

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

Cawkwell (Re), 2021 SKREC 8

Date: September 15, 2021
Commission File: 2021-26

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF EDWIN (TED) CAWKWELL**

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

Jeffrey P. Reimer- Chairperson
Wayne Zuk
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. Cawkwell breached Commission Bylaw 723(c) by failing to notify the Commission in writing within five days of the settlement of civil proceedings commenced against him with respect to a trade in real estate.

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 723(c) states:

“In addition to the requirements set out in section 33 of the Act and subsection 54(2) of the Act, and subject to Bylaw 724, a registrant shall notify the Commission in writing no later than five (5) days after the occurrence of any of the following:

...

(c) commencement of civil proceedings against the registrant with respect to:

- i. a trade in real estate;*
- ii. fraud;*
- iii. misrepresentation;*
- iv. undue influence; or*
- v. breach of trust;*

and any settlement entered into by the registrant or judgment issued against the registrant as a result of those civil proceedings”.

FACTS:

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

[5] Mr. Cawkwell has been continuously registered as a salesperson under the provisions of *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since November 15, 2011.

[6] Mr. Cawkwell has taken the following real estate courses:

- Phase 1 – Real Estate as a Professional Career;
- Farm Real Estate as a Professional Career; and
- Residential Real Estate as a Professional Career.

[7] Mr. Cawkwell has completed the continuing professional development seminars each registration year since 2011-2012.

[8] Mr. Cawkwell is presently registered under the provisions of *The Real Estate Act* as a salesperson with Re/Max Saskatoon.

[9] On April 28, 2017, Mr. Cawkwell contacted Commission staff to advise that Brokerage A had initiated civil proceedings against him with respect to the sale of a property. His clients, Mr. X and Farm Ltd., were also named as defendants.

[10] Mr. Cawkwell sold a large farm property owned by Farm Ltd. in the fall of 2016. He was the fourth registrant to have listed the property for sale. A registrant of Brokerage A had been the last registrant to have the property listed before him.

Several months after the property was sold, Mr. Cawkwell heard that Brokerage A was suing Farm Ltd. for just under \$1,500,000, which he understood to be the commission the brokerage would have earned on the transaction if they had sold the property. Many months later, Mr. Cawkwell was also sued by Brokerage A.

- [11] On May 4, 2017, Commission staff replied to thank Mr. Cawkwell for notifying the Commission of the claim and to advise that: "Bylaw 723 further requires you to notify us within five days of the claim settling, judgment being issued, or other termination of the claim."
- [12] On May 18, 2018, Commission staff sent Mr. Cawkwell an email inquiring whether the claim had been settled, had judgment issued or had otherwise terminated. The email reminded him that he was "required under Bylaw 723 to report, within five days, once any of them do occur."
- [13] Mr. Cawkwell replied that same day to advise that the proceedings were still ongoing.
- [14] On December 3, 2018, Commission staff sent Mr. Cawkwell an email inquiring whether the claim had been settled, had judgment issued, or had otherwise terminated. The email reminded him that Bylaw 723 required him to "report, within five days, once any of them do occur."
- [15] Mr. Cawkwell replied that same day to advise that the claim had not been resolved as of yet.
- [16] On December 4, 2018, Commission staff replied to Mr. Cawkwell to thank him for his quick response and to remind him that Bylaw 723 required him to notify the Commission in the event the claim was settled, judgment was issued, or the claim was otherwise terminated.
- [17] Mr. Cawkwell replied that same day to thank Commission staff for the follow up. His email stated: "noted on all points."
- [18] On June 4, 2019, Commission staff sent Mr. Cawkwell an email inquiring whether the claim had settled, had judgment issued, or had otherwise terminated. The email reminded him that Bylaw 723 required him to "report, within five days, once any of them do occur."
- [19] Mr. Cawkwell replied that same day to advise that Brokerage A had dropped its claim against him the previous week, but that Mr. X had initiated a third party claim against Mr. Cawkwell. As such, Mr. Cawkwell remained a defendant in the litigation. He further advised that there was a hearing scheduled for June 20 at which he and his lawyer would try to get Mr. X's claim against him removed as well.

- [20] Mr. Cawkwell provided a copy of the Discontinuance of Claim filed by Brokerage A discontinuing its action against him.
- [21] On June 25, 2019, Commission staff followed up with Mr. Cawkwell to see if he had received any news regarding the outcome of the June 20, 2019 hearing.
- [22] Mr. Cawkwell replied that same day to advise that the hearing could not proceed because the judge was missing an affidavit from Brokerage A. He advised that the hearing had been rescheduled to September 16, 2019.
- [23] On July 5, 2019, Commission staff replied to thank Mr. Cawkwell for his quick response and to remind him that Bylaw 723 required him to notify the Commission within five days of the claim settling, judgment being issued, or other termination of the claim.
- [24] On October 18, 2019, Commission staff sent Mr. Cawkwell an email inquiring whether the claim had settled, had judgment issued, or had otherwise terminated. The email reminded him that Bylaw 723 required him to “report, within five days, once any of them do occur.”
- [25] Mr. Cawkwell replied that same day to advise that the proceedings were still ongoing.
- [26] On October 23, 2019, Commission staff replied to thank Mr. Cawkwell for his quick response and to remind him that Bylaw 723 required him to notify the Commission within five days of the claim settling, judgment being issued or other termination of the claim.
- [27] Mr. Cawkwell replied: “Received and understood”.
- [28] On April 23, 2020, Commission staff sent Mr. Cawkwell an email inquiring whether the claim had settled, had judgment issued, or had otherwise terminated. The email reminded him that Bylaw 723 required him to “report, within five days, once any of them do occur.”
- [29] Mr. Cawkwell replied to advise that, while the claim filed against him by Brokerage A had been discontinued, the third party claim initiated by Mr. X remained ongoing.
- [30] Commission staff replied to thank Mr. Cawkwell for his response and to remind him that Bylaw 723 required him to notify the Commission within five days of the claim settling, judgment being issued or other termination of the claim.
- [31] In September of 2020, Mr. X and Farm Ltd. discontinued their claim against Mr. Cawkwell as part of a settlement agreement between Mr. X, Farm Ltd., Brokerage A, and Mr. Cawkwell.

- [32] Three years into the litigation, Mr. Cawkwell had been told that it was almost certain that he would win his case, but that he would spend a significant amount of money in legal fees to prove his innocence. He had already spent a large sum of money in legal fees and did not want to spend any more money or time to prove a point. Farm Ltd. and Mr. Cawkwell each offered a sum of money to Brokerage A to make the claim go away. The settlement did not involve either Farm Ltd. or Mr. Cawkwell admitting guilt.
- [33] On September 24, 2020, copies of the discontinuances were sent to Mr. Cawkwell alongside confirmation from his lawyer that the matter was finalized.
- [34] Mr. Cawkwell did not contact Commission staff to advise that he had entered into a settlement with respect to the claim made against him.
- [35] On May 3, 2021, Commission staff sent Mr. Cawkwell an email inquiring whether the claim had settled, had judgment issued, or had otherwise terminated. The email reminded him that Bylaw 723 required him to “report, within five days, once any of them do occur.”
- [36] That same day, Mr. Cawkwell advised that the third party claim initiated against him by Mr. X had settled the previous fall. He apologized for having forgotten to notify the Commission of the settlement.
- [37] Mr. Cawkwell acknowledges that he forgot one small step, which was to notify the Commission of the settlement. He is diligent in his efforts to make sure he is always working within the legislation and he makes positive contributions to the real estate industry.

REASONS:

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

Mitigating Factors

- [39] Mr. Cawkwell was co-operative with the investigation.
- [40] Mr. Cawkwell immediately acknowledged his error.

Aggravating Factors

- [41] Between 2017 and 2020, Commission staff sent 10 emails to Mr. Cawkwell that made specific reference to the requirement to notify the Commission in the event the claim settled.
- [42] An [information bulletin](#) on the topic of a registrant’s reporting obligations under Bylaw 723 was published in the February 2015 Register, and a reminder was

published in the November 2015 Register. Several discipline decisions against registrants who failed to comply with Bylaw 723 are currently posted on the Commission's website.

- [43] Mr. Cawkwell has a previous sanction history. In *Cawkwell (Re)*, [2017 SKREC 12](#) (file #2016-79), Mr. Cawkwell was issued an order of reprimand and a \$2,500 fine for breaching Bylaw 727 by advertising a property for sale without written authorization from the owner. The property was listed for sale by another brokerage. Mr. Cawkwell combined information received from the listing agent with information gathered by his team to create information packages relating to the property, which were distributed to 411 qualified buyers in Saskatchewan and elsewhere.

Prior Decisions & Other Considerations

- [44] 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.
- [45] 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.*
- [46] In 2017, Mr. Cawkwell notified the Commission that a claim had been commenced against him with respect to a trade in real estate. Commission staff followed up with Mr. Cawkwell on the progress of the litigation, reminding him often of his obligation to notify the Commission in the event the claim settled. When the claim settled in September of 2020, Mr. Cawkwell did not notify the Commission.

2. *The role of the offending member in the breaches.*
- [47] Mr. Cawkwell was the only registrant involved in his breach of the legislation.
3. *Whether the offending member suffered or gained as a result of the breaches.*
- [48] There is no evidence to suggest that Mr. Cawkwell suffered a loss or enjoyed a benefit as a result of his breach of the legislation.
4. *The impact of the breaches on complainants or others.*
- [49] There is no evidence of actual consumer harm arising out of Mr. Cawkwell's breach of the legislation, but a registrant's failure to notify the Commission of the occurrence of an event set out in Bylaw 723 challenges the Commission's ability to regulate the industry in the public interest.
5. *The need for specific deterrence to protect the public.*
- [50] Specific deterrence is needed to remind Mr. Cawkwell of his obligations under Bylaw 723.
6. *The need for general deterrence to protect the public.*
- [51] General deterrence is needed to remind all registrants of the notification requirements placed upon them by Bylaw 723.
7. *The need to maintain the public's confidence in the integrity of the profession.*
- [52] The public must have confidence in the Commission's ability to regulate the industry in the public interest. As such, registrant conduct that undermines this ability must be addressed.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [53] Mr. Cawkwell'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. Cawkwell's breach of Bylaw 723(c)?

- [54] There are three previous decisions dealing with breaches of Bylaw 723 that are similar to the case at hand.
- [55] In *Duggleby (Re)*, [2019 SKREC 19](#) (file #2019-03) ("*Duggleby*"), Mike Duggleby was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 723(c). Mr. Duggleby did not notify the Commission of a claim that had been commenced against his brokerage. Commission staff contacted Mr. Duggleby to advise that the Commission had learned of the claim against the brokerage and to remind Mr. Duggleby of his reporting requirements under Bylaw 723, including the need to report a settlement of the claim. A few months later, Mr. Duggleby entered into a settlement agreement with the plaintiff. He did not notify the Commission of the settlement or the discontinuance of the plaintiff's claim.

- [56] Mr. Duggleby had no previous sanction history and had been a registrant since 2002. He was cooperative with the investigation.
- [57] Mr. Duggleby was 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. An article on the topic of a registrant's reporting obligations under Bylaw 723 was published in the February 2015 Register, and a reminder was published in the November 2015 Register. A discipline decision against a registrant for failing to comply with Bylaw 723 and a decision against his broker for failing to ensure his compliance were published in the August 2015 Register. Mr. Duggleby was specifically reminded of his obligation to notify the Commission in the event of a settlement or judgment.
- [58] Mr. Cawkwell's breach of Bylaw 723(c) is more serious than that of the registrant in *Duggleby*. Both registrants were specifically reminded of their obligation to notify the Commission in the event of a settlement or judgment with respect to the civil proceedings, but Mr. Cawkwell was sent no less than 10 emails over the course of three years that included this reminder. While Mr. Duggleby was registered as a broker, Mr. Cawkwell has a previous sanction history with the Commission.
- [59] In *Ackerman (Re)*, [2019 SKREC 20](#) (file #2019-04) ("*Ackerman*"), Brett Ackerman was issued an order of reprimand and a \$1,000 fine for his breach of Bylaw 723(c). Mr. Ackerman did not notify the Commission of a claim that had been commenced against him. Commission staff contacted Mr. Ackerman to advise that the Commission had learned of the claim against him and to remind Mr. Ackerman of his reporting requirements under Bylaw 723, including the need to report a settlement of the claim. A few months later, Mr. Ackerman entered into a settlement agreement with the plaintiff. He did not notify the Commission of the settlement or the discontinuance of the plaintiff's claim.
- [60] Mr. Ackerman was cooperative with the investigation.
- [61] In the past, Mr. Ackerman had been contacted by Commission staff when it became known that he had been charged with a criminal offence that he had not reported to the Commission. Mr. Ackerman was advised of the requirement that he report criminal charges and convictions to the Commission. An article on the topic of a registrant's reporting obligations under Bylaw 723 was published in the February 2015 Register, and a reminder was published in the November 2015 Register. A discipline decision against a registrant for failing to comply with Bylaw 723 and a decision against his broker for failing to ensure his compliance were published in the August 2015 Register. Mr. Ackerman was specifically reminded of his obligation to notify the Commission in the event of a settlement or judgment.

- [62] Mr. Cawkwell's breach of Bylaw 723 is more serious than that of the registrant in *Ackerman*. Mr. Cawkwell was specifically reminded of his obligation to notify the Commission in the event of a settlement of the civil proceedings on no less than 10 occasions and he has a previous sanction history.
- [63] In *Dodman (Re)*, [2019 SKREC 9](#) (file #2017-85) ("*Dodman*"), Dale Dodman was issued an order of reprimand and a \$1,000 fine for breaching Bylaw 723(i) by failing to notify the Commission of her conviction under federal tax laws. In December of 2014, Commission staff learned of several charges against Mrs. Dodman under federal tax laws. Over the course of several months, Mrs. Dodman was asked to provide several updates on the proceedings. On February 23, 2017, Mrs. Dodman pled guilty to charges under the *Income Tax Act* and the *Excise Tax Act*, but she did not notify the Commission of these convictions. Between February and December of 2017, Mrs. Dodman continued to correspond with Commission staff about the charges that had been laid against her, but she did not advise Commission staff of her guilty pleas or convictions. Commission staff learned of the convictions after contacting the court and being advised that Mrs. Dodman had been sentenced on February 23 with respect to the charges at issue.
- [64] Mrs. Dodman's sentence required her to pay a \$1,000 fine to the court for each of the four counts on which she was convicted.
- [65] Mrs. Dodman had been corresponding with Commission staff about the charges against her for several months at the time of her conviction. She knew, or ought to have known, that she should have reported her conviction to Commission staff. Mrs. Dodman never notified Commission staff that she had been convicted of offences under federal tax laws. The information was obtained directly from the court. Mrs. Dodman had a previous sanction history, including a charge for failing to provide substantive answers to questions from a review officer.
- [66] Mr. Cawkwell's breach of Bylaw 723 is slightly less serious than that of the registrant in *Dodman*. Both registrants had a previous sanction history and both corresponded with Commission staff about the progress of their court proceedings over a prolonged period of time. However, Mrs. Dodman continued to correspond with Commission staff for several months after entering guilty pleas to the charges against her without disclosing her pleas or the subsequent convictions. Mr. Cawkwell acknowledged his error immediately after Commission staff contacted him for an update on the proceedings.
- [67] An order of reprimand and a \$1,000 fine are appropriate sanctions for Mr. Cawkwell's breach of Bylaw 723(c).
- [68] As Mr. Cawkwell has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

- [69] In accordance with *The Real Estate Act*, its Regulations, and the Commission Bylaws, and with the consent of Mr. Cawkwell, and the Investigation Committee of the Saskatchewan Real Estate Commission, the Hearing Committee hereby orders:
- [70] With respect to Count 1, the charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* for breach of Commission Bylaw 723(c):
- a. Mr. Cawkwell shall receive an order of reprimand for the violation of Bylaw 723(c);
 - b. Mr. Cawkwell 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 *Act*; and
 - c. Mr. Cawkwell's registration shall be terminated if he fails to make payment as set out above.
- [71] There shall be no order as to costs.

Dated at City of Regina this 15th day of September 2021.

“Jeffrey P. Reimer”
Hearing Committee Chairperson