

A large, silver-colored gavel is positioned in the foreground, angled diagonally. Behind the gavel, a window looks out onto a row of colorful houses (blue, white, and red) with white-framed windows. The background is a soft, out-of-focus image.

COMPLAINT 2024-028

NBREA v. [the “Respondent”]

DISCIPLINE DECISION

This Decision was produced by the Discipline Committee of the New Brunswick Real Estate Association in accordance with *The New Brunswick Real Estate Association Act*.

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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-

(the "Respondent")

Date of Hearing: August 12, 2025

Place of Hearing: Microsoft Teams

Members of Committee: Fanny Bodart, Acting Chair
Shannon Auffrey
Amy Vanbuskirk
Chris Turner
Andrea Stierle-MacNeill, Government Appointee

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

[the "Respondent"], Respondent
Michael Ly, Counsel for the Respondent

The Chair noted persons attending the hearing:

Present: Ms. Bodart, Ms. Auffrey, Ms. Vanbuskirk, Mr. Turner, Mrs. Stierle-MacNeill, Mr. Caron, Ms. Duguay, [the "Respondent"], Mr. Ly, Ms. Jane Girard (FCNB), Mr. McLean (Registrar), Ms. Katelynn Kozlowski, Mrs. Kathleen Starke (Committee Legal Counsel), Ms. Alexandra Guitard (Student-at-Law) and Ms. Cheryl LeBlanc (Court Reporter).



Executive Summary

- [1] This Complaint outlines the actions of a REALTOR® who is alleged to have engaged in professional misconduct for failing to comply with the Association's financial inspection process, inclusive of the Association's deadlines (the "Allegation").
- [2] On August 6, 2025, the Respondent was notified by the Association that the Discipline Committee (the "Committee") had scheduled a hearing for August 12, 2025 (the "Notice of Hearing").
- [3] Prior to the hearing date, the Respondent, through his legal counsel, 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 to the charge laid against him on behalf of the Association, amounting to one count of professional misconduct under the REALTOR® Code of Ethics. The Committee accepted the Respondent's admission and issued an order consistent with the joint submission.

Introduction

- [5] The Association's position is that, under the REALTOR® Code of Ethics, the Allegation, if founded, constitutes an act of professional misconduct.
- [6] The Complaints Committee reviewed all evidence presented by the Complainant and the Respondent on December 18, 2024, and by decision dated February 7, 2025, referred the matter to the Committee pursuant to subsection 21(3)(a) of the Act.

Jurisdiction

- [7] The Respondent confirmed at the hearing that he had no objection to the composition and jurisdiction of the Committee.

Legal Test

- [8] The standard of proof required in a hearing before the Committee refers to the level of proof that must be met for the 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).
- [9] The Association has the onus of proving the Allegations against the Respondent, on a balance of probabilities, through documentation and testimony given under oath or affirmation.

[10] In the case of the Committee, it may find a member of the Association guilty of professional misconduct or incompetence. 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.

[11] 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.

[12] 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

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

promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.”²

[13] The public interest test, as established in *Anthony-Cook*, is widely accepted and unequivocally applies to disciplinary bodies.³

[14] 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 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

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

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.

Charges

[16] During the hearing, Counsel for the Association presented the following charges against the Respondent:

Between July 17th, 2024, and August 26th, 2024, both dates inclusive, [the "Respondent"], 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 trust account inspection process and procedure, inclusive of deadlines.

All as set out in the complaint of Jane Girard, the Association's Director of Finance and Inspections, thereby allegedly committing acts of professional misconduct, in violation of, inter alia, Articles 17 of the REALTOR® Code and punishable under ss. 23(4) and 23(5) of the Act.

[17] In accordance with the joint submission, the charges presented during the hearing were an amendment of the charges as set out in the Notice of Hearing.

Background and Evidence

[18] During the hearing, the Committee received as evidence and carefully reviewed the documents marked as Exhibit 1, a list of which documents is attached to this Decision as Schedule "A".

[19] The Complaint was initiated by the Association's Director of Finance and Trust Inspections in response to the Respondent's failure to comply with its opening investigation. The Respondent ultimately complied with the investigation on August 26, 2024.

[20] At the hearing, Counsel for the Association submitted that it had come to an agreement with the Respondent and was making a joint submission. As part of the joint submission, the Association agreed to amend the charges in the Notice of Hearing. As a result, the

Respondent acknowledges that he had failed to adhere to the Association's inspection process, inclusive of deadlines. The Respondent recognizes his wrongdoing and has committed to refraining from such behaviour in the future.

[21] As part of the discipline file prepared by the Registrar and provided to the parties and to the Committee, the Committee reviewed the Complaint and the subsequent responses submitted by the Complainant and Respondent inclusive of the documentary evidence provided. The Committee also reviewed the Notice of Hearing, and the decision of the Complaints Committee.

Findings and Reasons

[22] 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.

Decision

[23] 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*.

Order

[24] In accordance with the joint submission, the Committee orders that:

- Pursuant to paragraph 23(4)(d) of the *Act*, the Respondent pay a fine of \$500 to the Association;

- b. Pursuant to paragraph 23(4)(g) of the *Act*, the Respondent pay \$500 in costs to the Association as reimbursement of expenses incurred in these proceedings;
- c. The total amount of the fine and costs ordered under paragraphs (a) and (b) above must be paid within thirty (30) days of the date of this decision. If the fine and/or costs are not paid within the period prescribed, the Registrar is authorized to suspend the Respondent from the Association until such time as the payments are made. The Respondent will be subject to a reinstatement fee upon reinstatement in the event of suspension; and
- d. Pursuant to paragraph 23(4)(f) of the *Act*, the Registrar shall distribute a Notice to the Profession of this decision without the Respondent's name; and
- e. Pursuant to paragraph 23(4)(f) of the *Act*, the Registrar shall publish this decision on the website of the Association without the Respondent's name.

[25] 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 20th day of November, 2025.

// Original Signed by Committee Chair//

Fanny Bodart, Acting Chair
on behalf of the Discipline Committee,
Complaint 2024-028

Schedule “A” – Documents Reviewed by the Discipline Committee

<u>Exhibit</u>	<u>Description</u>
1.	<p><i>Book of Documents</i> consisting of a bound book of documents including:</p> <ul style="list-style-type: none">• Complaint, dated August 12, 2024• Receipt and Notice of Complaint, dated August 19, 2024• Additional Information from the Complainant, dated September 11, 2024• Response from Respondent, dated October 30, 2024• Decision of the Complaints Committee, dated February 7, 2025• Notice of Discipline Hearing, dated August 6, 2025• Notice of Panel Composition, dated July 29, 2025• Additional Information – Membership Status, February 21, 2025• Summons – Jane Girard, August 7, 2025• The REALTOR® Code