

**IN THE MATTER OF**  
**THE REAL ESTATE ACT, C. R-1.3**  
**AND**  
**IN THE MATTER OF IAN JOHNSTON**

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**DECISION OF THE**  
**SASKATCHEWAN REAL ESTATE COMMISSION**

**Commission File: #2008-03**

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Before: A Saskatchewan Real Estate Commission Hearing Committee  
comprised of the following:  
Randal C. Touet - Chairperson  
Cheryl Elliott  
Larry Gingerich  
Richard Jeanneau

Appearances: Allan York, on behalf of the Investigation Committee

Hearing Date: November 28, 2008

Written Decision: December 19, 2008

The Mitigation Hearing was held November 28, 2008 at the offices of the Saskatchewan Real Estate Commission, 237 Robin Crescent, Saskatoon, Saskatchewan before a Hearing Committee (“the Committee”) of the Commission. The Statement of Facts and Admissions dated June 27, 2008 provided particulars of Ian Johnston’s violation and admissions.

### **CHARGE and ADMISSION OF MISCONDUCT**

The registrant was charged with and has admitted, in the Statement of Facts and Admissions, to professional misconduct contrary to Section 39(1)(a) of *The Real Estate Act* in that:

Mr. Johnston added information to the Seller’s Brokerage/Data Input Form without the written authorization of the Sellers.

### **LEGISLATION**

Section 39(1)(a) 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 harmful to the best interests of the public, the registrants or the Commission.”

### **FACTS**

In accordance with subsection 9(4) of *The Real Estate Regulations* (“the Regulations”), the Committee accepted Ian Johnston’s Statement of Facts and Admissions, which include the following relevant points:

1. Mr. Johnston 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 April 8, 1998.
2. Mr. Johnston successfully completed the following real estate courses: *Fundamentals of Real Estate*, *Principles of Mortgage Financing*, *Principles of Real Estate Appraisal* and *Principles of Real Property Law*. He also completed the continuing professional development seminars each registration year since 2001-2002.
3. Mr. Johnston is presently registered under the provisions of *The Real Estate Act* as a salesperson with Century 21 Conexus Realty Ltd.
4. On or about March 16, 2007 Mr. Johnston signed an MLS Exclusive Seller’s Brokerage contract with the Sellers. The Seller’s Brokerage contract called for a \$149,900.00 asking price and a 6% commission to be equally split between the successful buying and selling brokerages.
5. Between March 16, 2007 and June 1, 2007 (both dates inclusive) Mr. Johnston added information to the Seller’s Brokerage/Data Input Form without the written authorization of the Sellers regarding a home in Rouleau, Saskatchewan (hereinafter called **the**

**property**). The amended Seller's Brokerage/Data Input form contained an attachment indicating the property's features as indicated on the MLS® listing.

6. On or about March 31, 2007 another registrant with Century 21 Conexus Realty Ltd. assisted the Buyers with the Residential Contract of Purchase and Sale to purchase the property.
7. On or about the June 1, 2007 possession date, the Buyers discovered that the property's wheat stove originally viewed had been removed by the Sellers.
8. On or about June 7, 2007 Mr. Johnston requested that the Sellers return the wheat stove to avoid any civil claim, to which the Sellers declined to do.
9. On or about January of 2008, the Sellers submitted letters of complaint to the Saskatchewan Real Estate Commission alleging that they had surrendered their mineral rights to the property and had never included the stove in the sale of the property.

## **REPRESENTATIONS**

The Investigation Committee representative, Allan York, stated that it was clear that Mr. Johnston had amended the Data Input Form without the consent of the Sellers. He added clauses without the Sellers having reviewed or consented to the addition.

The Investigation Committee recommended a fine of \$1,000.00 and a reprimand. This is required to restore public confidence in the actions of registrants and to provide a specific deterrent to Mr. Johnston to ensure he understands the importance of having the written consent of parties before submitting documents on their behalf. This would also provide a general deterrence to all registrants to ensure that they do not assume the consent of the seller or buyer when providing documents. This was a matter which Mr. York says while serious, it could easily have been resolved by checking with the Sellers first and having them sign off on the document or amending it to their satisfaction.

Mr. York confirmed that Mr. Johnston had clearly admitted his error and apologized for the incident.

Mr. York referred the Hearing Committee to the Reg Kotlar decision (2006-52) where there was a \$500.00 fine for advertising features which were not factual. As well, he mentioned the Andy Schmidt decision (2006-51) where Mr. Schmidt was fined \$3,000.00 for advertising errors on his own property.

Mr. Johnston was not present at the Hearing. He did provide a letter to the Commission in which he indicated that he had discussed what was going to be said in the general comments section of the listing. He said that because his handwriting is not very legible, it was understood that it would be typed out and submitted with the listing. They signed the listing and afterwards Mr. Johnston added the words "see attached" to the data input part of the listing. Mr. Johnston apologized for this and wanted to make it clear that he did not intend to mislead anyone.

## DECISION

In accordance with clause 9(4)(a) of the Regulations and clauses 38(1)(f), 38(2)(b) and subclause 38(2)(a)(i) of the *Act*, the Committee made the following orders:

- a) Pursuant to clause 38(1)(f) of the *Act*, that Ian Johnston receive an order of reprimand for the violation of Section 39(1)(a) of the *Act* ;
- b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Ian Johnston, prior to February 27, 2009, pay to the Saskatchewan Real Estate Commission, a \$1,500.00 fine for the said violation of the *Act*;
- c) Pursuant to clause 38(2)(b) of the *Act*, that Ian Johnston's registration shall be suspended if he fails to pay any portion of the fine within the said period of time

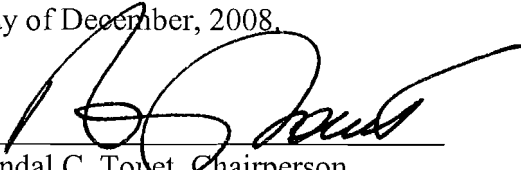
## RATIONALE

The Committee, in considering the disciplinary action, considered Ian Johnston's lack of previous sanction history and the length of time he has been in the real estate industry.

The Hearing Committee is concerned that all registrants ensure that the paperwork they submit on behalf of their clients is both correct and accepted by the clients. Once documents have been dealt with, there should be no discussion as to whether or not the clients had agreed to the contents. This is a simple matter to resolve as the clients can sign the documents after they have been fully completed. With the advent of email and fax machines, there is no excuse for not checking these matters first.

The problem arose in this matter because Mr. Johnston had the Sellers sign the document before it was completed. This is not appropriate and is not a practice method condoned by the Commission. This type of improper procedure with the paperwork has led to numerous complaints and hearings before the Commission. It is important that the Commission make it very clear to all registrants and particularly to Mr. Johnston that your clients must not sign documents in blank. The memory of both registrants and clients becomes subjective after the fact and an issue has arisen. These situations bring into question the professionalism of all registrants in the minds of the public. This decision will hopefully make it clear that such actions will not be tolerated by the Commission.

Dated at Saskatoon, Saskatchewan this 19<sup>th</sup>  
day of December, 2008.

  
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Randal C. Touet, Chairperson