



Complaint 2022-083

NBREA v. Naomie Caron

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*.



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

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

BETWEEN

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

-and-

Naomie Caron (the “Respondent”)

Date of Hearing: January 28th, 2025, 9:30 a.m.

Place of Hearing: Microsoft Teams, Virtual

Members of Committee: Anne Smith, Acting Chair
Joan Hayes
Chris Drysdale
Mandy Barrieau
Michèle Morin

Appearances: Naomie Caron, Respondent
Mathieu Lemieux, Counsel for the Respondent
Dominic Caron, Counsel for the Association
Julie LeBlanc Hultberg, Counsel for the Discipline Committee
Mitchell McLean, Registrar
Christine McLaughlin, Court Reporter



Executive Summary

1. This matter concerns the conduct of a REALTOR® in the handling of multiple offers relating to a property sale.
2. Prior to the hearing date, the Association and the Respondent mutually agreed to present a joint submission to the Discipline Committee.
3. Under the joint submission, the Respondent, Naomie Caron, admitted guilt to the following charges laid against her:

Between August 29th and December 9th, 2022, both dates inclusive, Naomie Caron, being a member as defined by An Act to Incorporate the New Brunswick Real Estate Association, c. 115, S.N.B. 1994 (the Act):

- (i) Committed a breach in her handling of multiple offers;*
- (ii) Failed to deal fairly with all parties to the transaction;*
- (iii) Committed a breach by failing to share all transaction documents leading up to the final sale of the residence; and*
- (iv) Failed to disclose that the vendors were immediate family members.*

All as set out in the complaint from Louise Carrier dated December 9th, 2022, thereby allegedly committing acts of professional misconduct, in violation of Articles 3, 11, 12 and 23 of the REALTOR® Code of Ethics and punishable under subsections 23(4) and 23(5) of the Act.

4. The Discipline Committee accepted her admission of guilt and the penalty jointly proposed by the parties. In accordance with the joint submission, the Discipline Committee orders that:
 - 1) Pursuant to paragraph 23(4)(b) of the Act, Ms. Caron be suspended from the Association for a period of seven days, namely March 11, 12, 13, 14, 15, 16 and 17 inclusively.

- 2) Pursuant to paragraph 23(4)(d) of the Act, Ms. Caron pay a fine of \$3,000 to the Association.
- 3) Pursuant to paragraph 23(4)(g) of the Act, Ms. Caron pay \$10,000 in costs to the Association as reimbursement of expenses incurred in the specific context of these procedures.
- 4) The total amount of the fine and costs ordered under paragraphs 2 and 3 above must be paid within six months of the date of this written decision. If the fine and/or costs are not paid within the period prescribed, the Registrar is authorized to suspend Ms. Caron from the Association until such time that the payments are made.
- 5) Pursuant to paragraph 23(4)(f) of the Act, the Registrar shall distribute a Notice to the Profession of this decision with the Respondent's name.
- 6) Pursuant to paragraph 23(4)(f) of the Act, the Registrar shall publish the decision of the Discipline Committee on the website of the Association.

Introduction

5. This matter relates to a complaint filed with the Association on October 15th, 2022. The complainant requested that the Association investigate the conduct of the Respondent, Naomie Caron, being a member of the Association, with respect to her involvement in the sale of a property in Edmundston between August 29th and October 12th, 2022.
6. The Respondent was representing the property vendors, who were members of her family. The vendors had accepted a conditional offer to purchase their property. The complainant subsequently contacted Ms. Caron on behalf of a client who was interested in purchasing the same property. However, Ms. Caron did not disclose to the complainant that a conditional offer had been made and accepted by the vendors. The complainant showed the property to her clients, who then made the second offer to purchase.

7. In the opinion of the Association, Ms. Caron's failure to disclose the existence of a conditional offer and failure to reveal that the vendors were family members constitute professional misconduct.
8. The Complaints Committee examined the evidence provided by the Association and by the Respondent. On August 22nd, 2023, the Complaints Committee ordered that the matter be referred to the Discipline Committee pursuant to paragraph 21(3)(a) of the Act.
9. The Association maintains further that Ms. Caron committed an act of professional misconduct by failing to immediately share all transaction documents leading up to the final sale of the residence as part of the investigation and disciplinary proceedings. The Association maintains that it had to make multiple disclosure requests and was forced to issue a subpoena to a witness to obtain the disclosure requested from Ms. Caron.
10. In preparation for the hearing commenced before the Discipline Committee, the Registrar confirmed that Ms. Caron was a member of the New Brunswick Real Estate Association at the time of the alleged offences.
11. The Respondent was also provided with a list of the Discipline Committee members in advance of the hearing and was given a reasonable amount of time to object to the composition of the said Committee. No such objections were received.
12. The Committee issued multiple Notices of Hearing, which were then subject to adjournments upon consent of the parties. The hearing in this proceeding began on November 6th, 2024. On November 6th, 2024, the Respondent presented another request

to adjourn the matter so that her counsel could be present. This request to adjourn was opposed by the Association. The Discipline Committee considered the positions of the parties and granted the adjournment of the hearing with conditions. The decision of the Discipline Committee with respect to this request to adjourn is provided in Appendix A hereto.

13. The Discipline Committee also reviewed the amended disciplinary record submitted by the parties.

Jurisdiction

14. Under subsection 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 August 22nd, 2023, the Complaints Committee rendered a decision concerning Complaint 2022-083, directing that the matter be referred to the Discipline Committee.

15. Being an administrative entity under the Act, the Discipline Committee is not bound by rules of court and may consequently accept evidence that might be considered inadmissible by another tribunal. However, although the Discipline Committee is not bound by the *New Brunswick Rules of Court*, it is bound by the *Complaint and Discipline Procedures Manual* as approved by the Board of Directors of the New Brunswick Real Estate Association.

16. Under paragraph 23(1)(a) of the Act, the Discipline Committee hears and determines allegations of professional misconduct or incompetence against a member of the Association when directed to do so by the Complaints Committee.

Legal Test

17. 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).

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

19. Accordingly, the Discipline Committee may find a member guilty of professional misconduct or to be incompetent. Pursuant to subsections 23(2) and 23(3) of the Act, a finding of professional misconduct or incompetence must meet the following criteria:

23(2) A member may be found guilty of professional misconduct by the Discipline Committee if

- i. the member has been convicted in a court of competent jurisdiction of an offence which, in the opinion of the Committee, is relevant to the member's suitability to trade in real estate; or*
- ii. the member has been guilty, in the opinion of the Committee, of professional misconduct.*

23(3) The Discipline Committee may find a member to be incompetent if in its opinion

- iii. 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 nature or extent to demonstrate the member is unfit to carry out the responsibilities of a person engaged in trading in real estate; or*
- iv. 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.*

20. The relevant provisions of *The REALTOR® Code of the Canadian Real Estate Association* are:

3 A REALTOR® shall protect and promote the interests of his or her Client. This primary obligation does not relieve the REALTOR® of the responsibility of dealing fairly with all parties to the transaction.

11 A REALTOR® shall not buy or sell, or attempt to buy or sell an interest in property either directly or indirectly for himself or herself, any member of his or her Immediate Family, or any entity in which the REALTOR® has a financial interest, without making the REALTOR®'s position known to the buyer or seller in writing.

12 A REALTOR® shall render a skilled and conscientious service, in conformity with standards of competence which are reasonably expected in the specific real estate disciplines in which the REALTOR® engages. When a REALTOR® is unable to render such service, either alone or with the aid of other professionals, the REALTOR® shall not accept the assignment or otherwise provide assistance in connection with the transaction.

23 Should a REALTOR® be asked to co-operate in any way in connection with a disciplinary investigation or proceeding, the REALTOR® shall place

all pertinent facts before the proper Committee of whichever real estate board or association is conducting the investigation or proceeding.

21. In the Notice of Hearing, the Association cites the authority of the Discipline Committee to impose penalties pursuant to subsections 23(4) and 23(5) of the Act. These provisions read as follows:

23(4) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may do one or more of the following

- a. revoke the member's membership in the Association;*
- b. suspend the member's membership in the Association for a stated period, not exceeding twenty-four months;*
- c. require that the member be reprimanded or counselled and, if considered warranted, direct that the fact of the reprimand or counselling be recorded on the register;*
- d. impose such fine as the Committee considers appropriate, to a maximum of five thousand dollars, to be paid by the member to the Secretary-Treasurer;*
- e. require the member to refund, waive or reduce the fee charged by the member with respect to the trading in real estate related to the finding of professional misconduct or incompetence;*
- f. subject to subsection (6), direct that a finding or order of the Committee be published in an official publication of the Association in detail or in summary form;*
- g. fix the costs of any investigation or procedures by the Complaints Committee and the Discipline Committee to be paid by the member;*
- h. direct that the imposition of a penalty be suspended or postponed for such a period and upon such term or for such purpose as may be specified by the Committee, but not limited to*
 - (i) the successful completion by the member of a particular course or courses of study;*

(ii) the production to the Committee of evidence satisfactory to it that any physical or mental condition or disorder in respect of which the penalty was imposed has been overcome.

23(5) In addition to any action taken by the Discipline Committee pursuant to subsection (4) it may recommend to the Minister one or more of the following

- a. that the member's licence to trade in real estate be revoked or suspended;*
- b. that the Minister impose terms, conditions and limitations on the right to trade in real estate including, but not limited to, the successful completion of a particular course or courses of study, as are specified by the Committee;*
- c. that the Minister impose specific restrictions on the right to trade in real estate including, but not limited to, requiring the member to*
 - (i) engage in the sale of real estate only under the personal supervision and direction of another member;*
 - (ii) not alone engage in the sale of real estate;*
 - (iii) accept periodic inspections of the books, accounts, records and work of the member in connection with the member's practice;*
 - (iv) report to the Registrar, or to such committee of the Board as the Minister may specify, on such matters with respect to the member's practice for such period and times, and in such form, as the Committee may specify.*

22. Where the parties have presented the Discipline Committee with a joint submission in which the Respondent has admitted guilt on the charges contained in the Notice of Hearing, the Discipline Committee has a duty to consider the joint submission from the parties.

23. In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada 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.”*¹

24. The Discipline Committee also took note of *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303, and *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81, also cited by the parties.

25. In the context of administrative law, the joint submission must therefore be approached from a position of restraint in accordance with the public interest test. The Discipline Committee must decide whether the mutual agreement with regard to penalties is appropriate, reasonable and fitting, is within the range of sentences imposed in similar circumstances and 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.

26. The Discipline Committee may reject a joint submission if the proposed penalty is disproportionate to the circumstances of the matter, but it must provide reasons for doing

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

² *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81, para 28.

so. However, it may not replace the proposed penalty with its own view of a more fit penalty.³

Issue

27. In this matter, the Discipline Committee must therefore decide whether it accepts the joint submission presented by the parties.

Charges

28. The Association presented the charges against Ms. Caron as also set out in the Notice of Hearing of January 24th, 2025, served on Ms. Caron on January 27th, 2025. At the hearing, the Association also cited the articles in the Code allegedly breached.

29. The Discipline Committee notes that the Association is relying on an amended Notice of Hearing also amending the charges originally brought against Ms. Caron.

30. The current charges against Ms. Caron are as follows:

Between August 29th and December 9th, 2022, both dates inclusive, Naomie Caron, being a member as defined by An Act to Incorporate the New Brunswick Real Estate Association, c. 115, S.N.B. 1994 (the Act)

(i) Committed a breach in her handling of multiple offers;

(ii) Failed to deal fairly with all parties to the transaction;

(iii) Committed a breach by failing to share all transaction documents leading up to the final sale of the residence; and

(iv) Failed to disclose that the vendors were immediate family members.

³ *Timothy Edward Bradley v. Ontario College of Teachers*, 2021 ONSC 2303, para 14.

All as set out in the complaint from Louise Carrier dated December 9th, 2022, thereby allegedly committing acts of professional misconduct, in violation of Articles 3, 11, 12 and 23 of the REALTOR® Code of Ethics and punishable under subsections 23(4) and 23(5) of the Act.

Background and Evidence

31. At this hearing on January 28th, 2025, the Association reported that the parties had come to a resolution and were presenting a joint submission.

32. The Association summarized the relevant facts of this matter, which were accepted by Ms. Caron. The Discipline Committee accepts the joint summary of facts.

33. In the light of this joint summary of facts, the Discipline Committee accepts the following:

- a. The Respondent, Ms. Caron, was representing the vendors in relation to the sale of their property. The vendors were members of her family.
- b. In July 2022, the Respondent entered into a dual agency agreement with potential buyers of the same property. An offer from these buyers was subsequently accepted by the vendors with a closing date of November 1st, 2022. This offer was conditional on the sale of the buyers' property and valid until September 30th, 2022.
- c. In early September 2022, the complainant contacted the Respondent on behalf of another client. Although the complainant asked Ms. Caron whether any prior offers had been made on the property, Ms. Caron failed to disclose the existence of a prior offer. The complainant showed the property for sale to her client on two occasions before submitting an offer to Ms. Caron's clients.

- d. Upon receiving this second offer, Ms. Caron sent a secondary counter-offer to the first one received by her vendor clients. It was at this time that the complainant learned that there was a first and prior offer on the property.
- e. Ms. Caron did not disclose to the complainant that the vendors were family members.
- f. During the disciplinary proceedings, Ms. Caron delayed in disclosing the documentation requested by the Association.

34. At the hearing, Ms. Caron also admitted to the charges brought against her by the Association as alleged in the amended Notice of Hearing and stated at the hearing.

35. Insofar as the Respondent has admitted to acts of professional misconduct as alleged, the Association submits that the following penalty should be imposed:

- 1) Pursuant to paragraph 23(4)(b) of the Act, Ms. Caron be suspended from the Association for a period of seven days, namely March 11, 12, 13, 14, 15, 16 and 17 inclusively.
- 2) Pursuant to paragraph 23(4)(d) of the Act, Ms. Caron pay a fine of \$3,000 to the Association.
- 3) Pursuant to paragraph 23(4)(g) of the Act, Ms. Caron pay \$10,000 in costs to the Association as reimbursement of expenses incurred in the specific context of these procedures.
- 4) The total amount of the fine and costs ordered under paragraphs 2 and 3 above must be paid within six months of the date of this written decision. If the fine and/or costs are not paid within the period prescribed, the Registrar is authorized to suspend Ms. Caron from the Association until such time that the payments are made.

- 5) Pursuant to paragraph 23(4)(f) of the Act, the Registrar shall distribute a Notice to the Profession of this decision with the Respondent's name.
 - 6) Pursuant to paragraph 23(4)(f) of the Act, the Registrar shall publish the decision of the Discipline Committee on the website of the Association.
36. The Association argues that it is in the public interest for the Discipline Committee to accept this submission in view of the aggravating factors and mitigating factors in the present situation.
37. Among the mitigating factors, the Association notes that the Respondent has acknowledged her misdeeds and will learn important lessons from this proceeding to avoid making the same mistakes again in her future practice. She also avoids the holding of a merit hearing, which would have required additional costs and resources.
38. In terms of aggravating factors, the Association submits that the first two misconduct charges are serious and aggravated by the latter two charges. The Association asserts that significant and unusual costs were incurred in this matter due to the delays and multiple adjournments.
39. The Association argues that the purpose of the suspension is to protect the public without causing undue harm to Ms. Caron's other clients.
40. The Association maintains that the \$3,000 fine is reasonable given the serious nature of the misconduct and the fact that the maximum fine the Discipline Committee can impose under the Act is \$5,000.

41. The Association argues that the amount of \$10,000 in costs is rather exceptional but warranted in the specific circumstances of this case due to the delays, numerous adjournment requests and repeated travel resulting in additional costs for the parties.

42. Ms. Caron agrees to and accepts the Association's submissions.

43. Ms. Caron explained through her counsel that she takes this matter seriously.

Analysis

44. Having regard for the evidence and for the submissions made, and for the reasons set out herein, the Discipline Committee accepts the joint submission of the parties.

45. It is the finding of the Discipline Committee that the Respondent's admission and the proposal put forth in the joint submission are appropriate, reasonable and fitting. The Discipline Committee finds that the proposed penalty is consistent with the range of penalties imposed in similar circumstances as well as consistent with cases heard by previous Committees.

46. Considering all the relevant circumstances, including the Respondent's admission, the importance of promoting certainty in discussions to reach a settlement, and the mitigating and aggravating factors, the Discipline Committee finds that the proposal presented in the joint submission of the parties is in favour of the public interest.

Decision

47. The Discipline Committee accepts the joint submission of the parties and the Respondent's acknowledgment that her actions as alleged in the amended Notice of Hearing constitute professional misconduct.

48. The Discipline Committee finds the Respondent guilty of professional misconduct pursuant to paragraph 23(2)(b) of the Act.

Order

49. In view of the foregoing and consistent with the consent of the parties, the Discipline Committee hereby orders that:

- 1) Pursuant to paragraph 23(4)(b) of the Act, Ms. Caron be suspended from the Association for a period of seven days, namely March 11, 12, 13, 14, 15, 16 and 17 inclusively.
- 2) Pursuant to paragraph 23(4)(d) of the Act, Ms. Caron pay a fine of \$3,000 to the Association.
- 3) Pursuant to paragraph 23(4)(g) of the Act, Ms. Caron pay \$10,000 in costs to the Association as reimbursement of expenses incurred in the specific context of these procedures.
- 4) The total amount of the fine and costs ordered under paragraphs 2 and 3 above must be paid within six months of the date of this written decision. If the fine and/or costs are not paid within the period prescribed, the Registrar is authorized to suspend Ms. Caron from the Association until such time that the payments are made.
- 5) Pursuant to paragraph 23(4)(f) of the Act, the Registrar shall distribute a Notice to the Profession of this decision with the Respondent's name.
- 6) Pursuant to paragraph 23(4)(f) of the Act, the Registrar shall publish the decision of the Discipline Committee on the website of the Association.

50. 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 3rd day of March 2025.

//Original Signed by Committee Chair//

Anne Smith, Acting Chair

On behalf of the Discipline Committee

Appendix - A – Decision – Request for an Adjournment

- Appendix A -

Decision

Request for Adjournment 2022-083



Complaint 2022-083

NBREA v. Naomie Caron

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*.

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**DECISION OF THE DISCIPLINE COMMITTEE
REQUEST TO ADJOURN**

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

BETWEEN

The New Brunswick Real Estate Association (the "Association")

-and-

Naomie Caron (the "Respondent")

Date of Hearing: November 6, 2024, at 9:30 a.m.

Place of Hearing: Grey Rock Quality Hotel, 110 Chief Joanna Boulevard,
Edmundston, NB

Members of Committee: Anne Smith, Acting Chair
Joan Hayes
Chris Drysdale
Mandy Barrieau
Michèle Morin

Appearances: Naomie Caron, Respondent, on her own behalf
Dominic Caron, Counsel for the Association
Julie LeBlanc Hultberg, Counsel for the Discipline Committee



REQUEST TO ADJOURN

DECISION AND ORDER OF THE DISCIPLINE COMMITTEE

1. This matter relates to a complaint filed with the Association by Louise Carrier on October 15th, 2022. The complainant requested that the Association investigate the conduct of the Respondent, Naomie Caron, being a member of the Association, with respect to her involvement in the sale of a property at 45 Thibodeau Avenue in Edmundston between August 29th, 2022, and October 12th, 2022.
2. The matter was considered by the Complaints Committee, which, on August 22nd, 2023, ordered that the matter be referred to the Discipline Committee pursuant to paragraph 21(3)(a) of *An Act to Incorporate the New Brunswick Real Estate Association*.
3. Under subsection 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.
4. Being an administrative entity under the Act, the Discipline Committee is not bound by rules of court and may consequently accept evidence that might be considered inadmissible by another tribunal. However, although the Discipline Committee is not bound by the *New Brunswick Rules of Court*, it is bound by the *Complaint and Discipline Procedures Manual* as approved by the Board of Directors of the New Brunswick Real Estate Association.
5. The Discipline Committee received and reviewed Disciplinary Record 2022-083 (156 pages).
6. The Discipline Committee also received an additional submission from the Association in the form of a two-page email from Dominic Caron to Mathieu Lemieux dated October 29th, 2024.
7. At the start of the hearing, the Respondent raised a preliminary issue. The Respondent requested that the hearing be adjourned due to her counsel's unavailability.
8. The Association opposed this request to adjourn. Alternatively, the Association requested that the Discipline Committee require that the Respondent pay any costs arising from her request to adjourn.
9. The Discipline Committee heard and considered the submissions from the Respondent, via Naomie Caron appearing on her own behalf, supporting this request to adjourn.
10. The Discipline Committee heard and considered the submissions from the Association, via counsel Mr. Caron, opposing this request to adjourn.
11. Having heard and considered the evidence and the submissions from the parties, the Discipline Committee rendered an oral decision on November 6th, 2024, in which it ordered:

1. That the hearing be adjourned in accordance with the following strict conditions:
 - a. The hearing must take place by January 31st, 2025; and
 - b. The date of the hearing shall be fixed by mutual consent of the parties by November 15th, 2024. Should the parties be unable to agree on a date by November 15th, 2024, the Association will fix a hearing date unilaterally.
2. The Discipline Committee will be ready to resume the hearing in this matter on the date fixed in accordance with paragraph 1 above regardless of whether counsel for the Respondent is available.
3. Any additional documents or evidence on which the Association or the Respondent intends to rely at the hearing in this matter must be disclosed to the other party and provided to the Discipline Committee 14 days before the hearing.
4. While the Discipline Committee recognizes that costs may be incurred due to delays in the hearing in this matter, without specific evidence in this regard, the Discipline Committee will consider the request to impose costs on the parties under the auspices of the full hearing in this matter.

12. The Discipline Committee issues this Written Decision confirming its oral decision.

Summary of the relevant facts – Disciplinary record

13. With respect to the request to adjourn, the Discipline Committee takes note of the following evidence in the Disciplinary Record.
14. This matter relates to a complaint filed with the Association by Louise Carrier on October 15th, 2022. The complainant requested that the Association investigate the conduct of the Respondent, Naomie Caron, being a member of the Association, with respect to her involvement in the sale of a property at 45 Thibodeau Avenue in Edmundston between August 29th, 2022, and October 12th, 2022.
15. On December 9th, 2022, the Association formally advised the Respondent in writing of the complaint.
16. The Respondent responded in writing to the complaint on January 16th, 2023, and February 16th, 2023.
17. The matter was considered by the Complaints Committee on July 10th, 2023. On August 22nd, 2023, the Complaints Committee ordered that the matter be referred to the Discipline Committee pursuant to paragraph 21(3)(a) of *An Act to Incorporate the New Brunswick Real Estate Association*.
18. On August 22nd, 2023, the Association advised the Respondent in writing of the Complaints Committee's decision, indicating:

[Translation] The Complaints Committee has decided to refer the matter to the Discipline Committee in the belief that if the complaint is valid, it could be related to professional misconduct or incompetence. In the opinion of the Complaints Committee, the complaint in question concerns the following:

- 1. Mishandling of a situation involving multiple offers;*
- 2. Failure to deal fairly with all parties to a transaction.*

This constitutes professional misconduct under the REALTOR® Code of Ethics.

Given that a decision has been rendered and the Complaints Committee is of the view that the matter should be referred to the Discipline Committee, the Office of the Registrar will make contact with respect to scheduling the hearing of the Discipline Committee.

You should receive a Notice of Hearing, an overview of the procedure to be followed for hearings of the Discipline Committee and a letter from the counsel appointed by the Association. If you have any questions concerning the procedure set out in the Complaint and Discipline Procedures Manual, you may contact the Registrar. If you have any questions concerning the nature of this matter or how to proceed, it may be in your interest to consult a lawyer.

19. On February 7th, 2024, the parties were advised of the composition of the Discipline Committee.
20. On April 24th, 2024, a Notice of Hearing was issued in which the Respondent was advised of the following:

*[Translation] **YOU ARE HEREBY NOTIFIED** that on May 7 and 8, 2024, at 9:30 a.m., the Discipline Committee will hold a hearing at the Radisson Kingswood Hotel at 41 Kingswood Way, Hanwell NB, E3C 2L4, to investigate a complaint of professional misconduct or incompetence against Naomie Caron as follows:*

Between August 29th and December 9th, 2022, both dates inclusive, Naomie Caron, being a member as defined by An Act to Incorporate the New Brunswick Real Estate Association, c. 115, S.N.B. 1994 (the Act)

- (i) Committed a breach in her handling of multiple offers; and*
- (ii) Failed to deal fairly with all parties to the transaction.*

All as set out in the complaint from Louise Carrier dated December 9th, 2022, thereby allegedly committing acts of professional misconduct, in violation of Articles 3 and 12 of the REALTOR® Code of Ethics and punishable under subsections 23(4) and 23(5) of the Act.

YOU ARE ALSO HEREBY ADVISED that you have the right to be represented by counsel and to present evidence at the hearing. Pursuant to subsection 24(2) of the Act, you also have the right to examine any document to be introduced at the hearing. To obtain access to such documents, please contact NBREA Registrar Mitch McLean.

21. On July 3rd, 2024, a second Notice of Hearing was issued in which the Respondent was advised of the following:

*[Translation] **YOU ARE HEREBY NOTIFIED** that on July 23, 24 and 25, 2024, at 9:30 a.m., the Discipline Committee will hold a hearing at the Quality Hotel and Conference Centre at 110 Chief Joanna Blvd., Edmundston NB, E7C 0C1, to investigate a complaint of professional misconduct or incompetence against Naomie Caron as follows:*

Between August 29th and December 9th, 2022, both dates inclusive, Naomie Caron, being a member as defined by An Act to Incorporate the New Brunswick Real Estate Association, c. 115, S.N.B. 1994 (the Act)

- (i) Committed a breach in her handling of multiple offers; and*
- (ii) Failed to deal fairly with all parties to the transaction.*

All as set out in the complaint from Louise Carrier dated December 9th, 2022, thereby allegedly committing acts of professional misconduct, in violation of Articles 3 and 12 of the REALTOR® Code of Ethics and punishable under subsections 23(4) and 23(5) of the Act.

YOU ARE ALSO HEREBY ADVISED that you have the right to be represented by counsel and to present evidence at the hearing. Pursuant to subsection 24(2) of the Act, you also have the right to examine any document to be introduced at the hearing. To obtain access to such documents, please contact NBREA Registrar Mitch McLean.

22. On July 19th, 2024, the Respondent submitted a request to adjourn to the Association, indicating that she had received new information. She requested more time to consult a lawyer. The Association granted this request to adjourn.

23. On September 27th, 2024, a third Notice of Hearing was issued in which the Respondent was advised of the following:

*[Translation] **YOU ARE HEREBY NOTIFIED** that on November 6 and 7, 2024, at 9:30 a.m., the Discipline Committee will hold a hearing at the Quality Hotel and Conference Centre at 110 Chief Joanna Blvd., Edmundston NB, E7C 0C1, to make determinations concerning a complaint of professional misconduct or incompetence against Naomie Caron as follows:*

Between August 29th and December 9th, 2022, both dates inclusive, Naomie Caron, being a member as defined by An Act to Incorporate the New Brunswick Real Estate Association, c. 115, S.N.B. 1994 (the Act):

- (i) Committed a breach in her handling of multiple offers;*
- (ii) Failed to deal fairly with all parties to the transaction;*
- (iii) Engaged in conduct that was disgraceful, unprofessional or unbecoming of a REALTOR®;*

- (iv) Committed a breach by failing to share all transaction documents leading up to the final sale of the residence; and*
- (v) Encouraged her clients to avoid their contractual obligations.*

All as set out in the complaint from Louise Carrier dated December 9th, 2022, thereby allegedly committing acts of professional misconduct, in violation of Articles 3, 12, 21, 20 and 23 of the REALTOR® Code of Ethics and punishable under subsections 23(4) and 23(5) of the Act.

YOU ARE ALSO HEREBY ADVISED that you have the right to be represented by counsel and to present evidence at the hearing. Pursuant to subsection 24(2) of the Act, you also have the right to examine any document to be introduced at the hearing. To obtain access to such documents, please contact NBREA Registrar Mitch McLean.

24. On October 15th, 2024, the parties were advised of the composition of the Discipline Committee. No objections were raised by the Association or the Respondent.
25. On October 28th, 2024, the Association issued a Summons to Witness requiring the Respondent's presence at the hearing on November 6th, 2024, and that she bring with her a series of documents as specified therein.

Positions of the Parties

26. The Respondent argues that the Notice of Hearing issued on September 27th, 2024, contains new allegations.
27. The Respondent wishes to be represented by counsel to respond to the charges.
28. The Respondent indicates she has had some difficulty retaining the services of a lawyer.
29. The Respondent states that she contacted Virginia Gilmore, who ultimately declined to represent her.
30. The Respondent submits that she was informed by the Association on or about October 25th, 2024, of additional potential penalties or allegations in her regard.
31. The Respondent indicates that she has recently retained Mathieu Lemieux, who has agreed to represent her.
32. The Respondent asserts that Mr. Lemieux is not available for the hearing on November 6th and 7th. Due to his unavailability, the Respondent requests that the hearing be adjourned.
33. The Association opposes this request to adjourn. Alternatively, the Association requests that the Discipline Committee require that the Respondent pay any costs arising from her request to adjourn.
34. The Discipline Committee did not receive any evidence with respect to additional costs that may be incurred due to the adjournment in this matter.

35. The Discipline Committee refers to the email from Dominic Caron to Mathieu Lemieux, dated October 29th, 2024, in which Dominic Caron sets out the Association's position:

[...]

[Translation] First, your client should have received a summons to witness (duces tecum) yesterday from Sue Duguay. It was sent at 7:14 p.m.

Next, you make reference to new information. To clarify, it is not new evidence or anything of that nature but rather my attorney's letter explaining the procedure and making an offer without prejudice.

Regarding your request to adjourn, while I sympathize with your situation, my instructions from the Association are to not agree to an adjournment.

It is rare for the Association to take this position. However, it weighed all factors carefully before adopting this position. In the circumstances, a review of the timeline of events is necessary:

- *Hearing set on May 8, 2024;*
- *On April 25, 2024, Ms. Caron files a request to adjourn;*
- *The request to adjourn is granted by the prosecutor and Ms. Caron is informed on April 25, 2024, that the hearing will be held on July 23–25, 2024;*
- *On July 3, 2024, the registrar sends out documents regarding the case and reminds Ms. Caron of the hearing date;*
- *On July 16, 2024, one week before the hearing, Ms. Caron contacts the Registrar to obtain an adjournment so that she can review this “disciplinary notice” with her new manager.*
- *On July 16, 2024, the Association declines to grant an adjournment and suggests that Ms. Caron make her request at the hearing on July 23;*
- *On July 19, 2024, Ms. Caron files a request to adjourn **so she can consult a lawyer about representing her;***
- *On July 19, 2024, the Association grants this request to adjourn so that she can find a lawyer;*
- *On September 27, 2024, the Registrar forwards the notice of hearing to Ms. Caron indicating a hearing date of November 6–7, 2024;*
- *On October 2, 2024, Ms. Caron files a request to adjourn on the pretext that her lawyer, Virginia Gillmore, needs more time;*
- *On October 2, 2024, the Registrar contacts Ms. Gillmore, who confirms that she is not representing Ms. Caron;*
- *On October 2, 2024, the Association declines the request to adjourn, notably because there is still ample time before the hearing, but advises Ms. Caron that she can make her request to the Discipline Committee;*

- *On October 29, you are retained as counsel and make a request to adjourn.*

In short, this was the fifth request to adjourn in 2024. In the view of the Association, this is excessive.

It is to be noted that the last request to adjourn from Ms. Caron that the Association granted was specifically so that she could consult a lawyer about representing her. This dates back to July 19.

All in all, in the circumstances, the Association does not agree to the request to adjourn from Ms. Caron. As such, you may make a request to adjourn at the start of the hearing on November 6, 2024. Should you insist on taking the request to adjourn to the Discipline Committee, be advised that we will insist that Ms. Caron provide the Discipline Committee with all evidence of all efforts she has made since July 19, 2024, to find herself a lawyer.

In addition, I want it on the record that if you make a request and it is granted by the Discipline Committee, we will ask that 100% of the costs associated with that adjournment be awarded to the Association. It is ultimately up to the Discipline Committee to decide.

Feel free to contact me should you have any questions.

I will be forwarding you the information for the hearing in the near future.

[...]

36. The Association argues that the Discipline Committee has the discretionary power to refuse a request to adjourn. It cites *Korzeniowski v. Alberta (Association of Professional Engineers and Geoscientists)*, 2024 ABCA 91.
37. The Association submits that the Respondent's right to the assistance of a lawyer is not absolute. It cites *Wagg v. Canada (F.C.A.)*, 2003 CAF 303.

Analysis

38. The decision as to whether to grant a request to adjourn is discretionary and should take into consideration the specific context of each request.
39. The Discipline Committee is concerned about the time elapsed between the Association's receipt of the complaint on October 22nd, 2022, the Respondent's response on January 16th, 2023, the referral to the Complaints Committee on August 22nd, 2023, and the present hearing.

40. The Discipline Committee notes that the Respondent has made previous requests to adjourn the hearing, some of which have been granted by the Association.
41. The Discipline Committee must balance the public interest in proceeding with the expeditious adjudication of this matter and the importance of the duty of procedural fairness to the Respondent.
42. While the Discipline Committee recognizes that costs may be incurred due to delays in the hearing of this matter, no specific evidence in this regard was received.
43. The Discipline Committee notes that the Notice of Hearing on September 27th, 2024, contained new charges against the Respondent.
44. The Discipline Committee accepts that the Respondent took steps to hire a lawyer with a view to responding to the charges and that the Respondent has since hired a lawyer.

DECISION AND ORDER

45. Based on the foregoing, the Discipline Committee has rendered the following decision:

Whereas the Respondent requests that the hearing be adjourned due to her counsel's unavailability;

Whereas the Association opposes the request to adjourn and the Association requests alternatively that the Discipline Committee require that the Respondent pay any costs arising from her request to adjourn;

Having heard and considered the submissions from the Association through its counsel, Dominic Caron;

Having heard and considered the submissions from the Respondent, Naomie Caron, appearing on her own behalf;

THE DISCIPLINE COMMITTEE ORDERS, ON NOVEMBER 6, 2024, AS FOLLOWS:

1. That the hearing be adjourned in accordance with the following strict conditions:
 - a. The hearing must take place by January 31st, 2025; and
 - b. The date of the hearing shall be fixed by mutual consent of the parties by November 15th, 2024. Should the parties be unable to agree on a date by November 15th, 2024, the Association will fix a hearing date unilaterally.

2. The Discipline Committee will be ready to resume the hearing in this matter on the date fixed in accordance with paragraph 1 above regardless of whether counsel for the Respondent is available.
3. Any additional documents or evidence on which the Association or the Respondent intends to rely at the hearing in this matter must be disclosed to the other party and provided to the Discipline Committee 14 days before the hearing.
4. While the Discipline Committee recognizes that costs may be incurred due to delays in the hearing in this matter, without specific evidence in this regard, the Discipline Committee will consider the request to impose costs on the parties under the auspices of the full hearing in this matter.

SIGNED at Edmundston, New Brunswick, on December 30th, 2024.

//Original Signed by Committee Chair//

Anne Smith, Acting Chair

On behalf of the Discipline Committee