

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

Bird (Re), 2022 SKREC 2

Date: January 24, 2022
Commission File: 2021-29

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF CAMERON BIRD**

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

Randal C. Touet - Chairperson

Tim Hammond

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. Bird breached Commission Bylaw 702.1 by engaging in conduct that is disgraceful and 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. Bird’s Statement of Facts and Admissions, which includes the following relevant points:

[5] Mr. Bird has been continuously registered as a salesperson under the provisions of *The Real Estate Brokers Act, SS 1968, The Real Estate Brokers Act, RSS 1978, 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 May 9, 1985.

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

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

[8] Mr. Bird is presently registered under the provisions of *The Real Estate Act* as a salesperson with 100% Realty Associates Ltd. O/A Re/Max Saskatoon.

[9] CTV News tweeted a headline regarding comments made about mixing and matching COVID-19 vaccines by Dr. Theresa Tam.

[10] A user named Phil commented: “How in hell does she still have a job?”.

[11] From his Twitter profile, @cambird, Mr. Bird replied: “You mean he...”.

[12] Phil replied: “Hahaha yeah...my mistake”.

[13] Mr. Bird replied: “How Do they say. Identify as a female now but pretty certain wasn’t the same gender at birth.”

[14] Mr. Bird’s posts were not intended by him to be made as part of his business as a realtor but instead were social/political commentary intended to express his personal frustration with Dr. Tam and with the federal government’s handling of the pandemic.

[15] Mr. Bird’s Twitter profile however identified him as a REALTOR® with RE/MAX Saskatoon and several of the posts related to his real estate listings.

- [16] Mr. Bird's tweets began to trend on Twitter.
- [17] Mr. Bird deleted his Twitter account shortly thereafter.
- [18] Mr. Bird did not direct his comments to the complainant and did not intend to offend the complainant or anyone in the LGBTQ community. He removed the post as soon as he became aware that some people did not agree with the way he expressed his opinion.
- [19] Mr. Bird also immediately posted an apology on his Facebook page.
- [20] A CBC News article regarding his conduct was published on May 14, 2021.
- [21] Mr. Bird's opinion about the manner in which Dr. Tam and the federal government have handled the pandemic has not changed, but he has re-examined the manner in which he expressed his opinion. He is now keenly aware of why some persons, particularly members of the LGBTQ community, might have found his post to be in poor taste. He also again reiterates his sincere apology to Dr. Tam and all members of the LGBTQ community as the manner in which he expressed his political commentary in relation to the pandemic was insensitive and inappropriate.
- [22] Mr. Bird has successfully completed LGBTQ sensitivity training including a single course and a 5 part course offered through Pride At Work Canada so that he will be better able to express his opinions in a way that does not offend anyone in future. He has also received helpful advice and mentorship in that regard from a realtor colleague who is a member of the LGBTQ community.

REASONS:

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

Mitigating Factors

- [24] Mr. Bird was co-operative with the investigation.
- [25] Mr. Bird has been a registrant since 1985.
- [26] Mr. Bird posted a public apology for his comments on his Facebook page.

Aggravating Factors

- [27] Mr. Bird's posts were publicly accessible and they were viewed by a large audience.

- [28] Mr. Bird's posts were insulting to Dr. Tam individually and derisive of the trans community in general.
- [29] Mr. Bird has a previous sanction history. In *Bird (Re)*, 2018 SKREC 28 (file #2018-12), Mr. Bird was issued an order of reprimand and a \$750 fine for breaching Bylaw 726(c) by creating a misleading advertisement. In the advertisement, a spokesperson stated that, "[i]n Saskatoon, no agent spends more marketing dollars, sells more homes, and attracts more buyers than Cam Bird." Mr. Bird prepared the advertisement based on information he received from his accountant regarding his expenses and he used MLS® data to arrive at the ratio of his sales to the city average. His calculations could support a claim that he sells more than the average agent in Saskatoon, but not that he sells more than any other agent in Saskatoon.

Prior Decisions & Other Considerations

- [30] 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.
- [31] 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.*
- [32] Mr. Bird published posts from his Twitter account referring to Dr. Theresa Tam as "he" and insinuating that Dr. Tam had been born a biological male.
2. *The role of the offending member in the breaches.*
- [33] Mr. Bird 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.*
[34] There is no evidence to suggest that Mr. Bird has 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.*
[35] There is no evidence of actual consumer harm arising out of Mr. Bird's actions, but Mr. Bird's comments were detrimental to the dignity of the trans community and to the public perception of the professionalism of the real estate industry as a whole.
5. *The need for specific deterrence to protect the public.*
[36] Specific deterrence is needed to ensure that Mr. Bird understands that his conduct was not acceptable and that similar behaviour does not continue in future.
6. *The need for general deterrence to protect the public.*
[37] General deterrence is needed to remind all registrants of the importance of civil and professional decorum in all aspects of a registrant's practice.
7. *The need to maintain the public's confidence in the integrity of the profession.*
[38] Public confidence in the professionalism and competence of registrants is damaged when registrants fail to act with the courtesy and civility expected of professionals in the course of their practice.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
[39] Mr. Bird's conduct falls well 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. Bird's breach of Bylaw 702.1?

- [40] There are several previous hearing decisions involving breaches of Bylaw 702.1. While there are none dealing with inappropriate comments posted on a registrant's social media profile, there are some prior decisions that bear some factual similarity to the case at hand.
- [41] In *Stretch (Re)*, [2019 SKREC 30](#) (file #2019-26) ("*Stretch*"), Darrel Stretch was issued an order of reprimand and a \$1,000 fine for his breach of Bylaw 702.1. Upon arriving at a property for a showing, Mr. Stretch discovered that the gas had been left on. He sent a text message to the listing agent accusing her seller clients of almost killing him and his clients by leaving the burners on the gas stove on. When the listing agent had difficulty getting in touch with Mr. Stretch, she sent him a text message telling him that he should have the balls to answer his phone. Mr. Stretch called the listing agent and, after some comments from

her, Mr. Stretch responded by saying, “Go f*** yourself, you f***ing c***. I have the f***ing balls to answer my phone.”

- [42] Mr. Stretch had been a registrant since 1986 and he did not have a previous sanction history. He was cooperative with the investigation and sent a message to the listing agent to apologize for his comments.
- [43] The comments Mr. Stretch made to the listing agent were extremely inappropriate.
- [44] Mr. Bird’s breach of Bylaw 702.1 is more serious than that of the registrant in *Stretch*. While Mr. Stretch’s comments were extremely inappropriate, the platform on which Mr. Bird’s comments were made must be taken into account. Mr. Bird’s Twitter profile was fully accessible to the public and his posts were shared enough that local media picked up the story in the following days. Additionally, Mr. Stretch’s comments were offensive to his colleague, but Mr. Bird’s comments were insulting to Dr. Tam, as an individual, and to other marginalized communities, such as the trans community, in general. Mr. Stretch did not have a previous sanction history.
- [45] In *Irwin (Re)*, [2018 SKREC 32](#) (file #2017-72) (“*Irwin*”), Scott Irwin was issued an order of reprimand and a \$1,250 fine for his breach of Bylaw 702.1. Mr. Irwin represented the buyer of a property. After taking possession of the property, the buyer contacted Mr. Irwin several times regarding issues she was having with the property and questions she wanted him to ask the previous owners. Mr. Irwin advised the buyer that the sellers were done with the deal and that she could not keep asking them questions. The buyer texted Mr. Irwin again about an issue with the heat vents in the bedrooms. He told her to call a professional and stated, “Stupidly don’t call or text me anymore about your home.” The buyer told him that she would be calling her lawyer. He told the buyer to “go for it” and that she “should have bought a new house if she wanted everything to be perfect.” He went on to say that the buyer “needed to give her head a shake and stop blaming [him] for things”. He noted that, if she was unhappy, she should “go after the home inspector or [blame herself] for being so cheap.”
- [46] Mr. Irwin was cooperative with the investigation and had no previous sanction history.
- [47] Mr. Bird’s breach of Bylaw 702.1 is more serious than that of the registrant in *Irwin*. Mr. Bird did post a public apology on his Facebook page, but his original posts were accessible to, and viewed by, a large audience. While Mr. Irwin’s comments were clearly upsetting to his former client, Mr. Bird’s comments were derogatory to Dr. Tam and to the trans community as a whole. Mr. Irwin did not have a previous sanction history.
- [48] In *Berner (Re)*, [2018 SKREC 19](#) (file #2017-15) (“*Berner*”), Katherine Berner was issued an order of reprimand for her breach of Bylaw 702.1. Ms. Berner’s

brokerage had entered into a property management agreement with the owner of a property. The owner had decided to sell the property and requested that Ms. Berner's brokerage contact the recently placed tenants to cancel the lease agreement. A lawyer representing the owner advised Ms. Berner that brokerage staff were no longer allowed onto the property and requested that the brokerage take all reasonable steps to offer the tenants alternative lease options and send an executed copy of the agreement to the lawyer. Ms. Berner responded to the lawyer to say that the brokerage was not assisting the tenants in finding alternative rental arrangements because of the tenants' rights under the *Residential Tenancies Act*. She stated that the lawyer was wasting his client's money trying to bully the brokerage into breaking the law. She stated that general practice lawyers are not well-versed in the applicable laws and that most lawyers do not understand tenant/landlord laws. She recommended that the owner seek proper counsel before wasting more of her time and money with incorrect legal advice. She noted that she found the lawyer's letter amusing because he was acting completely outside the letter of the law. The letter was copied to several people.

- [49] Ms. Berner was cooperative with the investigation and signed a Consent Order acknowledging her error.
- [50] Ms. Berner had a previous sanction history and she 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. There is evidence of consumer harm as the property owner was very upset.
- [51] Mr. Bird's breach of the bylaw is more serious than that of the registrant in *Berner*. While Ms. Berner was registered as a broker, Mr. Bird's comments were shared with a large audience and they were derogatory toward Dr. Tam and to the trans community as a whole.
- [52] There are two other decisions involving inappropriate comments made by registrants in the course of their practice, though the registrants in these cases were charged under a different section of the legislation because Bylaw 702.1 did not exist at the time of the conduct giving rise to these charges.
- [53] 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 unprofessional comments to a client. Mr. Crawford represented the sellers of a property. There was little interest in the property and one of the sellers was not satisfied with the work Mr. Crawford was doing to sell the property. During one telephone call, the seller asked Mr. Crawford how much longer she was "stuck with" him. Unbeknownst to Mr. Crawford, the seller obtained a cancellation form, which she submitted to the brokerage for processing and which the brokerage submitted to the local real estate board for processing. When he learned of the cancellation, Mr. Crawford contacted the

seller to ask how the listing had been cancelled without his consent. The seller was verbally abusive to Mr. Crawford during the call and called him an “a*****”. In response, Mr. Crawford called the seller a “piece of s***” and told her to “go f*** herself” before hanging up on her.

- [54] Mr. Crawford did not have a previous sanction history and was cooperative with the investigation. He found the seller extremely difficult to work with and she appeared to have unreasonable expectations about the work required of a listing agent. Mr. Crawford’s client was verbally abusive toward him.
- [55] The comments Mr. Crawford made to his seller client were extremely inappropriate.
- [56] Mr. Bird’s breach of Bylaw 702.1 is more serious than the breach of s. 39(1)(a) in *Crawford*. Mr. Bird’s comments were made on an extremely public platform and they were insulting to an individual and to a larger, marginalized community. There were more mitigating factors at play in *Crawford*.
- [57] 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 a showing. During the showing, Mr. Hastings had 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.”
- [58] Mr. Hastings had been registered for approximately 14 years at the time of the breach and he did not have a previous sanction history. He was cooperative with the investigation, acknowledged his mistake, and showed remorse for his actions. The Hearing Committee considered that the seller was allegedly very difficult to work with and had provoked Mr. Hastings past normal working limits.
- [59] Mr. Bird’s breach of Bylaw 702.1 is similarly serious to the breach of s. 39(1)(a) in *Hastings*. Mr. Hastings made a threatening comment directly to a member of the public, which constitutes a serious breach of his professional obligations. While Mr. Bird’s comments were not threatening, they were demeaning and they were available to, and viewed by, a large audience. Mr. Bird has a previous sanction history with the Commission, though the conduct giving rise to the previous decision was not factually similar to the case at hand.
- [60] 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 commission 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 seen as a “cost of doing business”.

[61] An order of reprimand and a \$1,500.00 fine are appropriate sanctions for Mr. Bird’s breach of Bylaw 702.1.

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

CONSENT ORDER:

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

[64] 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:

- a. Mr. Bird shall receive an order of reprimand for the violation of Bylaw 702.1.
- b. Mr. Bird shall, within 30 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$1,500.00 fine for the said violation of the *Act*; and
- c. Mr. Bird’s registration shall be terminated if he fails to make payment as set out above.

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

Dated at Saskatoon in the Province of Saskatchewan this 24th day of January 2022.

“Randal C. Touet”
Hearing Committee Chairperson