

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

Moshenko (*Re*), 2023 SKREC 7

Date: November 21, 2023
Commission File: 2023-19

**IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3 AND
IN THE MATTER OF RUBY MOSHENKO**

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

Randal C. Touet - Chairperson

Kayla McQueen

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*, Ms. Moshenko breached Commission Bylaw 702.1 by engaging in conduct that was unprofessional in the course of her 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 Ms. Moshenko’s Statement of Facts and Admissions, which includes the following relevant points:

[5] Ms. Moshenko 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, 2019, and registered as a salesperson since May 22, 2015.

[6] Ms. Moshenko has taken the following real estate courses:

- Phase 1 – Real Estate as a Professional Career
- Residential Real Estate as a Professional Career
- Farm Real Estate as a Professional Career
- Commercial Real Estate as a Professional Career
- Real Estate Office Management & Brokerage

[7] Ms. Moshenko has completed the continuing professional development seminars each registration year since 2015.

[8] Ms. Moshenko is presently registered under the provisions of *The Real Estate Act* as a broker with Hudson Bay Realty.

[9] The Owner is the owner of the “Property”.

[10] The Owner listed the Property for sale with Brokerage “A”.

[11] Registrant “A” acted as the listing agent.

[12] Registrant “A” posted a picture of the Property advertising it for sale on the Facebook business page for Brokerage “A”.

[13] In the comments section underneath the photo, Ms. Moshenko wrote the comment “House is a disaster and huge slough on property”.

[14] Ms. Moshenko thought this was a link sent to her private page and that she was talking to a very discerning client who had given her a specific set of parameters to work with.

- [15] Ms. Moshenko did not see that she was on the public link and not just in messenger.
- [16] Ms. Moshenko was trying to impress on her client that it would not be what they were looking for as they wanted a turnkey property.
- [17] Ms. Moshenko apologizes and deeply regrets using the word “disaster”.
- [18] Registrant “A” showed the Owner the post with the photo of her Property and Ms. Moshenko’s comment.
- [19] The Owner lives in a small community.
- [20] The Owner was mentally distressed by Ms. Moshenko’s comment.

REASONS:

Mitigating Factors

- [21] Ms. Moshenko has no previous sanction history.

Aggravating Factors

- [22] Ms. Moshenko’s comment was posted publicly on Facebook as a comment on the listing agent’s post advertising the property for sale.

Prior Decisions & Other Considerations

- [23] 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.

- [24] 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.*
- [25] Ms. Moshenko made a public social media post about a property that was derogatory in nature by commenting on the listing agent's Facebook post advertising the property for sale.
2. *The role of the offending member in the breaches.*
- [26] Ms. Moshenko was the only registrant involved in her breach of the legislation.
3. *Whether the offending member suffered or gained as a result of the breaches.*
- [27] There is no evidence to suggest that Ms. Moshenko enjoyed a benefit or suffered a loss as a result of the breach.
4. *The impact of the breaches on complainants or others.*
- [28] The Owner states she was mentally distressed by Ms. Moshenko's comment. Additionally, the property is located in a small community and Ms. Moshenko's comment may negatively impact the Owner's ability to sell the property.
5. *The need for specific deterrence to protect the public.*
- [29] Specific deterrence is needed to ensure Ms. Moshenko understands her comment about the property was inappropriate and that she needs to take more care when interacting through social media platforms.
6. *The need for general deterrence to protect the public.*
- [30] General deterrence is needed to remind all registrants to keep language courteous and professional when referring to properties listed for sale and to take proper care when posting to or interacting within public social media platforms.
7. *The need to maintain the public's confidence in the integrity of the profession.*
- [31] Registrant conduct on public social media platforms that does not conform to standards of professional courtesy damages consumer confidence in the competence and professionalism of the registrants they engage to assist them in real estate transactions.
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
- [32] Ms. Moshenko'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 Ms. Moshenko's breach of Commission Bylaw 702.1?

- [33] In *Bird (Re)*, [2022 SKREC 2](#) (file #2021-29) ("Bird"), Cam Bird was issued an order of reprimand and a \$1,500 fine for breaching Bylaw 702.1 by posting an insulting and derisive comment on a CTV News tweet using his Twitter profile which identifies him as a registrant. CTV News tweeted a headline regarding comments about COVID-19 vaccines made by Dr. Theresa Tam. A user questioned how she still had a job. From his Twitter profile, @cambird, Mr. Bird replied: "You mean he...". Mr. Bird also tweeted: "How Do they say. Identify as a female now but pretty certain wasn't the same gender at birth". Mr. Bird did not intend the posts as part of his business as a registrant, but rather as social/political commentary intended to express his personal frustration with Dr. Tam and the federal government's handling of the pandemic. Mr. Bird's Twitter profile identified him as a registrant with Re/Max Saskatoon and several of the posts related to his real estate listings. Mr. Bird's tweets began to trend on Twitter. He deleted his Twitter account shortly thereafter. Mr. Bird posted an apology on his Facebook page. A CBC News article regarding his conduct was published a short time later. Mr. Bird completed LGBTQ sensitivity training.
- [34] Mr. Bird was co-operative with the investigation and had been a registrant since 1985. He posted a public apology for his comments on his Facebook page.
- [35] Mr. Bird's posts were publicly accessible and they were viewed by a large audience. The posts were insulting to Dr. Tam individually and derisive of the trans community in general. Mr. Bird had a recent previous sanction history.
- [36] Ms. Moshenko's breach of Bylaw 702.1 is distinct from Mr. Bird's breach in both content and distribution. The main parallel between the two breaches being that they both posted negatively on a public social media platform. Ms. Moshenko's statement, while overtly negative, was not entirely egregious in nature like Mr. Bird's statements. However, Ms. Moshenko's statement may have a direct impact on the property owner's ability to sell her property and for this reason Ms. Moshenko's breach is more serious than that of Mr. Bird.
- [37] As Bylaw 702.1 encompasses a broad range of conduct, Bird is the only previous breach of Bylaw 702.1 that relates in any way to Ms. Moshenko's conduct. Similar conduct is also found in Bylaw 706.
- [38] In *Peter (Re)*, [2023 SKREC 1](#) (file #2022-18) ("Peter"), Kevin Peter was issued an order of reprimand and a \$4,000 fine for breaching Bylaw 706 by publicly discrediting a competitor on social media. Mr. Peter had listed a property for sale. A buyer wrote an offer that was made subject to a house and furnace inspection. A home inspection was carried out and the inspector identified the furnace as an issue. The buyer wanted the seller to have the furnace serviced, but the seller

had the furnace inspected by another professional and did not believe the furnace required servicing. Ultimately, the buyer chose not to remove the home inspection condition. The buyer's agent sent Mr. Peter a Notification Conditions Have Not Been Satisfied or Removed in Writing with no explanation. Mr. Peter tried to contact the buyer's agent, but was not successful. Mr. Peter created a Facebook post that stated: "Due to fall through of unqualified buyer & through a home inspector that lacked qualification for a furnace inspection from an arrogant inexperienced agent, although was cleared by Seller paying for Qualified Plumber to pass furnace inspection!". The post included a link to the listing of the property. The post initially did not identify the agent to whom Mr. Peter was referred, but he later edited it to include a reference to the buyer's agent. Mr. Peter made the post with the intention of reaching the buyer's agent and altered it to get it more direct to her. He was not aware that he was posting to everyone. Mr. Peter eventually took the post down.

- [39] Mr. Peter had no previous sanction history.
- [40] Mr. Peter's comment about another registrant was posted publicly on Facebook.
- [41] Ms. Moshenko's breach is similar to that of the registrant in Peter. Although Peter dealt with a breach of a different Bylaw, the conduct was parallel. Both Ms. Moshenko and Mr. Peter made public posts on the social media platform Facebook. While Mr. Peter's post was disparaging of another registrant, Ms. Moshenko's post was disparaging of a property currently listed for sale. Ms. Moshenko's comment was posted directly into the comments section of the listing agent's post advertising the property for sale. The owner of the property lives in a small community and Ms. Moshenko's negative public comment could reasonably be assumed to have an impact on the owner's ability to sell the property.
- [42] Both Ms. Moshenko and Mr. Peter alleged they posted publicly by mistake, believing their posts were private messages.
- [43] The Owner has stated that Ms. Moshenko's comment caused her mental distress.
- [44] In May of 2020, the provincial legislature amended s. 38 of The Real Estate Act to increase the maximum fines that can be ordered against registrants found guilty of professional misconduct or professional incompetence. The previous iteration of the legislation capped fines at \$5,000 for each finding up to a maximum of \$15,000 in the aggregate for all findings. The new maximum fine for each finding of professional misconduct or professional incompetence was increased to \$25,000 up to \$100,000 in the aggregate for all findings. While this legislative change does not invalidate the precedents to be found in previous hearing decisions, it must be taken as a strong signal from lawmakers that the fines ordered against registrants should be increased so as to ensure the protection of the public.

[45] An order of reprimand and a fine of \$3,500 are appropriate sanctions for Ms. Moshenko's breach of Bylaw 702.1.

[46] As Ms. Moshenko has agreed to sign this consent order, there will be no order as to costs.

CONSENT ORDER:

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

[48] 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. Ms. Moshenko shall receive an order of reprimand for the violation of Bylaw 702.1;
- b. Ms. Moshenko shall, within 60 days of the date of this order, pay to the Saskatchewan Real Estate Commission a \$3,500 fine for the said violation of the *Act*; and
- c. Ms. Moshenko's registration shall be terminated if she fails to make payment as set out above.

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

Randal C. Touet
Hearing Committee Chairperson