



Complaint 2023-058

NBREA v. Mylene Haché

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.

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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-

Mylene Haché (the “Respondent”)

Date of Hearing: January 21, 2025

Place of Hearing: Microsoft Teams, Virtual.

Members of Committee: Anne Smith, Chair
Alissa Lee
Jeffrey Smith
Don Ketchum
Andrea Stierle-MacNeill, Government Appointee

Appearances: Dominic Caron, Counsel for the Association
Sue Duguay, Student-At-Law for the Association

Mylene Haché, Respondent

The Chair noted persons attending the hearing:

Present: Mrs. Smith, Mrs. Lee, Mr. Smith, Mr. Ketchum, Mrs. Stierle-MacNeill, Mr. Caron,
Ms. Duguay, Mrs. Haché, Mr. Mitchell McLean (Registrar), Mrs. Brittany Trafford (Committee
Legal Counsel) and Mrs. Laura Melles (Court Reporter).



Executive Summary

- [1] This Complaint concerns the activities of a REALTOR[®] who, while acting as the Manager for a licensed Agent, failed to comply with the directions and obligations imposed by the Association through the Trust Account Inspections Procedures Manual. The Complaint alleges that significant issues arose during a trust account inspection which indicated that the Agent may not be in compliance with the *Real Estate Agents Act* and that failure to take any follow-up action could cause harm or damage to one or more members of the public.
- [2] Prior to the hearing date, the Respondent and Mr. Caron mutually agreed to present a joint submission to the Committee.
- [3] Under the joint submission, Mrs. Haché admitted guilt to the charges laid against her on behalf of the Association which amounted to one (1) count of professional misconduct under the REALTOR[®] Code of Ethics. The Committee accepted her admission of guilt and, in accordance with the joint submission, ordered that:
1. The Respondent pay a \$500 fine to the Association;
 2. The Respondent pay \$500 in costs to the Association;
 3. The Decision be published including the name of the Member; and
 4. A Notice be published to the Profession.

Introduction

- [4] This Complaint concerns allegations that the Respondent, while acting as the principal (Manager of Record) for Equipe Creativ Team Realty Inc. (“the Agent”), failed to adhere to the processes and procedures for trust account inspections as directed by the Association. Further, the Complaint also alleges that during the course of the trust account inspection, there were significant issues which indicated that the Agent may not be in compliance with the “*Real Estate Agents Act*” and that failure to take any follow-up action may cause harm or damage to one or more members of the public.
- [5] The Association’s position is that the Respondent’s conduct constitutes a breach of the REALTOR® Code of Ethics and professional misconduct for the failure to adhere to the Association’s trust account inspections process and procedures, inclusive of deadlines.
- [6] The Complaint was submitted to the Office of the Registrar from the Director of Finance and Trust Inspections of the NBREA 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. The Complaint and all information presented as evidence supporting the Complainant’s claims were presented to the Respondent, who was provided until August 10, 2023, to respond. The exchange of information ensued with a response from the Respondent on August 8, 2023, a response from the Complainant to the Respondent on September 22, 2023, a response from the Respondent on October 6, 2023, a response from the Complainant on October 6, 2023, and a final response from the Complainant on April 5, 2024.

- [7] On April 25, 2024, the Respondent responded to the Complaint to add an additional email chain that indicated that the Complainant had provided the Respondent with a deadline extension to respond to the contents of the Trust Account Inspection Report. The request for an extension was made on July 24, 2023 (which was after the initial deadline of July 17, 2023), and the new deadline to respond to the inspection report, as approved by the Complainant, was set for August 4, 2023. The Respondent indicated that they had not noticed the deadline to respond set by the Director of Finance and Trust Account Inspections initially which necessitated the extension.
- [8] The request for the extension was submitted to the Complainant after this matter had been referred to the Office of the Registrar as a Complaint.
- [9] The Complaints Committee reviewed the evidence presented by the Complainant and the Respondent on June 26, 2024, and rendered a Decision on September 20, 2024, to forward the matter to the Discipline Committee pursuant to subsection 21(3)(a) of the *Act*.
- [10] In preparation for the hearing commenced before the Discipline Committee, the Registrar confirmed that Mrs. Haché was a member of the New Brunswick Real Estate Association at or during the time of the alleged offence.
- [11] The Respondent was provided with a list of the panel members in advance of the hearing and was given a reasonable amount of time to object to the composition of the Committee. No such objections were received.

Jurisdiction

[12] Under subsection 23(1)(a) 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 September 20, 2024, the Complaints Committee rendered its Decision in Complaint matter 2023-058 ordering the Discipline Committee to commence such a proceeding.

[13] The Discipline Committee exists in legislation as an administrative legal body and is therefore not bound by the same rules of court 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 *New Brunswick Rules of Court*, they are bound by the *Complaint and Discipline Procedures Manual* as approved by the Board of Directors of the New Brunswick Real Estate Association.

Legal Test

[14] 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).

[15] 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.

[16] In the case of the Discipline Committee, it may find a member guilty of professional misconduct and/or incompetency. Pursuant to subsections 23(2) and 23(3) 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 member's 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.

[17] Where the parties have presented the Committee with a joint submission and the Respondent has admitted guilt on the charge contained in the notice of hearing, the Committee has a duty to consider the joint submission.

[18] In the Decision of *R. v. Anthony-Cook*,¹ the Supreme Court adopted a high standard for rejecting joint submissions explaining that, “*rejection [of a joint submission] denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all of the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.*” In the context of administrative law, the Committee must decide whether the mutual agreement with regard to sanctions is appropriate, reasonable and fitting, consistent with the range of sanctions imposed in similar circumstances and that the agreement is not contrary to the public interest.² The Committee must approach the joint submission from a position of restraint but may refuse a joint submission should be it so unreasonable as to bring the administration of justice into disrepute or otherwise be contrary to the public interest.

Issue

[19] The issue in this Complaint matter is whether the Committee accepts the joint submission of the parties.

Charges

[20] Mr. Dominic Caron, representing the Association as the appointed prosecutor, presented the following charge against Mrs. Haché:

¹ *R. v. Anthony-Cook*, 2016 SCC 43 at para 34.

² *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII) at para 28.

Between July 28th, 2022, and July 20th, 2023, both dates inclusive, Mylene Haché being a member, as defined by The Act to Incorporate the New Brunswick Real Estate Association, Chap. 115, S.N.B., 1994 (the Act):

(i) Failed to adhere to the NBREA's trust account inspections process and procedures, inclusive of deadlines.

All as set out in the Complaint dated July 21st, 2023, thereby allegedly committing acts of professional misconduct, in violation of, inter alia, Article 17 of the REALTOR[®] Code of Ethics and punishable under ss. 23(4) and 23(5) of the Act.

Background and Evidence

[21] This Complaint was made by the Director of Finance and Trust Account Inspections of NBREA following the inspection of the Agent's trust account during the period of December 21, 2022, to January 5, 2023.

[22] The purpose of the inspection is to ensure that the Agent is conducting operations or business in compliance with the *Real Estate Agents Act* or the corresponding Regulations. The requirement for the Association to inspect the books, records and accounts of Agents is contained the *Real Estate Agents Act* and is a statutory obligation. As a result, the Association inspects trust accounts of all Agents in the Province of New Brunswick in accordance with the Association's Trust Account Inspections Procedures Manual. The responsibility of the management of the Agent rests with the Agent, Nominee for the Agent, or its assigned principal (Manager of Record).

[23] NBREA Trust Account Inspectors Bob Wood and Donat Poirier conducted the inspection of the Agent's trust account on December 21, 2022, and January 25, 2023, for the period of November 1, 2021, to October 31, 2022.

[24] Following the Trust Account Inspection, an Inspection Report Letter was issued on June 27, 2023, and identified the following deficiencies:

- a. Recommendations from previous inspection were not implemented. The implementation of some recommendations from the previous inspection could still use improvement, most notably, the procedure for bank reconciliations. Further, there were several instances where a real estate transaction had closed, yet funds remained in the trust account for several months following closing.
- b. Sales files were maintained and grouped by address rather than in order by sales transaction number. Files should be opened, sequentially numbered, and maintained for each written offer or contract. Further, sales files should be stored in sequential transaction order.
- c. Bank reconciliations were not adequately documented and were not remediated in a reasonable time. There were several instances in which government remittances were paid from the trust account instead of the operating account and no evidence to support the correction of these withdrawals.
- d. There was no annual formal process to confirm that the appropriate amount of CDIC insurance was in place for the entire balance of the trust account.
- e. There were instances of sales record sheets that were not filed with the transaction file and supporting documentation for the receipt into and payment out of the trust account was not filed with the transaction file.

- f. There were two instances where the listing agreements could not be located in the sales files.
- g. A trust deposit was not deposited into the trust account without unreasonable delay and was deposited 15 days after receipt.
- h. An agreement of purchase and sale was noted to have an inconsistent sale price.
- i. One transaction file contained inconsistent sale records where the commission payable was more than the commission paid.

[25] The Inspection Report Letter contained recommendations for each deficiency identified.

[26] The Inspection Report Letter also required that the Respondent “*review the recommendations and provide a response to each recommendation by return letter by July 17, 2023*” and that failure to provide a response may result in disciplinary action taken against the Agent by either the Financial and Consumer Services Commission or NBREA’s Disciplinary Committee.

[27] On July 20, 2023, having received no reply to the initial Inspection Report Letter, the Complainant referred the matter to the Office of the Registrar as a formal complaint. The Complainant indicated that the referral was necessitated by s. 4.6 of the NBREA Inspection Procedures Manual where the Complainant was of the opinion that there were significant concerns with the trust account inspection performed for the Agent, that the Agent may not be compliant with the *Real Estate Agents Act*, and that failure to take follow-up action could cause harm to one or more members of the public.

[28] Four days later, the Respondent submitted a request to the Complainant asking for an extension to respond to the Inspection Report Letter and its contents. The Complainant

responded affirmatively and provided the Respondent with a new deadline to respond which was set for August 4, 2023.

[29] On August 4, 2023, the Respondent provided the Complainant with a response to the inspection report and provided satisfactory responses to the issues identified by the NBREA inspectors. Accordingly, the issues identified in the Complaint regarding the Inspection Report Letter are not at issue before this Committee, save and except the requirement to comply with deadlines set by the Association in the course of its trust account inspection procedure.

[30] At the hearing, Counsel for the Association submitted that it had come to a resolution with the Respondent and that they would be making a joint submission to the Committee. The Respondent admitted to wrongdoing and submitted that she has learned from her mistakes. As part of the joint submission, the Respondent admitted to the charge laid against her by the Association.

[31] Counsel for the Association submitted at the hearing that the allegation in this case is constrained to the failure to adhere to the deadlines set by the Director of Finance and Inspections of NBREA pursuant to the Association's Trust Account Inspections Procedures Manual. The charge against the Respondent is for professional misconduct relating to the non-adherence to prescribed deadlines given the sacrosanct nature of trust accounts in the real estate profession.

[32] As part of the discipline file prepared by the Association and provided to the parties and to the Committee, the Committee reviewed the Complaint and the responses between the Complainant and the Respondent. The Committee also reviewed the Notice of Hearing, and the Decision of the Complaints Committee.

Findings and Reasons

[33] Having regard for the evidence and for the submissions made, the Committee accepts the joint submission. It is the finding of the Committee that the joint submission is appropriate, reasonable, and in accordance with the public interest. Further, the acceptance of the joint submission is consistent with matters heard by prior Committees.

Decision

[34] The Committee accepts the joint submission of the parties in that the parties agree that the actions of the Respondent constitute professional misconduct and finds that the Respondent is guilty of professional misconduct pursuant to section 23(2)(b) of the *Act*.

Order

[35] In light of the above and in accordance with the joint submissions of the parties, we hereby order the following pursuant to subsections 23(4)(d), 23(4)(f), and 23(4)(g) of the *Act* for Mrs. Haché:

1. Mrs. Haché is ordered to pay a fine of \$500 CAD to the Association and is further directed to pay costs to the Association in the amount of \$500 CAD as partial reimbursement for costs incurred in the prosecution of this complaint matter.
2. Mrs. Haché is further ordered to pay the total amount of the fine and hearing costs (\$1000 CAD) within 30 days of the date of receipt of this decision. If payment is not received by the prescribed deadline, the Registrar shall suspend the member until

such time that payment is made. The member will be subject to a reinstatement fee upon reinstatement in the event of a suspension.

3. Pursuant to s. 23(4) of the Act, the Registrar will publish this decision with names, to include, but not limited to, the Association's website and CanLII.
4. Pursuant to s. 23(4) of the Act, the Registrar will 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).

[36] In accordance with subsection 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 7th day of March, 2025.

// Original signed by the Acting Committee Chair//

Anne Smith, Acting Chair
on behalf of the Discipline Committee,
Complaint 2023-058