	Council reporting Review and evaluation of reporting to the Council	Reports prepared for Council are timely, accurate and sufficient to support decision making	<p>Material from the two most recent Council meeting packages were reviewed. Most of the material presented to Council seemed comprehensive and appropriate for decision making.</p> <p>RECA attaches a briefing memo to each item to provide context (e.g., is this being presented for information or decision) and a summary [68]. It was observed that most information is provided by the deadline of 10 days prior to a meeting.</p> <p>Generally, Council is satisfied with the timeliness and adequacy of most materials.</p>	Partially meets 


Ref	Review Item	Criteria	Observations	Rating
			As was observed in the Governance Review, the presentation of financial information against budget and performance metrics tied to intended outcomes could be improved [13, pp. 45-46].	
3. Financial Management				
3.1	Financial status Review and evaluation of the financial status of RECA	RECA is not operating at a loss, has established an operating reserve, and maintains debt levels within limits established in policy and comparable to other similar non-profit corporations	<p>RECA had sufficient revenues to cover its expenses in the 2016/17 and 2017/18 fiscal years [14]. RECA meets its debt obligations and, at 1.49, is above the debt service ratio of 1.25 [69] [70, p. 3] required by its covenants. RECA has operated at a surplus over the last two fiscal years.</p> <p>RECA's operating surplus decreased from \$2.5 million in 2016/17 to \$8,783 by 2017/18 [14]. At the beginning of 2018/19 RECA budgeted a deficit of \$1.1 million and at the mid-year point, it revised its forecasted deficit to \$1.7 million. This is mainly due to declining revenue.</p> <p>Compared to the previous year, the 2018/19 revenue is forecast to decline by 4%, primarily due to declining course enrollments (forecast decline of 18%) and license fees (forecast decline of 1%) [15] [69]. RECA has responded to the revenue decline by reducing expenditures (e.g. deferring, removing, or completing work internally instead of relying on external support) [71].</p> <p>Table 2 in Section 3.3 compares RECA's financials with other real estate regulators. In 2017/18, RECA had an operating reserve of \$7.7 million. This represents approximately 7 months of its operating expenses.</p> <p>By comparison, RECO had a reserve equivalent to 1 month of expenditures in the same year and SREC had a reserve of approximately 2 months of expenditures [69]. RECA does not appear to have a policy governing its unrestricted operating reserve.</p>	Partially meets 
3.2	Council oversight of financial management Review and evaluation of the Council's role in	Council appoints an auditor, approves a budget, receives regular financial reporting against the	<p>Council approves RECA's budget, receives financial updates, and approves year-end audited financial statement [69].</p> <p>A number of Council members were unclear how the 2017/18 year-end financial results related to the approved budget [12]. Deficiencies</p>	Does not meet 



Ref	Review Item	Criteria	Observations	Rating
	financial planning, budgeting and oversight	budget, and approves year-end audited financial statements in accordance with the Real Estate Act, regulations and corporate by-laws	<p>in how financial results are tracked against budget were identified in the Governance Review [13, p. 46].</p> <p>There are examples to suggest that RECA's Administration requests Council's approval for non-budgetary expenditures and payments that exceed the Executive Director's signing authority [69]. However, as was identified in the Governance Review, it is not clear at what level of detail the budget is approved. Legal expenses in fiscal year 2017/18 may have exceeded the approved budget without approval [13, p. 46].</p> <p>RECA has a Finance and Audit Committee with a clear mandate. However, due to an inability of Council to establish their committees until April 2019, RECA operated without a Finance and Audit Committee for the first half of its fiscal year.</p> <p>An external auditor completes the audit of the financial statements, and the latest letter from auditors to Council did not highlight any significant deficiencies (e.g. fraud, ongoing concern) [72]. The auditors provided an unqualified opinion and concluded that RECA's audited financial statements were correctly presented [72].</p>	
3.3	<p>Revenue model</p> <p>Review and evaluation of whether RECA's funding is fair to industry members including whether there is a reasonable balance of revenue sources between general license fees, levies, premiums, and other assessments; training; sanctions; and/or other sources of revenue</p>	RECA's revenue model is based on the cost to deliver services and avoids burdening members with costs associated with non-member services	<p>There is a reasonable balance of RECA's revenue sources: licensing accounted for 63% of RECA's forecasted 2017/18 budget, while education accounted for 35%. Penalties accounted for 2% of revenue and are not intended to be used as a material source of income for RECA [67].</p> <p>RECA's Finance and Audit Committee reviews the license fees annually, and if necessary, makes recommendations to Council for fee adjustments. License fees are based on RECA's budget, previous year fees, projected volumes, and fees set by other jurisdictions [28]. License fees are intended to cover RECA's non-educational costs. RECA's licensing fees are in line with the comparator jurisdictions [28]. However, 2017 license fees did not cover non-education operating costs. Average non-education revenue per member was \$582 as compared to non-education costs per member of \$679 [40].</p>	<p>Partially meets</p> 


Ref	Review Item	Criteria	Observations	Rating
			<p>Education course pricing reflects direct costs associated with course development and delivery, the value of courses when compared to the market, and enabling providers to deliver affordable courses in a classroom setting [18]. RECA projects future course costs and volumes to determine fees [28]. Past and projected course fees significantly exceed course costs [19]. In 2018, surplus from courses significantly exceeded RECA's total operating surplus [4, p. 23].</p> <p>In some cases, RECA's course fees are lower compared to other jurisdictions. For example, in 2018, RECA surveyed all Canadian real estate regulators with the exception of the three territories and Prince Edward Island. The survey identified that RECA's course fees to obtain the real estate residential license are the second lowest compared to other jurisdictions [9].</p>	
4. Human Resources				
4.1	<p>Human resources practices</p> <p>Review and evaluation of the organization's human resources strategy, processes and issues</p>	<p>RECA has human resource policies and procedures that are comparable in scope to those generally employed by comparable non-profit corporations</p> <p>RECA has policies pertaining to inclusion and equality, conduct, ethics and protection for reporting of unethical and illegal acts</p>	<p>RECA has instituted Human Resource (HR) policies and procedures to hire and retain high-performing employees. RECA's Service Excellence Principles document, Employee Guide and Employee Code of Conduct Policy are some of the HR resources that are available for RECA Senior Management and employees. With respect to HR documents reviewed, a few observations were made:</p> <ul style="list-style-type: none"> — Guidelines pertaining to compensation are not comprehensive and specific (e.g. how bonuses will be assigned, job-based salary ranges, or general salary grids). Leading practice indicates that a transparent compensation system and clear employee appreciation procedures (e.g. bonus structures, rewards, etc.) should be in place to enhance and drive employee satisfaction [73, p. 7]. — Documentation of annual performance reviews differs for Senior Management from the rest of the organization and are less formal. Good practice includes the use of standard forms to encourage consistency in evaluations across employees and adequate documentation of performance. <p>While RECA's Senior Management find RECA's HR policies to be sufficient [20], a number of Council members perceive there to be</p>	<p>Partially meets</p> 

Ref	Review Item	Criteria	Observations	Rating
			<p>deficiencies with respect to the anonymity of the Whistleblower Policy and complaints process, and the determination of seniority for employees on parental leave [20].</p> <p>For an organization its size, RECA appears to have a high number of human resource complaints and high turnover:</p> <ul style="list-style-type: none"> — Over the past three years, nine human resource complaints were filed. Of the five that have been resolved, two led to disciplinary action on substantiated allegations, one was settled, one was resolved through an explanation of policy, and one was closed after receiving a legal opinion in RECA’s favour [22]. The legal opinion, however, did give cause for RECA to revise its HR policies to align with recent changes in the Alberta Labour Code [74]. The specifics of these cases were not investigated to determine the appropriateness of their resolutions. — In 2017/18 RECA had a higher employee turnover compared to previous years. The employee turnover ratio was 33% in 2017/18, compared to 14% and 15% in the previous fiscal years [5]. This is higher than the North American average of 5% for government entities with revenue less than \$100 million [23]. The most common reasons for leaving are personal, dismissals, retirements, and seeking other opportunities [5]. <p>Notwithstanding these issues, Senior Management interviewed indicated that RECA had a positive work culture.</p> <p>This view is supported by an October 2017 survey by Downey Norris and Associates Inc. conducted as part of a one-time communication’s audit. The survey was completed just prior to RECA’s relocation in January 2018, which management attributes to the departure of some employees. The survey addressed employee engagement [24, 5] and had a 90% response rate (55 employees responded). The survey results showed that the majority of respondents (75%) were satisfied and perceive RECA positively [24]. This survey result appears to be in line with a global survey that showed a North American average engagement score of 69% in 2018 [75, p. 10].</p>	

Ref	Review Item	Criteria	Observations	Rating
4.2	<p>Organization development</p> <p>Review and evaluation of RECA policies related to organization learning and continuous improvement, including the implementation of those policies</p>	<p>RECA has policies and a program to promote continuous learning and development within the organization comparable to programs employed by other non-profit corporations</p>	<p>RECA has a professional development and training policy [21]. The Operational Review did not identify gaps in RECA's professional development policy.</p> <p>Senior Management confirmed that each department allocates funds for staff training [20], and RECA's annual organizational budget also outlines the amount dedicated for professional development [67]. RECA's financial statements outline their training and development spending. While it was observed that the 2017/18 spending was not the entire budgeted amount, the overall spend had increased from the previous fiscal year [14].</p>	<p>Generally meets</p> 
5. Scope and Structure				
5.1	<p>Size of organization</p> <p>Review and evaluation of whether RECA is appropriately sized, skilled and funded to carry on the activities within its mandate – including comparisons to other similar organizations</p>	<p>RECA's costs and staffing per member served are comparable to those of similar non-profit corporations</p>	<p>RECA is the only real estate regulator in Canada that develops and delivers pre-licensing education [9]. As a result, when comparing RECA's expenses per member to other jurisdictions and regulators, this review excluded education-related costs.</p> <p>RECA's overall expenditures per member are in line with those of the other real estate regulators compared [76]. Comparable data on the number of employees per member was not available from comparable organizations. Labour costs are RECA's largest expenditure, making expenditures per member is a reasonable proxy for organization size.</p> <p>Directors believe RECA's staffing level and capabilities to be generally appropriate, although it was commented that it could benefit from more Senior Investigators to give the organization the necessary capacity to respond at times when there is a higher-volume of complex cases.</p>	<p>Generally meets</p> 
6. Implementation of Prior Recommendations				
6.1	<p>Status of implementation</p> <p>Review and evaluation of RECA's implementation of recommendations from prior reviews, including</p>	<p>Recommendations from reviews completed over the past five years have been implemented or</p>	<p>RECA tracks the progress of the implementation of the recommendations from Field Law's Regulatory Performance Review [25] and Watson Advisory's Governance Review [27].</p>	<p>Generally meets</p> 

Ref	Review Item	Criteria	Observations	Rating
	recommendations related to investigative and enforcement practices	formally rejected with supporting rationale	<ul style="list-style-type: none"> — 82% of the recommendations from the Regulatory Performance Review have been completed or are underway. The remaining recommendations require legislative changes to implement [26]. RECA has pursued an alternate solution to some recommendations; however, the solution chosen appears to address the concern [26]. — 41% of the recommendations from the Watson Governance Review have been completed [77] — Fifteen recommendations marked complete resulting from both reviews were randomly selected and tested to assess implementation. Documentation to support proof of completion was obtained for all recommendations that were tested [27]. — The recommendations that are pending implementation are often labelled as low or medium priority, and are either underway (assigned committee), or tabled for later (e.g. waiting for the new Executive Director) [77]. 	
7. Investigative and Enforcement Actions				
7.1	Investigative and enforcement policies Review and evaluation of policies and procedures guiding investigations and enforcement/administrative actions for adequacy, relevancy, and consistency	Key investigative and enforcement policies and procedures are relevant given the legislative mandate of the corporation, and consistent with those of other comparable regulatory agencies	<p>The Field Law Regulatory Performance Review completed in April 2016 included a thorough review of the five regulatory program areas (Office of the Registrar, Professional Conduct Reviews, Conduct Proceedings, Administration of Hearings, and Trust Assurance and Practice Review) across the <i>Standards of Good Regulation as Adapted for RECA</i>.</p> <p>This Review concluded that “RECA is a high performance regulator meeting or exceeding almost all the Assessment Criteria in the five program areas” [25, p. 3].</p> <p>Additionally, the Review found that overall, the policies, procedures, and processes were fair, transparent, and consistent with requirements of the legislation [25].</p> <p>As part of this Operational Review, key investigative policies and procedures (from Professional Conduct Review, Professional Conduct Proceedings, and Trust Assurance and Practice Review) were reviewed and compared with the <i>Real Estate Act</i>, Ministerial</p>	Generally meets 

Ref	Review Item	Criteria	Observations	Rating
			Regulations, Bylaws, and Rules, and there were no examples of inconsistent practice observed during the review [2, 29, 30, 31, 35, 34, 32, 33].	
7.2	<p>Compliance with policies and procedures</p> <p>Review and evaluation of whether the key policies and procedures above are being followed</p>	Key policies and procedures are being followed as intended	<p>The Field Law Regulatory Performance Review completed in April 2016 included a thorough review of the five regulatory program areas (Office of the Registrar, Professional Conduct Reviews, Conduct Proceedings, Administration of Hearings, and Trust Assurance and Practice Review) across the <i>Standards of Good Regulation as Adapted for RECA</i> [25].</p> <p>There were no significant deficiencies noted, however, where RECA may not have met the standard fully, recommendations were made.</p> <p>As part of this Operational Review, six recommendations were sampled to confirm that they have been implemented. Documentation reviewed demonstrated that the six recommendations were implemented. See Reference 6.1 for further information on the status of implementation [27].</p> <p>Compliance with specific policies and procedures was further tested as part of this Operational Review across the regulatory program areas (Professional Conduct Reviews, Conduct Proceedings, and Trust Assurance and Practice Review) through a randomized selection of case files for review, as outlined in Section 1.3 [38, 37, 36].</p> <p>Across the cases, compliance was demonstrated through the clear and consistent documentation of:</p> <ul style="list-style-type: none"> — Issues as they relate to legislation; — Facts and evidence; — Evidence used to support a conclusion, and; — Rationale to support conclusions and decisions made regarding a case 	<p>Generally meets</p> 
7.3	<p>Administrative actions and investigations</p> <p>Review and evaluation of a sample of administrative</p>	Investigation and enforcement / administrative actions are adequate,	A randomized selection of cases (as outlined in Section 1.3) from the Professional Conduct Review and Professional Conduct Proceedings program areas were reviewed. Case documentation indicated that:	<p>Generally meets</p> 



Ref	Review Item	Criteria	Observations	Rating
	actions and investigations related to licensees or others for adequacy, consistency, and appropriateness	consistently applied, and appropriate	<ul style="list-style-type: none"> — Administrative actions were consistently applied — Precedents set through similar breaches of conduct in previous cases were considered — Rationale was provided for whether the case being investigated was of similar severity and / or impact to either the complainant or industry member. — Consideration was given to whether the industry member admitted to the conduct, felt remorse, and / or demonstrated a commitment to preventing the action from happening again [37, 36]. <p>In addition, the cases reviewed demonstrated an evaluation of the investigation through Jaswal Factors, which included an assessment of aggravating and mitigating factors in the case. Jaswal Factors are criteria from the <i>Jaswal v. Newfoundland (Medical Board)</i> that have been adapted to the industries regulated by RECA. Consideration of Jaswal Factors are used to support investigators in determining reasonable sanctions.</p> <p>Some Council members highlighted the following concerns with respect to RECA’s administrative actions and investigations:</p> <ul style="list-style-type: none"> — The duration of some investigations are long. Administration cites challenges with a limited number of cases that are beyond RECA’s control (e.g., subject leaves the jurisdiction or is uncooperative). — Section 54 dispositions (lifetime withdrawal from the industry) of the <i>Real Estate Act</i> appear to be increasing, and it was stated that this might be indicative of pressure from investigators [41]. A historical review of Section 54 dispositions indicates that the volume of these fluctuate annually, and the recent increase may be largely driven by an increase in the total number of case files that have proceeded to Professional Conduct Proceedings [78]. 	
7.4	Administrative fairness Review of the policies and processes in place to ensure administrative	Policies and processes are in place to promote administrative fairness	As part of this Operational Review, key policies and procedures (from the Hearing and Appeals Practice and Procedures) were reviewed and compared with the <i>Real Estate Act</i> , Ministerial Regulations, Bylaws, and Rules. There were no examples of inconsistent	Generally meets 

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Ref	Review Item	Criteria	Observations	Rating
	<p>fairness in the establishment of hearing and appeal panels, as well as in adjudication and decision-making as it relates to hearings and appeals</p>	<p>in the establishment of hearing and appeal panels, as well as in adjudication and decision-making as it relates to hearings and appeals</p>	<p>practices observed [2, 29, 30, 31, 34], and there was evidence of the application of the principles of Administrative Fairness. There were no indications that principles of Administrative Fairness—Chain of Legislative Authority, Duty of Fairness, Participation Rights, Adequate Reasons, Apprehension of Bias, Legitimate Expectation, Exercising of Discretionary Power, and Reasonable Decision—were not followed.</p> <p>Council members and Senior Management who were interviewed generally perceive RECA’s hearing and appeal processes to be fair. However, they note that it can be demanding on Council members to have to sit on hearing panels in addition to their Council duties, and that it takes two to three years for Council members to be sufficiently experienced to be effective panelists.</p> <p>RECA maintains a schedule of appropriate administrative penalties by contravention to promote consistency and fairness in their application across cases [30, p. 23]. However, during one industry stakeholder interview, it was noted that penalties do not always appear to be reflective of the seriousness of a violation. This perception was partially reflected in the Field Law Regulatory Performance Review. It concluded that “the hearings process is transparent, fair, and compliant with the principles of natural justice” [25, p. 64] and noted that “while there was some variance in the severity of the sanction [in] each case, there was also variance in the facts” [25, p. 60]. However, it also identified that penalties may “no longer [be] appropriate given their relationship to, for example, average real estate commissions [25, p. 61].” RECA is currently reviewing its administrative penalties.</p> <p>KPMG conducted a survey of industry members that were the subject of a conduct review in the last three years, and a survey of complainants in the last three years. The results of both surveys showed evidence of strong bias related to the favourable or unfavourable result achieved for the industry member. Respondents that perceived the outcome of their case was favourable to them rated the RECA’s administrative fairness to be positive. Respondents that perceived the outcome of their case was unfavourable rated RECA’s administrative fairness to be negative.</p>	

Ref	Review Item	Criteria	Observations	Rating
8. Education and Licensing				
8.1	Member licensing Review and evaluation of licensing processes, policies, and procedures to ensure appropriateness, effectiveness, and transparency	Processes, policies, and procedures are appropriate to support the licensing function. Licensing processes, policies and procedures are transparent and effective at administering licenses	The Field Law Regulatory Performance Review completed in April 2016 included a thorough review of Authorizations: Licensing and Registration and found that “these policies and procedures are appropriate, thorough, detailed and conform to the <i>Regulatory Principles</i> ” [25, p. 35], and further note that “the licensing process appears to be fair, transparent, effective, reasonable, and based on RECA’s standards” [25, p. 38]. As part of this Operational Review, key licensing policies and procedures were compared to the <i>Real Estate Act</i> , Ministerial Regulations, Bylaws, and Rules, and no examples of inconsistent practices were observed [2, 29, 30, 31, 58]. Council and Senior Management did not raise concerns about RECA’s licensing. They perceive RECA’s licensing to be thorough and effective. There were no consistent concerns expressed from industry stakeholders.	Generally meets 
8.2	Member education Review and evaluation of policies and procedures related to education, both pre- and post-licensing, for adequacy, relevancy, and consistency	Policies and procedures related to education, both pre- and post-licensing, are adequate, relevant, and consistent	Generally, RECA appears to deliver strong educational courses: <ul style="list-style-type: none"> — RECA has won several education awards, most recently the 2014 and 2016 Pre-Licensing Education Awards [43]. — Council and Senior Management were generally satisfied with RECA’s courses, although some suggested RECA could enable other organizations to deliver the courses [42]. — Satisfaction surveys administered by third-parties following new course releases suggest learners are generally satisfied with the courses and felt an increased ability to provide enhanced services (e.g. 95% approval rating for the re-licensing education program and 90% pre-licensing learners found the Practice of Rural Real Estate course enabled them to be competent in their field) [79, p. 27] [80, p. 16]. Survey respondents also identified opportunities for improvement including, appropriate course topics, and requests for more case studies. 	Partially meets 

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Ref	Review Item	Criteria	Observations	Rating
			Notwithstanding the quality of its education, RECA has not identified required competencies and educational standards for the professionals it regulates.	

Appendix 1 Ministerial Order and Terms of Reference



MINISTERIAL ORDER NO. SA:002/2019

Pursuant to Section 76(1) of the *Real Estate Act*, I, Brian Malkinson, Minister of Service Alberta, hereby appoint Tim Swanson of KPMG LLP to conduct a review into the operations of the Real Estate Council of Alberta.

The Terms of Reference of this review are attached as Schedule A.

Dated at Edmonton, Alberta, this 18 day of JANUARY, 2019.



Honourable Brian Malkinson
Minister of Service Alberta

Schedule A

Terms of Reference

The scope of the review shall include a full review and evaluation of the administration and day-to-day operations of the Real Estate Council of Alberta (RECA) and RECA's effectiveness as the regulator for the real estate sector.

*Note: "Council" means the governing Council of the Real Estate Council of Alberta.
"The Act" means the Real Estate Act.*

The review shall include, but is not limited to, the following:

1. General

- Review and evaluation of whether RECA is effectively carrying out its delegated mandate under the Act;
- review and evaluation of key policies and procedures for appropriateness, effectiveness, and consistency; and
- review and evaluation of whether the key policies and procedures above are being followed.

2. Administration

- Review and evaluation of the organizational structure of RECA's administration;
- review and evaluation of the Executive Director's (ED) understanding of their role and responsibilities;
- review and evaluation of senior management's understanding of their roles and responsibilities;
- review and evaluation of the exercise of the roles and responsibilities of the ED and senior management regarding attendance at an executive meeting and evaluation of the conduct of those meetings;
- review and evaluation of the process and procedures used to prepare for executive meetings and to approve executive documents and materials;
- review and evaluation of key planning documents; and
- review and evaluation of reporting to the Council.

3. Financial Management

- Review and evaluation of the financial status of RECA;
- review and evaluation of the Council's role in financial planning, budgeting and oversight; and
- review and evaluation of whether RECA's funding is fair to industry members, including whether there is a reasonable balance of revenue sources between general licensee fees, levies, premiums, and other assessments; education income; sanctions; and other sources of revenue.

4. Human Resources

- Review and evaluation of the organization's human resources strategy,

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- processes, and issues; and
- review and evaluation of RECA policies related to organizational learning and continuous improvement, including the implementation of those policies.

5. Scope and Structure

- Review and evaluation of whether RECA is appropriately sized, skilled and funded to carry on the activities within its mandate, including comparisons to other similar organizations.

6. Implementation of Prior Recommendations

- Review and evaluation of RECA's implementation of recommendations from prior reviews, including recommendations related to investigative and enforcement practices.

7. Investigative and Enforcement Actions

- Review and evaluation of policies and procedures guiding investigations and enforcement/administrative actions for appropriateness, effectiveness, and consistency;
- review and evaluation of whether the key policies and procedures above are being followed;
- review and evaluation of a sample of administrative actions and investigations related to licensees or others for adequacy, consistency, and appropriateness; and
- review of the policies and processes in place to ensure administrative fairness in the establishment of hearing and appeal panels, as well as in adjudication and decision-making as it relates to hearings and appeals.

8. Education and Licensing

- Review and evaluation of licensing processes, policies, and procedures to ensure appropriateness, effectiveness, consistency, and transparency; and
- review and evaluation of policies and procedures related to education, both pre- and post-licensing, for appropriateness, effectiveness, consistency, and transparency.

9. Other Operational Areas

- Review and evaluation of any other relevant aspect of RECA's operations.

Appendix 2 **Interviewees**

Council

Bobbi Dawson	Tiago Lage
Amina Deiab	Phil McDowell
Ramey Demian	Stan Mills
JT Dhoot	Robyn Moser
Bill Kirk	Rob Telford, Chair
Brian Klingspon, Past Chair	Christine Zwozdesk

RECA

Bob Myroniuk, Executive Director
Joseph Fernandez, Director, Education Programs
Jean Flanagan, Director, Strategic Initiatives and External
Charles Stevenson, Director and Registrar
Warren Martinson, Director, Corporate Services
Mark Blessing, Account and Administration Manager
Hannah Wagner, Human Resources Manager
Stefan Myroniuk, IT Manager
David Pomeroy, Trust Assurance & Practice Review Manager
James Porter, Professional Conduct Review Manager
Elsie Drew Saly, Professional Conduct Proceedings Manager
Shawna Risdon, Licensing Services Manager

RECA Stakeholders

Alberta Mortgage Brokers Association
Alberta Real Estate Association
Appraisal Institute of Canada, National and Provincial

Comparator Organizations

Association of Professional Engineers & Geoscientists of Alberta
College of Physicians and Surgeons of Alberta
Real Estate Council of Ontario
Saskatchewan Real Estate Commission
Real Estate Council of British Columbia

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Appendix 4 Surveys

Survey to Industry Members Subject to a Complaint

Introduction

KPMG LLP (KPMG) has been engaged by Service Alberta to conduct an operational review of the Real Estate Council of Alberta (RECA). As part of this review, KPMG would appreciate your feedback on your experience with RECA’s Professional Conduct processes, including complaints handling, investigations and proceedings.

Please take **five minutes** to complete this short online survey. **Responses will be held in confidence.** Survey results will be aggregated to a minimum of five responses.

If you have any questions or concerns, please don’t hesitate to contact our survey administrator at etessera@kpmg.ca.

Thank you for your participation!

Section I: Context

- 1 Please indicate your profession:
 - Real Estate Associate
 - Real Estate Broker
 - Property Manager
 - Mortgage Broker
 - Real Estate Appraiser

- 2 Please indicate your most recent involvement with RECA’s Professional Conduct process:
 - Subject of a complaint
 - Subject of an investigation
 - Subject of a conduct proceeding

- 3 Do you perceive that the outcome was favourable to you (e.g., found in your favour, was resolved through mutual agreement, or did not proceed)?
 - Yes
 - No

Section II: Feedback on Experience

Thinking about your most recent involvement with RECA’s Professional Conduct processes, please rate the following statements on a scale from “Strongly Disagree” to “Strongly Agree.” Answer “No Opinion” or “NA” if you do not want to or the question is not applicable to your experience.

		Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	No Opinion or NA
4	I felt fairly treated by how RECA handled the complaint against me.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Operations Review of the Real Estate Council of Alberta

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	No Opinion or NA
5 I felt fairly treated by how RECA handled the investigation against me.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 If the investigation resulted in a hearing, regardless of the decision, I felt RECA's hearing was fair.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 I felt RECA treated my appeal of a conduct decision fairly.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8 I felt like the decision regarding the outcome of my case (e.g., the sanctions) was made fairly.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9 I felt that RECA adequately considered all factors and evidence brought forward during the investigation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 I felt that RECA investigated the complaint against me in a timely manner.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 I felt that RECA held the hearing and / or appeals panel, if applicable, within a reasonable timeframe.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12 Decisions regarding the outcome of my case (e.g., sanctions) were made in a timely manner.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13 I was made aware of my rights during the Professional Conduct Review and / or Proceedings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14 I was aware of what to expect during the Professional Conduct	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	No Opinion or NA
Review and / or Proceedings					
15 I felt that I was provided adequate information from RECA regarding the outcome of my case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16 I was provided sufficient information to understand the implications of the decision made in my case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Survey to Complainants

Introduction

KPMG LLP (KPMG) has been engaged by Service Alberta to conduct an operational review of the Real Estate Council of Alberta (RECA). As part of this review, KPMG would appreciate your feedback on your experience with RECA’s Professional Conduct processes, including complaints handling, investigations and proceedings.

Please take **five minutes** to complete this short online survey. **Responses will be held in confidence.** Survey results will be aggregated to a minimum of five responses.

If you have any questions or concerns, please don’t hesitate to contact our survey administrator at etessera@kpmg.ca.

Thank you for your participation!

Section I: Context

- Please indicate the type of professional or brokerage against which you made a complaint:
 - Real Estate Associate
 - Real Estate Broker
 - Property Manager
 - Mortgage Broker
 - Real Estate Appraiser
- Do you perceive that the outcome of the complaint was favourable to you (e.g., found in your favour, was resolved through mutual agreement, or resolved with clarification or additional information)?
 - Yes
 - No

Section II: Feedback on Experience

Thinking about your most recent complaint submitted to RECA, please rate the following statements on a scale from “Strongly Disagree” to “Strongly Agree.” Answer “No Opinion” or “NA” if you do not want to or the question is not applicable to your experience.

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	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	No Opinion or NA
General					
3 I felt fairly treated by RECA while it handled my complaint.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4 I felt that RECA addressed my complaint in a timely manner.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 I felt like the decision or outcome related to my complaint was fair.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 I felt that I was provided adequate information from RECA regarding the outcome of the case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Investigations					
Please answer if your complaint was investigated by RECA.					
7 I felt fairly treated by RECA while it investigated my complaint.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8 I felt that RECA investigated my complaint in a timely manner.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9 I felt that RECA adequately considered all factors and evidence brought forward during its consideration of my complaint.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hearings and Appeals					
Please answer if your complaint resulted in a hearing, and potentially, an appeal.					
10 Regardless of the outcome, I felt RECA's hearings process and any subsequent appeal was fair.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	No Opinion or NA
11 I felt that RECA held the hearing or appeals panel within a reasonable timeframe.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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This report has been prepared by KPMG LLP (“KPMG”) for the Minister of Service Alberta (“Minister”) pursuant to the terms of our engagement agreement with the Minister dated January 21, 2019 (the “Engagement Agreement”). This report was prepared in response to the Minister’s request for a review of the Real Estate Council of Alberta (“RECA”) under Section 76 of the Real Estate Act and the findings presented in the report address specific evaluation criteria agreed to by the Ministry of Service Alberta.

KPMG neither warrants nor represents that the information contained in this report is accurate, complete, sufficient or appropriate for use by any person or entity other than the Minister or for any purpose other than set out in Section 76 of the Real Estate Act. This report may not be relied upon by any person or entity other than the Minister, and KPMG hereby expressly disclaims any and all responsibility or liability to any person or entity other than the Minister in connection with their use of this report.

The procedures we carried out in performing the work that forms the basis of this report were not such as to constitute an audit. As such, the content of this report should not be considered as providing the same level of assurance as an audit. Our procedures consisted solely of inquiry, observation, comparison and analysis of information provided by the Ministry, RECA and other stakeholders. We relied on the completeness and accuracy of the information provided. Such work does not constitute an audit. Accordingly, we express no opinion on financial results, internal controls or other information.