

**DECISION OF  
THE SASKATCHEWAN REAL ESTATE COMMISSION  
AND CONSENT ORDER**

*Wilson (Re)*, 2019 SKREC 36

Date: October 7, 2019  
Commission File: 2019-24

**IN THE MATTER OF  
THE REAL ESTATE ACT, C. R-1.3 AND  
IN THE MATTER OF ROGER WILSON**

Before: A Saskatchewan Real Estate Commission Hearing Committee  
comprised of the following:

David M. Chow - Chairperson

Lori Patrick

Anne Parker

**CHARGE and ADMISSION OF MISCONDUCT:**

[1] The registrant is charged with and is admitting to professional misconduct as follows:

**Count 1:**

That, contrary to section 39(1)(c) of *The Real Estate Act*, Mr. Roger Wilson breached Saskatchewan Real Estate Commission Bylaw 702 by failing to protect and promote the interests of his brokerage's client.

**LEGISLATION:**

[2] Section 39(1)(c) of *The Real Estate Act* states: "Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act, if...it is a breach of this Act, the regulations or the bylaws or any terms or restrictions to which the registration is subject."

[3] Bylaw 702 states: “A registrant shall protect and promote the interests of his or her client. This primary obligation does not relieve the registrant from the obligation of dealing fairly with all other parties to the transaction.”

**FACTS:**

[4] In accordance with subsection 9(4) of *The Real Estate Regulations* (“the Regulations”), the Hearing Committee accepts Roger Wilson’s Statement of Facts and Admissions, which includes the following relevant points:

[5] Mr. Wilson was continuously registered as a salesperson under the provisions of *The Real Estate Brokers Act, 1987* and *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission from March 10, 1993 until March 5, 2002.

[6] Mr. Wilson has been continuously registered as a broker under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since July 1, 2005.

[7] Mr. Wilson has taken the following real estate courses:

- Property Management 150; and
- Property Management 350.

[8] Mr. Wilson has completed the continuing professional development seminars each registration year since 2001-2002.

[9] Mr. Wilson is presently registered under the provisions of *The Real Estate Act* as a broker with Elite Property Management Ltd.

[10] On August 2, 2017, the Owner signed a property management agreement with Elite Property Management (“Elite”) for the management of her property (the “Property”).

[11] Registrant A, then an associate broker for Elite, signed the agreement on behalf of the brokerage.

[12] Mr. Wilson was, and still is, the broker for Elite.

[13] Throughout the duration of the agreement, the Owner dealt almost exclusively with Registrant A.

[14] At the beginning of October of 2017, tenants moved into the Property.

[15] Registrant A’s employment with Elite was terminated in the first week of January of 2019.

- [16] To the best of Mr. Wilson's knowledge, the Owner was not notified of Registrant A's termination at this time.
- [17] In January of 2019, the Owner's tenants gave notice to Elite to vacate the Property. The January 20, 2019 Notice to Vacate states that the tenants would be vacating the Property on February 28, 2019 and was stamped "Received January 21, 2019".
- [18] To the Best of Mr. Wilson's knowledge, the Owner was not told that the tenants had vacated the Property.
- [19] In March of 2019, the Owner received an email from SaskPower indicating that the tenants had removed themselves from the account at the Property.
- [20] On March 6, 2019, the Owner contacted Elite and was informed that the tenants had vacated the Property in January of 2019.
- [21] At this time, the Owner was advised for the first time that Registrant A, her primary contact at the brokerage, no longer worked there.
- [22] Mr. Wilson wanted to reorganize and re-distribute Registrant A's portfolio before contacting the landlords to advise of Registrant A's termination.

#### **REASONS:**

- [23] The Investigation Committee and Mr. Wilson considered the following as relevant in agreeing to the within consent order:

#### Mitigating Factors

- [24] Mr. Wilson was co-operative with the investigation.

#### Aggravating Factors

- [25] Mr. Wilson is registered as a broker. As the people responsible for ensuring that the registrants and employees under their supervision are complying with the legislation, brokers are held to a higher standard of conduct.

#### Previous Sanctions

- [26] Mr. Wilson has a previous sanction history:
- *Wilson (Re)*, [2019 SKREC 11](#), (file #2017-17) ("*Wilson*"): Mr. Wilson was issued an order of reprimand and a \$750 fine for breaching Bylaw 617(b). He was also issued an order of reprimand and a \$1,500 fine for breaching section 63(b) of the *Act*. Mr. Wilson utilized a property management agreement that did not include the legal description of the Property to be

managed and that required the Owner to pay the brokerage compensation for management in the amount of 10% of all rental income and/or other income from the rental unit or \$100, whichever was greater.

### Prior Decisions & Other Considerations

- [27] In May of 2012, the Appeals Committee of the Real Estate Council of Ontario rendered a decision [\*In the Matter of Suzette Thompson\*](#) (“*Thompson*”). The Appeals Committee in *Thompson* set out a series of factors to be considered when determining the appropriate sanction for a registrant found in breach of the legislation. The factors are as follows:
1. The nature and gravity of the breaches of the Code of Ethics.
  2. The role of the offending member in the breaches.
  3. Whether the offending member suffered or gained as a result of the breaches.
  4. The impact of the breaches on complainants or others.
  5. The need for specific deterrence to protect the public.
  6. The need for general deterrence to protect the public.
  7. The need to maintain the public’s confidence in the integrity of the profession.
  8. The degree to which the breaches are regarded as being outside the range of acceptable conduct.
  9. The range of sanction in similar cases.
- [28] These factors are reasonable considerations and can offer guidance to members of a Hearing Committee tasked with crafting an appropriate sanction for a registrant found to have committed professional misconduct. These factors have been consistently applied in Saskatchewan Real Estate Commission consent orders since September 2016.
1. *The nature and gravity of the breaches of the Code of Ethics.*
- [29] Mr. Wilson is the broker for Elite. Elite’s client (the “Owner”) was not notified when her primary contact at the brokerage was terminated. She did not find out about his termination until she received the news from an unrelated third party that her tenants had vacated the rental property and she contacted the brokerage for further information.
2. *The role of the offending member in the breaches.*
- [30] As the broker for Elite, Mr. Wilson is responsible for ensuring that clients of the brokerage are properly taken care of when the individual registrant with whom they have been dealing is terminated.
3. *Whether the offending member suffered or gained as a result of the breaches.*
- [31] There is no evidence to show that Mr. Wilson enjoyed any benefits or suffered any losses as a result of his breach of the legislation.

*4. The impact of the breaches on complainants or others.*

[32] As a result of Mr. Wilson's breach, the Owner was unable to properly manage her financial affairs because she was not informed that her rental income would be ending early. The Owner had budgeted and made plans on the basis of rental income through the spring of 2019. There is no evidence of actual consumer harm.

*5. The need for specific deterrence to protect the public.*

[33] Mr. Wilson and Elite must be reminded that the interests of all clients are to be properly protected and promoted in a timely manner.

[34] Clients enter into an agency relationship with the brokerage, so the broker is responsible for ensuring that the client's interests are properly protected and promoted in the event the individual registrant the client has been dealing with is terminated.

*6. The need for general deterrence to protect the public.*

[35] The importance of adequately protecting and promoting the interests of all clients must be emphasized to all registrants.

[36] Further, a brokerage owes obligations to the clients. It therefore falls to the broker to ensure the clients are taken care of when an individual registrant is terminated.

*7. The need to maintain the public's confidence in the integrity of the profession.*

[37] Registrants occupy a position of trust. Mr. Wilson's failure to notify clients of what was occurring at the brokerage in a timely manner threatens the trust that clients have placed in his brokerage. Members of the public must be reassured that their trust in registrants is not misplaced.

*8. The degree to which the breaches are regarded as being outside the range of acceptable conduct.*

[38] Mr. Wilson's conduct falls below the standard expected of registrants, but it was not egregious.

*9. The range of sanction in similar cases.*

**A. What is an appropriate sanction for Mr. Wilson's breach of Bylaw 702?**

[39] There are no previous decisions under Bylaw 702 dealing with a similar fact pattern as Mr. Wilson's current case. There are, however, cases dealing with a registrant's failure to notify clients of important information in a timely manner.

- [40] In *Carriere (Re)*, [2005 SKREC 5](#), (file #2005-20) ("*Carriere*"), Laverne Carriere was issued an order of reprimand and a \$2,000 fine and his certificate of registration was suspended for two weeks for breaching Bylaw 702 by failing to inform the sellers on more than one occasion of the rejection of his buyer client's deposit cheques for insufficient funds.
- [41] Mr. Carriere was acting as agent for the Buyer. He assisted his buyer client in writing a conditional offer to purchase the property. The offer included a \$5,000 deposit and a condition requiring that the sellers make several upgrades before the buyer was to take possession.
- [42] On June 26, 2003 Mr. Carriere received a deposit cheque in the amount of \$5,000 from the Buyer's father. On June 30, 2003 the cheque was returned to the brokerage by the bank for insufficient funds. Mr. Carriere did not notify the seller of this problem. On July 3, 2003, Mr. Carriere obtained a replacement cheque from the buyer for the deposit amount. On July 10, 2003 Mr. Carriere was advised by brokerage staff that the second cheque also failed to clear at the bank and was returned for the reason of insufficient funds. On July 15, 2003 Mr. Carriere notified the seller's agent of the issues surrounding the deposit cheques.
- [43] The Buyer did not show up for the walk-through of the property, nor did the Seller's lawyer receive any of the required funds from the Buyer. The Seller had spent \$4,575 in renovations as set out in the contract of purchase and sale. The property eventually sold to another buyer for \$4,500 less. Mr. Carriere was not the buyer's agent on the second sale.
- [44] The Committee was of the belief that the handling of trust money is one of the most fundamental tasks undertaken by a registrant. Consumers place significant trust in registrants that trust money will be handled properly. Mr. Carriere's failure to notify the seller's agent of the issues with the deposit cheques in a timely manner escalated the problem to the detriment of the seller. In addition, Mr. Carriere had been sanctioned for professional misconduct of a similar nature only two years prior. The fact that Mr. Carriere seemed to not learn from his prior mistakes warranted a greater penalty, which was evidenced by the suspension of his registration.
- [45] Mr. Wilson's breach of Bylaw 702 is as serious as that of the registrant in *Carriere*. Mr. Carriere failed to provide critical information to the seller's agent, but Mr. Wilson also failed to provide information to his client. The fact that Mr. Wilson owed fiduciary obligations to the Owner exacerbates the seriousness of his breach.
- [46] In *Harbottle (Re)*, [2018 SKREC 16](#), (file #2017-20) ("*Harbottle*"), June Harbottle was issued an order of reprimand and a fine of \$2,000 for breaching Bylaw 702 by failing to inform her buyer clients of the death of one of the property owners and its potential impact on the transaction in a timely manner.

- [47] Ms. Harbottle listed a property for sale. At the time of the listing, the property was owned by Owner 1 and Owner 2. Owner 1 had passed away several years prior, but remained on title, and Owner 2 passed away a few months after the property was listed for sale. Ms. Harbottle continued to deal with the children of Owner 2 who had been named as executors of Owner 2's estate. Ms. Harbottle believed that a copy of Owner 2's death certificate and the page of Owner 2's will that named his children as executors were sufficient authority to proceed with the listing and sale of the property.
- [48] Ms. Harbottle also represented the buyers. She did not tell her buyer clients that Owner 2 had passed away or that the property would have to go through probate before they signed the offer to purchase the property. Ms. Harbottle did not know that the property was still in probate until after the buyers had removed conditions and the paperwork was sent to the lawyers. Two days before the scheduled possession date, the buyers were sent a Tenancy at Will Agreement which they were required to sign in order to take possession of the property.
- [49] Ms. Harbottle had no previous sanction history and was co-operative with the investigation. At the time of the transaction, she believed she was doing everything right. Ms. Harbottle signed a Consent Order acknowledging her error.
- [50] There was actual consumer harm as the buyers' purchase of the property was complicated by the legal consequences of the death of an owner of the property and the buyers were not made aware of the death or its potential impact in a timely manner. Ms. Harbottle's breach occurred while she was representing both parties as a limited dual agent. Registrants in limited dual agency must be especially diligent in protecting and promoting the interests of their clients, as there is no other registrant involved in the transaction to notice or correct any errors.
- [51] Mr. Wilson's breach is less serious than that of the registrant in *Harbottle*. Ms. Harbottle failed to inform her buyer clients that the surviving owner of the property had passed away. The implications of this passing were significant and the buyers should have been made aware of this. The consequences for Ms. Harbottle's conduct were significant. Further, Ms. Harbottle's sanction was aggravated by the fact that she was acting as a limited dual agent. In contrast, Mr. Wilson was trying to reorganize the portfolio that had been managed by the associate broker who had been terminated. While the more than two month delay was unacceptable, Mr. Wilson was attempting to re-organize everything prior to contacting clients in order to have more positive information to give them.
- [52] In *Swartz (Re)*, [2017 SKREC 6](#), (file #2013-31) ("*Swartz*"), Kelly Swartz received an order of reprimand and a \$1,000 fine for her breach of Bylaw 702.

- [53] Ms. Swartz was engaged as a limited dual agent in a transaction for a residential property. The Property Condition Disclosure Statement completed by the Sellers stated that they were not aware of any roof leaks or unrepaired water damage, but that the roof needed shingling. The Buyer did not request, nor was she provided, the Property Condition Disclosure Statement. Ms. Swartz was aware of the obvious water stains on the walls and ceilings of the second floor, but did not discuss them with the Sellers or with the Buyer.
- [54] Ms. Swartz advised the Buyer that the roof did not leak yet, but that it needed attention, and stated that she thought it would last through the winter. The Buyer, who was moving from out of province, did not view the property prior to purchase. The Buyer looked at the MLS listing relating to the Property, but this did not include photos of the second floor. The Buyer did not request a home inspection or any other professional assessment of the property. The parties entered into an agreement for sale.
- [55] After several months of occupying the property, the Buyer complained that the roof was in extremely poor condition on arrival, sagging in many places and leaking after rainfall, that most of the windows did not open, and that there was mold in the walls and ceilings. The buyer ultimately abandoned the Property and moved away from the province. The buyer filed a statement of claim against the sellers and Ms. Swartz. Ms. Swartz was found to have made a negligent misrepresentation in stating that the roof did not leak yet and paid the judgment against her.
- [56] Ms. Swartz represented both parties to the trade. The Hearing Committee noted that “registrants must be extra careful to protect and promote the interests of the client when they are acting as a limited dual agent.” It is especially important to be diligent when obtaining information about the property. The Hearing Committee also considered that the Buyer did not view the property or undertake any inspections prior to purchase, but relied entirely on information and representations from Ms. Swartz. Ms. Swartz also received a reprimand for a breach of Bylaw 715 and was ordered to pay a fine of \$1,500.
- [57] Ms. Swartz had no previous sanction history, was co-operative with the investigation, and acknowledged her misconduct by signing a Statement of Facts and Admissions. When the extent of the property damage was discovered, she offered to assist the Buyer at no cost in selling the property. Ms. Swartz also paid the civil judgment against her, which was for 25% of the buyer’s losses (\$1,439.25).
- [58] Mr. Wilson’s breach of Bylaw 702 is less serious than that of the registrant in *Swartz*. The registrant in *Swartz* was aware of some evidence of water leakage at a property, but did not advise her buyer client who was purchasing the property sight unseen. While both Mr. Wilson and Ms. Swartz failed to inform their clients of important information, Ms. Swartz’s breach was aggravated by the

fact that her clients were purchasing the property sight unseen and resulted in a civil suit.

- [59] In *Braaten (Re)*, [2016 SKREC 8](#), (file #2012-62) ("*Braaten*"), Mr. Braaten was fined \$500, ordered to pay \$5,774.17 in costs, and issued an order of reprimand when he breached Bylaw 702.
- [60] Employees of Mr. Braaten's brokerage failed to keep proper records relating to a property management client. The records retained by the brokerage included accounting errors. The brokerage did not have copies of receipts to support a deduction from rent paid by a tenant of the landlord's property. The brokerage did not have a copy of an invoice for work done by a carpentry service. Upon termination of the property management agreement by the landlord, the brokerage returned the tenant's security deposit to the tenant rather than turning it over to the landlord. Mr. Braaten did not respond to several e-mails from the client; choosing instead to trust that his employees were following up on the issues. Mr. Braaten did not follow-up with his employees to confirm that they were indeed responding to the client's e-mails.
- [61] Mr. Braaten gave evidence regarding the significant personal stress he was facing at the time of the transaction and indicated that he relied on his employees to carry out their duties. At the hearing, the registrant suggested that an absolute discharge or a conditional discharge would be an appropriate sanction for his breaches of the legislation. The Investigation Committee Representative took the position that a discharge was not an appropriate result.
- [62] Mr. Braaten did not have a previous sanction history and had been a registrant since 1986. He was co-operative with the investigation and admitted to his breaches of the legislation. There was no suggestion that Mr. Braaten intended to deceive the client.
- [63] The Hearing Committee found that it was not in a position to grant an absolute or a conditional discharge to Mr. Braaten in the circumstances. The Committee noted that Mr. Braaten had the opportunity to deal with this matter in a number of circumstances, but that he did not do so. It is a broker's responsibility to supervise employees and take full responsibility for their actions. The Committee noted that Mr. Braaten had numerous occasions to remedy the matter merely by checking on the files and responding to queries from the landlord. The sanctions were lower than they would have been due to the significant mitigating circumstances brought forth by Mr. Braaten. The Committee stressed the importance of general deterrence, stating it is important for all brokers and registrants to take responsibility for their business.
- [64] Mr. Wilson's breach of Bylaw 702 is less serious than that of the registrant in *Braaten*. Employees of Mr. Braaten's brokerage failed to keep proper records relating to a property management client. After the contract was terminated, the

landlord tried several times to get in touch with Mr. Braaten, but Mr. Braaten did not respond. In contrast, Mr. Wilson's brokerage did retain the proper records relating to their property management clients and, when contacted, Mr. Wilson did inform the Owner of the situation.

[65] An order of reprimand and a fine of \$1,000 are appropriate sanctions for Mr. Wilson's breach of Bylaw 702.

[66] As Mr. Wilson has agreed to sign this consent order, there will be no order as to costs.

### **CONSENT ORDER:**

[67] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of the Broker, Roger Wilson, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:

[68] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Saskatchewan Real Estate Commission Bylaw 702:

- a. Roger Wilson shall receive an order of reprimand for the violation of Bylaw 702;
- b. Roger Wilson shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$1,000.00 fine for the said violation of the bylaw; and
- c. Roger Wilson's registration shall be suspended if he fails to make payment as set out above.

[69] There shall be no order as to costs.

Dated at Moose Jaw, Saskatchewan this 7<sup>th</sup> day of October, 2019.

"David M. Chow"  
David M. Chow, Chairperson