

NBREA AAINB
OFFICE OF THE REGISTRAR / BUREAU DU REGISTRAIRE



COMPLAINT 2023-003

NBREA v. STEPHANIE WILKINS

DISCIPLINE DECISION

This Decision was 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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Recitals

DECISION OF THE DISCIPLINE COMMITTEE WITH RESPECT TO MERIT AND PENALTY

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-

Stephanie Wilkins (the “Respondent”)

Date of Hearing: May 6, 2025

Place of Hearing: Virtually, via Microsoft Teams

Members of Committee: Karl Merrill, Chair
Fanny Bodart
Joan Hayes
Chris Turner
Michèle Morin, Government Appointee

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

Stephanie Wilkins, Respondent
Donald V. Keenan, K.C., Counsel for the Respondent

The Chair noted the following persons attending the hearing:

Present: Mr. Merrill, Mrs. Bodart, Mrs. Hayes, Mr. Turner, Mrs. Michele Morin, Mr. Caron, Ms. Duguay, Mrs. Wilkins, Mr. Keenan, K.C., Mr. Mitchell McLean (Registrar), Ms. Brittany Trafford (Committee Legal Counsel), and Mrs. Jill Whitlock (Court Reporter).

Executive Summary

- [1] This Complaint concerns the actions of a REALTOR® who failed to protect the interests and deal fairly with her clients; failed to discover facts pertaining to the property; acted outside of her professional expertise; and failed to render skilled and conscientious service to her clients (collectively, the “Allegations”).
- [2] On April 8, 2024, the Respondent was notified by the Association that the Discipline Committee (the “Committee”) would commence a hearing respecting the Allegations on May 28 and 29, 2024. Following the receipt of a request for adjournment from counsel for the Respondent, a second Notice of Hearing was issued adjourning until August 26, 2024. On August 26, 2024, a hearing was held regarding preliminary matters related to various Summonses to Witness issued and the collection of documentation required under these summonses. The matter was scheduled to be heard from the 24th to the 28th of March 2025. Following a request for a delay by the Respondent, the matter was subsequently continued on May 6, 2025.
- [3] Prior to the hearing date, the Respondent and the Association, through its legal counsel, mutually agreed to present a joint submission to the Committee.
- [4] Pursuant to the joint submission, the Respondent admitted guilt to the charges laid against her on behalf of the Association which amounted to four (4) counts of professional misconduct under the REALTOR® Code of Ethics. The Committee accepted the Respondent’s admission of guilt and issued an order in accordance with the joint submission.

Introduction

- [5] The Association's position is that, under the REALTOR® Code of Ethics, the Allegations, if founded, constitute acts of professional misconduct.
- [6] The Complaints Committee reviewed all evidence presented by the Complainant and the Respondent on August 16, 2023, and by decision dated January 9, 2024, referred the matter to the Committee pursuant to subsection 21(3)(a) of the *Act*.

Jurisdiction

- [7] The legal counsel for the Respondent and legal counsel for the Association confirmed at the hearing that they had no objection to the composition and jurisdiction of the Committee.

Legal Test

- [8] The Committee may find a member of the Association guilty of professional misconduct pursuant to subsections 23(2) and 23(3) of the *Act*. In accordance with these subsections of the *Act*, a finding of professional misconduct 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.

- [9] Where the parties have presented a joint submission to the Committee and the Respondent has admitted guilt on the charges contained in the Notice of Hearing, the Committee has a duty to consider the joint submission.
- [10] In the decision of *R. v. Anthony-Cook*,¹ 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.”²

- [11] The public interest test, as established in *Anthony-Cook*, is widely accepted and unequivocally applies to disciplinary bodies.³
- [12] When considering the joint submission, 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.⁴ The Committee must approach the joint submission from

¹ *R. v. Anthony-Cook*, 2016 SCC 43 (“*Anthony-Cook*”).

² *Ibid*, at para 34.

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

⁴ *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII), at para 28.

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

[13] The issue to be determined by the Committee is whether it should accept the joint submission presented by the parties.

Charges

[14] Counsel for the Association presented the following charges against the Respondent:

Between October 1st, 2021 and January 16th, 2023, both dates inclusive, Stephanie Wilkins, 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 protect the interests and deal fairly with her clients,*
- (ii) Failed to discover facts pertaining to the property;*
- (iii) Acted outside of her professional expertise; and*
- (iv) Failed to render skilled and conscientious service to her clients.*

All as set out in the complaint dated January 16th, 2023, thereby allegedly committing acts of professional misconduct, in violation of, inter alia, Articles 3, 4, 10, 12 and 13 of the REALTOR® Code and punishable under ss. 23(4) and 23(5) of the Act.

[15] It was noted that although five charges against Ms. Wilkins had been initially referred to the Committee, one charge had been dropped by the Association prior to the hearing.

Background and Evidence

[16] During the hearing, the Committee received as evidence and carefully reviewed the Book of Documents, the list of which is attached to this Decision as Schedule “A”.

- [17] The Complainant in this matter and his wife retained the Respondent to assist in their purchase of a property which was a special care home and hobby farm (the "Property"). The Respondent was representing both parties on the Property transaction and oversaw all aspects of the sale.
- [18] The Complainant and his wife resided overseas at the time of the transaction and therefore the Respondent viewed the property on their behalf, provided photos and facilitated virtual tours. The Complainant obtained an inspection of the property and requested a list of renovations to be completed as part of the agreement.
- [19] The Respondent did not notify the Complainant of any issues with the Property upon the closing; however, the conditions agreed to on the sale had not been completed and any improvements made were not done to code.
- [20] When the Complainant and his wife arrived at the Property after the sale had closed, they discovered that the home and other buildings were in very poor condition, the Property was overgrown and there was excessive garbage on the Property. The Seller had not removed her belongings and the home was dirty. They also discovered seasonal flooding, severe mold and moisture issues, faulty and uneven flooring, damaged ceiling and roof, uneven walls, broken doors, poor insulation, major electrical issues, old and broken appliances, absent heating systems including in bedrooms and a pest infestation. There was also a dangerous septic issue on the Property as the septic tank was not large enough for the number of residents in the care home. They also found that equipment included in the agreement was broken down and useless and the barn on the site was in tear down condition.

- [21] The Complainant reached out to the Respondent who did not provide any assistance.
- [22] The Respondent had also provided information about the finances and profitability of the care home on the Property, the care required by the residents and when the Complainant faced issues securing financing, she recommended a Vendor Take Back Mortgage. However, the information provided by the Respondent about the business and residents was not accurate and this resulted in financial losses and significant stress for the Complainant.
- [23] At the hearing, Counsel for the Association submitted that it had come to an agreement with the Respondent and was making a joint submission.
- [24] As part of the joint submission, the Respondent admitted to the charges against her and more specifically that she had: failed to protect the interests of her clients, failed to discover facts pertaining to the property, acted outside her professional experience and failed to render skilled and conscientious services to her clients in breach of her obligations under the REALTOR® Code of Conduct.

Findings and Reasons

- [25] After receiving the evidence presented by both parties and considering the submissions made at the hearing, the Committee accepts the joint submission. The Committee finds that the joint submission is appropriate, reasonable, and is sufficient to protect the public interest and is consistent with matters heard by prior Committees.

Decision

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

[27] Further, the Committee makes the following non-binding recommendations:

- a. A REALTOR® should use Amendments to record any changes in terms and conditions of a sale and to ensure parties have formally agreed to such changes. This includes situations where the seller agrees to fix something or any other change to the agreement.
- b. Where buyers are proceeding with a purchase of a property without viewing the property themselves, the agreement should acknowledge that the purchase is “sight unseen” and that the buyers are aware of the state of the property.
- c. It is essential to complete a final walkthrough on behalf of buyers to make sure that: any required work has been completed by the seller (including requesting receipts/pictures as appropriate); that any equipment is still working as agreed upon; and; debris has been removed from the property.
- d. Transactions involving the sale of a business can be complex and a REALTOR® must assess their ability to competently complete such transactions which may result in a referral to another agent or co-listing with an experienced agent as necessary.

Order

[28] The Committee hereby orders the following:

1. The Respondent pay a fine in the amount of \$3,500.00 CAD to the Association.

2. The Respondent pay costs in the amount of \$3,500.00 CAD to the Association as partial reimbursement for costs incurred in the processing of the Complaint.
3. The Respondent shall pay the fine and costs outlined in paragraphs 1 and 2 within six (6) months of the date of this Decision. If payment is not made within the prescribed deadline, the Registrar is directed to suspend the Respondent's membership in the Association until such time that payment is made. The Respondent will be subject to a reinstatement fee upon reinstatement in the event of a suspension in accordance with this paragraph.
4. The Respondent shall, within six (6) months of the date of this Decision, attend a three (3) hour training session delivered by the Director of Education of the Association to cover Modules 1-11 of the 2019 Mandatory Continued Professional Development course ("MCPD") and must successfully complete a learning comprehension assessment as directed by the Director of Education following the completion of the training session.
5. The Respondent shall, within six (6) months of the date of this Decision, take and successfully pass the REALTOR® Code of Ethics Course as delivered online by the Canadian Real Estate Association and provide a copy of the course completion certificate to the Registrar.
6. If the Respondent fails to provide confirmation of completion of the 2019 MCPD in accordance with paragraph 4 of this Decision or the certificate of successfully passing the REALTOR® Code of Ethics Course in accordance with paragraph 5 of this Decision within six (6) months, the Registrar is directed to suspend the Respondent's

membership in the Association until such time as a session completion confirmation or certificate is furnished to the Registrar. The Respondent will be subject to a reinstatement fee upon reinstatement in the event of a suspension in accordance with this paragraph.

7. Pursuant to subsection 23(4)(f) of the *Act*, that the Registrar shall publish this Decision, including the Respondent's name.
8. Pursuant to subsection 23(4)(f) of the *Act*, that the Registrar distribute a summary of this Decision, including the Respondent's name and a website link to the Decision, to all members of the Association by way of email (Notice to the Profession).
9. It is the Respondent's responsibility to ensure that she fulfills the requirements in paragraphs 1, 2, 3, 4, and 5.

[29] 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 July, 2025.

// Original signed by committee chair//

Karl Merrill, Chair
on behalf of the Discipline Committee,
Complaint 2023-003

Schedule “A” – Documents reviewed by the Discipline Committee

<u>Exhibit</u>	<u>Description</u>
1.	<i>Book of Documents</i> consisting of a bound book of documents including: • Complaint and enclosures, dated January 16, 2023 • Notice of Complaint, dated January 17, 2023 • Letter to Complainant, acknowledging receipt of Complaint, dated January 17, 2023 • Initial Response to Complaint from Respondent and enclosures, dated February 14, 2023 • Letter to Complainant, receipt of Initial Response, dated February 14, 2023 • Initial Response from Complainant, dated March 6, 2023 • Letter to Respondent, further information from Complainant, dated March 6, 2023 • Further Response from Respondent, dated March 27, 2023 • Letter to Complainant, Response to Complainant Letter, dated March 27, 2023 • Further Response from Complainant, dated April 17, 2023 • Further Response from Respondent, dated May 5, 2023 • Letter to Complainant with Further Response to Complaint, dated May 5, 2023 • Further Response from Complainant, dated May 26, 2023 • Letter to Respondent with further information from Complainant, dated May 26, 2023 • Final Response to Complaint, dated June 20, 2023 • Decision of the Complaints Committee, dated July 26, 2024 • Notice of Hearing dated, • Notice of Panel Composition • Nine Summons to Witnesses dated July 26, 2024, August 15, 2024 and April 25, 2025 • Requested information from Complainant • Requested information from partner of Complainant • Requested information from Respondent • Additional Information (Form 13 Transfer and PAN Information) • The REALTOR® Code