



# Complaint 2022-024

NBREA v. Alexandra Daigle

A Discipline Decision produced by the Discipline Committee of the New Brunswick Real Estate Association in accordance with "*An Act to Incorporate the New Brunswick Real Estate Association*". This decision is published and distributed by the Office of the Registrar under the direction of the Discipline Committee of the NBREA.

Contents

..... 2

**Recitals**..... 2

**Executive Summary**..... 3

**Introduction**..... 4

**Jurisdiction** ..... 4

**Legal Test**..... 5

**Issue**..... 6

**Charges** ..... 6

**Background and Evidence** ..... 6

**Findings and Reasons** ..... 7

**Decision** ..... 7

## Recitals

### DECISION OF THE DISCIPLINE COMMITTEE WITH RESPECT TO A JOINT SUBMISSION

In the matter of a Discipline Committee Hearing held pursuant to Section 23(1) of *The New Brunswick Real Estate Association Act* (the “Act”):

#### BETWEEN

The New Brunswick Real Estate Association (the “Association”)

**-and-**

Alexandra Daigle

#### RESPONDENT

Date of Hearing: April 21<sup>st</sup>, 2023, 9:30 am

Place of Hearing: Videoconference

Members of Committee: Karl Merrill, Chair  
Chris Drysdale  
Alexandre Bellefeuille  
Jeff Sherwood  
Andrea Stierle-MacNeil, Government Appointee

Appearances: Dominic Caron, Counsel for the Association  
Alexandra Daigle, Self-Representing Respondent

The Chair noted persons attending the hearing:

Present: N/A

Via Videoconference: Mr. Karl Merrill, Mr. Drysdale, Mr. Bellefeuille, Mr. Sherwood, Mrs. Stierle-MacNeil, Mr. Caron, Ms. Daigle, Mrs. Shawna Roy (Respondent’s Manager), Mr. Mitchell McLean (Registrar), and Mrs. Jodie Yerxa (Court Reporter).

## Executive Summary

In April of 2022, Ms. Daigle organized a viewing of the Complainants' property while representing her buyer clients. The listing in question was held by another Agent. The pretense of the showing was to take measurements; however, Ms. Daigle took the opportunity to test a jetted tub that had an existing leak that was known to her. The test of the tub was unauthorized by the Complainants. Ms. Daigle ran the tub for some time to video the amount of water leaking and seeping through the tub's base. A second video was taken of the water dripping in the room below the tub. Ms. Daigle also left her clients in the home with an unlicensed assistant.

Prior to the hearing date Ms. Daigle and Mr. Dominic Caron mutually agreed to present a joint submission to the Discipline Committee.

Under the Joint Submission:

Ms. Daigle was charged with two (2) counts of professional misconduct under the REALTOR® Code of Ethics on behalf of the New Brunswick Real Estate Association. The Discipline Committee accepted her admission of guilt on all counts and in accordance with the Joint Submission, ordered that Ms. Daigle:

1. Pay a \$1,500.00 fine;
2. Pay \$1,000.00 in costs to the Association;
3. Publish the Decision to the NBREA Website with names; and
4. Publish a Notice to the Profession.

## Introduction

This complaint concerns allegations from the Complainants that while representing her buyer clients, Ms. Daigle breached their trust by causing damage to the property, failing to lock a mudroom door, and leaving the clients with an unlicensed assistant in their home. In doing so she:

1. Failed to deal fairly with all parties; and
2. Failed to render skilled and conscientious service.

All of which constitutes an act of professional misconduct under the REALTOR® Code of Ethics.

The Complaint was submitted to the Office of the Registrar primarily to ascertain if the complaint met the threshold required for a finding of professional misconduct for Real Estate Professionals within the Province of New Brunswick. Following an exchange of information between the Complainants and the Respondent as part of the information gathering process, the Complaints Committee reviewed the evidence presented for their review on the 17<sup>th</sup> of October, 2022 and rendered a decision to forward the matter to the Discipline Committee pursuant to s. 21(3)(a) of *the Act*.

In preparation for the hearing commenced before the Discipline Committee, the Registrar confirmed that Ms. Daigle was a member of the New Brunswick Real Estate Association at or during the time of the alleged offences. The Respondent was provided with a list of the panel members in advance of the hearing and were given a reasonable amount of time to object to the composition of the committee. No such objections were received.

Ms. Daigle elected to proceed to the Discipline Committee's hearing without legal representation and participate in the Discipline process as a self-represented party.

## Jurisdiction

Under section 23(1) of the *Act*, the Discipline Committee shall, when so directed by the Complaints Committee, hear and determine allegations of professional misconduct or incompetence against a member of the Association. On the 17<sup>th</sup> of October, 2022 the Complaints Committee rendered its decision in complaint matter 2022-024 so ordering the Discipline Committee to commence such a proceeding.

The Discipline Committee exists in legislation as an administrative legal body and is therefore not bound by the same rules as a court of law and as such, may admit evidence that might not otherwise be deemed admissible in other courts. Where the Discipline Committee is not bound by the Rules of Court, they are bound by the Complaints and Discipline Procedures Manual as approved by the Board of Directors of the New Brunswick Real Estate Association.

## Legal Test

The standard of proof required in a hearing before the Discipline Committee refers to the level of proof that must be met for the Discipline Committee to find a member guilty of an alleged offence. That level of proof, or threshold, is the civil standard of a “balance of probabilities” which is 51% or higher (i.e., is it more likely than not that the Respondent is guilty of one or more of the alleged offences).

The Association has the onus of proving the allegations against the Respondent on a balance of probabilities, through documentation, submission and testimony given under oath or affirmation.

In the case of the Discipline Committee of the Association, we may find a member guilty of professional misconduct or to be incompetent. Pursuant to s. 23 of *the Act*, a finding of professional misconduct or incompetence must meet the following criteria:

1. A member may be found guilty of professional misconduct if:
  - a. The member has been convicted of an offence which in the opinion of the Committee, is relevant to the member’s suitability to trade in real estate; or
  - b. The member has been guilty, in the opinion of the Committee, of professional misconduct.
2. A member may be found to be incompetent if:
  - a. The member has displayed in carrying out the members’ professional responsibilities a lack of knowledge, skill, or judgement, or disregard for the welfare of the public of such a nature or extent to demonstrate the member is unfit to carry out the responsibilities of a person engaged in trading in real estate; or
  - b. The member is suffering from a physical, or mental condition or disorder of such a nature or extent as to render the member unfit to engage in trading in real estate.

Where the parties have presented the Discipline Committee with a Joint Submission, the respondent has admitted guilt on the charges contained in the notice of hearing. The Committee must decide if based on the documentary evidence they were presented, the Joint Submission represents a just result for the parties and that such a result would not offend the carriage of justice. For the Committee to refuse a Joint Submission, the Committee must prove in their decision that the acceptance of such a Submission would be offensive to their decision-making authority, and further bring the credibility of the Committee to such a state of disrepute as to render their credibility ineffective.

## Issue

The issue in this complaint matter is whether the Discipline Committee supports the Joint Submission of the parties and find in favour that the Joint Submission does not offend the Committee and the carriage of justice.

## Charges

Mr. Dominic Caron, representing the Association as the appointed prosecutor, presented the following charges against Ms. Daigle:

Between April 12, 2022, and April 19, 2022, both dates inclusive, Alexandra Daigle, being a member as defined by *An Act to Incorporate the New Brunswick Real Estate Association*, Chap. 115, S.N.B., 1994 (the Act):

1. Failed to deal fairly with all parties to the transaction including [the Complainants]; and
2. Failed to render skilled and conscientious service.

All as set out with respect to the transaction found in the complaint dated April 19, 2022, thereby allegedly committing acts of professional misconduct, in violation of, *inter alia*, Articles 3 and 12 of the REALTOR® Code of Ethics and punishable under ss. 23(4) and 23(5) of *the Act*.

## Background and Evidence

In March of 2022, Ms. Alexandra Daigle assisted a set of buyers in the search of a new home. One such property was a home owned by the Complainants who were represented by another agent. On the 18<sup>th</sup> of March 2022, the parties negotiated an amendment to the Agreement of Purchase and Sale which included among other matters, the following provision:

*“The seller at their expense to have a licensed plumber repair the leaky faucet/tap of the tub in ensuite. It is currently leaking through the furnace room. Receipt to be provided to the buyer prior to closing”*

On April 12, 2022, Ms. Daigle organized a showing of the property with the Complainants’ REALTOR® for the purposes of obtaining measurements. The property was attended by the Respondent, her clients, and her unlicensed assistant. Approximately 15 minutes prior to the termination of the viewing, Ms. Daigle left the property and did not return, leaving her clients and her unlicensed assistant in the property. Her unlicensed assistant locked the front door, but the Complainants allege that the door from their garage to their mudroom was left unlocked.

During the scheduled viewing of April 12, 2022, Ms. Daigle took it upon herself, prior to closing, to test the known leak in the jetted tub. In a video taken by Ms. Daigle, and entered in the record as evidence, water could be observed to be pouring from the plumbing for the tub and pooling on the Oriented Strand Board flooring below. In a second video entered in the record and taken by Ms. Daigle, water is observed to be dripping from plumbing in the room below the tub.

The Complainants' position is that the actions of Ms. Daigle constitute a significant breach of trust.

Prior to the hearing date, Ms. Daigle and Mr. Caron negotiated a Joint Submission for presentation to the Discipline Committee. As per the Joint Submission, Ms. Daigle accepted responsibility for her actions for the following:

1. Failing to deal fairly with all parties; and
2. Failing to render skilled and conscientious service.

As part of the Discipline file prepared by the Registrar and provided to the parties and to the Committee, the Discipline Committee reviewed the Complaint and the subsequent response between the Complainant and Respondent inclusive of the documentary evidence provided. We also reviewed the notice of hearing, and the decision of the Complaints Committee.

## Findings and Reasons

Having regard for the evidence and to the submissions made, the Committee accepts the joint submission. It is the finding of the Committee that the Joint Submission is just and is not offensive to the Committee as a decision maker. Further, the acceptance of the Joint Submission is consistent with matters heard by prior Committees.

## Decision

Pursuant to s. 23 of *the Act*, we accept the Joint Submission of the parties in that the parties agree that the actions of Ms. Daigle in this transaction constitute Professional Misconduct.

## Order

Considering the above and in accordance with the Joint Submission, we hereby order the following pursuant to s.23(4) of *the Act* for Ms. Daigle:

1. Ms. Daigle is ordered to pay a fine of \$1,500.00 CAD to the Association and is further directed to pay costs to the Association in the amount of \$1,000.00 CAD as reimbursement for costs incurred in the prosecution of this complaint matter.



2. Ms. Daigle is further ordered to pay the total amount of the fine and hearing costs (\$2,500.00 CAD) within thirty days of the date of this decision. If payment is not received by the prescribed deadline, the member will be suspended as a member of the Association until such time that the fine and costs are paid in full. The member will not be subjected to a reinstatement fee upon reinstatement in the event of a suspension.
3. Pursuant to s. 23(4) of *the Act*, we direct the Registrar to publish this decision with names to the Association's website: [www.nbrea.ca](http://www.nbrea.ca).
4. Pursuant to s. 23(4) of the Act, we further order the Registrar to publish a summary of this decision including a website link to the decision to all members of the Association by way of electronic dispatch (Notice to the Profession).

In accordance with s. 25(1) of *the Act*, the respondent may appeal this decision within thirty (30) days from the date of the decision by application to the Court of King's Bench of New Brunswick.

Dated at Fredericton, New Brunswick this 6 day of July, 2023.

//Original Signed by the Committee Chair//

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Karl Merrill, Chair

Chair; on behalf of the Discipline Committee,

Complaint 2022-024