

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

Stretch (Re), 2019 SKREC 30

Date: July 30, 2019
Commission File: 2019-26

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF DARREL STRETCH**

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

David M. Chow - Chairperson

Al Myers

Dean Staff

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. Stretch breached Commission Bylaw 702.1 by engaging in conduct that is unprofessional or unbecoming of a registrant in the course of his practice.

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 702.1 states:

“A registrant shall not engage in conduct that is disgraceful, unprofessional or unbecoming of a registrant in the course of his or her practice.”

FACTS:

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

[5] Mr. Stretch has been continuously registered as a salesperson under the provisions of *The Real Estate Brokers Act, The Real Estate Brokers Act, 1987,* and *The Real Estate Act* in the Province of Saskatchewan with the Superintendent of Insurance and the Saskatchewan Real Estate Commission since September 5, 1986.

[6] Mr. Stretch has taken the Real Estate 150 course.

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

[8] Mr. Stretch is presently registered under the provisions of *The Real Estate Act* as a salesperson with Carway Holdings Ltd. O/A Realty Executives Saskatoon.

[9] In the spring of 2019, Registrant A was representing the sellers of the Property.

[10] Mr. Stretch arranged to view the Property with his buyer clients on March 9, 2019.

[11] Mr. Stretch smelled natural gas when he opened the front door of the Property. When he and his clients walked into the kitchen, he heard a noise coming from the stove and realized that the gas had been left on.

[12] Mr. Stretch sent Registrant A a text message accusing her seller clients of almost killing him and his clients because all of the burners on the gas stove had been left on and the house was full of gas.

[13] Registrant A tried to call Mr. Stretch to discuss his text message, but he did not answer her call because he was with his clients.

[14] Registrant A sent Mr. Stretch a text message stating: “Very professional Darrell! At least have the balls to answer your phone”.

[15] Mr. Stretch did not find Registrant A’s text to be very professional.

- [16] Mr. Stretch called Registrant A. After comments from her Mr. Stretch then responded by saying, “Go f*** yourself, you f***ing c***. I have the f***ing balls to answer my phone.” Registrant A came unglued and Mr. Stretch hung up on her.
- [17] Registrant A sent Mr. Stretch a text message advising that she would be bringing the matter before the real estate board.
- [18] Mr. Stretch replied, saying, “Please, please, I totally look forward to it!!”
- [19] Mr. Stretch sent another text message to Registrant A apologizing for his previous comments. Mr. Stretch acknowledged that it was not very professional to say those things to her and that that is not how he does business.

REASONS:

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

Mitigating Factors

- [21] Mr. Stretch has no previous sanction history.
- [22] Mr. Stretch has been a registrant since 1986.
- [23] Mr. Stretch was co-operative with the investigation.
- [24] Mr. Stretch sent a text message to Registrant A to apologize for his comments.

Aggravating Factors

- [25] The comments Mr. Stretch made to Registrant A were extremely inappropriate.

Prior Decisions & Other Considerations

- [26] 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.

[27] 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.

[28] Mr. Stretch encountered natural gas in a property he was showing to clients. He got into a heated exchange with the listing agent during which he called her a "f***ing c***" and told her to "go f*** [herself]" .

2. The role of the offending member in the breaches.

[29] While neither Mr. Stretch nor the listing agent conducted themselves very well in the course of their interactions, Mr. Stretch crossed a line when he called the listing agent a "f***ing c***" .

3. Whether the offending member suffered or gained as a result of the breaches.

[30] There is no evidence to suggest that Mr. Stretch 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.

[31] There is no evidence of consumer harm arising out of Mr. Stretch's breach.

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

[32] Specific deterrence is needed to ensure that Mr. Stretch understands that he must conduct himself professionally and appropriately in the course of his practice. It must be made clear to Mr. Stretch that he will be better able to serve the interests of his clients if he is able to deal with his colleagues in a respectful manner.

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

[33] General deterrence is needed to ensure that all registrants understand that they are required to conduct themselves professionally and appropriately in the course of their practice. The real estate industry functions more efficiently and clients are better served when the registrants who represent them are able to deal with one another in a respectful manner.

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

[34] Members of the public are better served when the registrants who represent them are able to deal with one another in a respectful manner. Public confidence

in the industry is bolstered by registrants who conduct themselves professionally and appropriately in the course of their practice.

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

[35] Mr. Stretch'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. Stretch's breach of Bylaw 702.1?

[36] There are five previous decisions dealing with breaches of Bylaw 702.1, only two of which bear much factual resemblance to the case at hand.

[37] In *Berner (Re)*, [2018 SKREC 19](#) (file #2017-15) ("*Berner*"), Kathy Berner was issued an order of reprimand for responding to correspondence from a lawyer in a hostile and condescending manner. Ms. Berner's brokerage had been managing the landlord's property. A dispute arose because the landlord wanted to sell the property, but the brokerage had just signed a lease agreement with new tenants. A lawyer representing the landlord sent correspondence to Ms. Berner. Ms. Berner believed that some of the lawyer's requests were in violation of the tenants' rights under the *Residential Tenancies Act*. Her response to the lawyer indicated that the lawyer was wasting his client's money trying to bully the brokerage into breaking the law and that general practice lawyers are not well-versed in, or do not understand, tenant/landlord laws. She recommended that the landlord seek out proper counsel before wasting more time and money with incorrect legal advice. She advised that she found the lawyer's letter amusing because he was acting completely outside the letter of the law. This letter was copied to several people.

[38] Ms. Berner was co-operative with the investigation and signed a Consent Order acknowledging her error.

[39] Ms. Berner had a previous sanction history and was registered as a broker. There was evidence of consumer harm as Ms. Berner's landlord client was very upset.

[40] Mr. Stretch's breach of Bylaw 702.1 is less serious than that of the registrant in *Berner*. Ms. Berner was registered as a broker and had a previous sanction history.

[41] In *Irwin (Re)*, [2018 SKREC 32](#) (file #2017-72) ("*Irwin*"), Scott Irwin was issued an order of reprimand and a \$1,250 fine for sending rude text messages to a buyer client. Mr. Irwin's buyer client contacted him several times after taking possession of the property to discuss issues she was having with the home. After several such exchanges, Mr. Irwin instructed her not to call or text him about the

property anymore. He suggested she should have bought a new house if she wanted everything to be perfect and noted that, if she was unhappy, she should go after the home inspector or blame herself for being so cheap.

- [42] Mr. Irwin was co-operative with the investigation and had no previous sanction history.
- [43] Mr. Stretch's breach of Bylaw 702.1 is similarly serious to that of the registrant in *Irwin*. Although Mr. Stretch's comments were more inappropriate than the comments made by Mr. Irwin, Mr. Irwin's comments were directed at his client, a member of the public.
- [44] There are two other decisions that deal with breaches of a different provision in the legislation, but that involve similar facts to the case at hand.
- [45] In *Crawford (Re)*, [2018 SKREC 34](#) (file #2015-64) ("*Crawford*"), Devon Crawford was issued an order of reprimand and a \$1,000 fine for breaching s. 39(1)(a) of the *Act* by making inappropriate comments to his seller client. The agency relationship between Mr. Crawford and the seller had begun to break down. Unbeknownst to Mr. Crawford, the seller had obtained a cancellation form, which she submitted to the brokerage for processing and which the brokerage ultimately submitted to the real estate board. When he learned of the cancellation, Mr. Crawford called the seller to ask how the listing had been cancelled without his consent. The seller was verbally abusive to Mr. Crawford during the phone call and called him an "a*****". In response, Mr. Crawford called his client a "piece of s***" and told her to "go f*** herself". Then he hung up on her.
- [46] Mr. Crawford did not have a previous sanction history and was co-operative with the investigation. He found the seller extremely difficult to work with and she appeared to have unreasonable expectations about the work that was required of Mr. Crawford as the listing agent. The seller was verbally abusive toward Mr. Crawford.
- [47] The comments Mr. Crawford made to his seller client were extremely inappropriate.
- [48] Mr. Stretch's breach is similarly serious to that of the registrant in *Crawford*. While Mr. Stretch's comments were more inappropriate than the comments made by Mr. Crawford, Mr. Crawford's comments were directed at his client, a member of the public. The seriousness of Mr. Stretch's breach is mitigated by the fact that he is a long-time registrant and that he apologized to the complainant for his comments. However, Mr. Crawford was able to demonstrate more provocation on the part of his client.
- [49] In *Hastings (Re)*, [2002 SKREC 3](#) (file #2001-46) ("*Hastings*"), John Hastings was issued an order of reprimand and a \$1,000 fine for breaching s. 39(1)(a) of the

Act by entering into a verbal altercation with, and making inappropriate comments to, the seller of a property after he had showed the seller's property to a potential buyer. During a showing of a property, Mr. Hastings used the washroom and his client continued to view the property on his own. The owner returned during the showing, objected to Mr. Hastings' use of the washroom and the client being in the home unattended, and asked that they leave the premises. The conversation continued outside the home, with both parties making regrettable comments. Mr. Hastings stated words to the effect of, "If you like, I'll drive home and pick up one of my boys and bring him back and kick the s*** out of you."

- [50] Mr. Hastings had no previous sanction history and co-operated with the investigation. He had been registered with the Commission for approximately 14 years. He acknowledged his mistake and was remorseful for his actions. The Commission considered that the seller was allegedly very difficult to work with and had provoked Mr. Hastings past normal working limits.
- [51] Mr. Stretch's breach is slightly less serious than that of the registrant in *Hastings*. Mr. Hastings' comments were made to a member of the public and included threats of violence, but he was able to demonstrate more provocation on the part of the homeowner.
- [52] The decision in *Hastings* was rendered prior to an expansion of the real estate market in 2008 that saw significant increases in property values. As property values rise, so do the commissions registrants can expect to earn on trades in real estate. When using older decisions as precedent, the impact general inflation and rising property values have had on commissions payable to registrants on trades in real estate must be considered. Failure to account for these factors could lead to disciplinary action by the Commission coming to be considered a "cost of doing business".
- [53] At the time of the decision, Bylaw 702.1 was not yet in place.
- [54] An order of reprimand and a fine of approximately \$1,000 are appropriate sanctions for Mr. Stretch's breach of Bylaw 702.1.
- [55] As Mr. Stretch has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [56] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Stretch, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:

- [57] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Bylaw 702.1:
1. Mr. Stretch shall receive an order of reprimand for the violation of Bylaw 702.1;
 2. Mr. Stretch 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
 3. Mr. Stretch's registration shall be suspended if he fails to make payment as set out above.

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

Dated at Moose Jaw, Saskatchewan this 30th day of July, 2019.

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