



OFFICE OF THE REGISTRAR / BUREAU DU REGISTRAIRE

COMPLAINT 2023-066

NBREA v. CAMERON BRIOUX

DISCIPLINE DECISION

This Discipline 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

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-

Cameron Brioux (the “Respondent”)

Date of Hearing: March 12, 2025, 9:30 am

Place of Hearing: Radisson Kingswood, Fredericton, New Brunswick

Members of Committee: Karl Merrill, Chair
Don Ketchum (unable to act after commencement of hearing)
Alissa Lee
Jeff Smith
Andrea Stierle-MacNeill, Public Appointee

Appearances: Dominic Caron, Counsel for the Association
Sue Duguay, Student-at-Law, for the Association
the Complainant
Cameron Brioux, the Respondent
Robert Basque, K.C., Counsel for the Respondent

The Chair noted persons attending the hearing:

Present: Mr. Merrill, Mr. Ketchum (leaving the hearing after it commenced), Ms. Lee, Mr. Smith, Mrs. Stierle-MacNeill, Mr. Caron, Ms. Duguay, The Complainant, Mr. Brioux, Mr. Basque, Mr. Mitchell McLean (Registrar), Ms. Brittany Trafford (Committee Legal Counsel), the Complainant, present to testify only) and Mrs. Christine McLauchlan (Court Reporter).

Executive Summary

- [1] This Complaint relates to the activities of a REALTOR® who had viewed a property listed with another REALTOR® and subsequently sent a marketing mailout containing a handwritten note and flyer to the owner of the property asking if the owner would consider selling the specific property to a “prospect”.
- [2] The Complaint alleged that the Respondent failed to respect the contractual relationship between the Complainant and his client. The Discipline Committee (the “Committee”) finds that the mailout constituted direct contact with an individual already in a contractual relationship with another REALTOR® and was a breach of the REALTOR® Code of Ethics. A hearing will be held on the penalty at a later date.

Introduction

- [3] This Complaint alleges that the Respondent improperly directly contacted a property owner who was represented by another REALTOR®. The Association’s position is that, under the REALTOR® Code of Ethics, the Respondent failed to deal fairly with all parties of a transaction, failed to provide skilled and conscientious service, and failed to respect contractual relationships, which constitute acts of professional misconduct.
- [4] 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.
- [5] The Complaints Committee reviewed all evidence presented by the Complainant and the Respondent and rendered a Decision on July 24, 2024. The matter was forwarded to the Committee pursuant to subsection 21(3)(a) of the *Act*.

- [6] In preparation for the hearing commenced before the Committee, the Registrar confirmed that the Respondent was a member of the Association at or during the time of the alleged offence.
- [7] The Respondent elected to proceed with a dual hearing process whereby the Committee will first render a decision on the merits of the complaint, and if required, will hold a subsequent hearing on the penalty.

Jurisdiction

- [8] Under subsection 23(1)(a) of the *Act*, the Committee shall, when so directed by the Complaints Committee, hear and determine allegations of professional misconduct or incompetence against a member of the Association.
- [9] The Respondent confirmed at the hearing that he had no objections to the composition and jurisdiction of the Committee. After the hearing commenced, one member of the Committee, Mr. Don Ketchum, became unable to act. The hearing continued pursuant to s. 22(4) of the *Act* with no objections from the parties.

Legal Test

- [10] 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). 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.
- [11] The Committee, may find a member guilty of professional misconduct pursuant to subsection 23(2) on the basis of the following criteria:

- 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.

Issue

[12] The Committee is tasked with determining whether the Respondent's conduct was a breach of the REALTOR®'s Code of Conduct and, therefore, professional misconduct as outlined in the charges issued by the Association.

Charges

[13] Mr. Dominic Caron, representing the Association as the appointed prosecutor, presented the following charges against the Respondent:

Between August 2nd, 2023, and October 14th, 2023, both dates inclusive, Cameron Brioux, being a member as defined by The 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 of a transaction;*
- 2. Failed to provide skilled and conscientious service; and*
- 3. Failed to respect contractual relationships.*

All as set out in the complaint of The Complainant dated October 14th, 2023, thereby allegedly committing acts of professional misconduct, in violation of, inter alia, Articles 3, 12, and 20 of the REALTOR® Code of Ethics and punishable under ss. 23(4) and 23(5) of the Act.

Background and Evidence

[14] During the hearing, the Committee received as evidence and carefully reviewed documents marked as Exhibits 1 and 2, a list of which documents is attached to this Decision as Schedule “A”.

[15] The Committee heard the sworn testimony of the following witnesses:

- The Complainant; and
- Cameron Brioux, Respondent

Testimony of the Complainant

[16] The Complainant testified that he has been a REALTOR® for 14 years in the greater Moncton area.

[17] The Complainant testified that, in October of 2023, he was representing the Seller of a commercial building located on a corner lot at 166 Mountain Road/389 Robinson Street in Moncton (the “Property”). The Property had been listed on September 21, 2022, and the listing was scheduled to expire on October 31, 2023.

[18] The Complainant testified that, on October 14, 2023, he was contacted via text message by the seller of the Property (the “Seller”) who told him that he had been contacted by another REALTOR®. The Seller stated, *“Got this weird message in the mail. I don’t understand the approach. Shouldn’t this Cameron Brioux Agent contact you since your [sic] the listing agent?”*

[19] The Complainant provided a screen shot of his conversation with the Seller and a photo of the communication received in the Seller’s home mailbox. According to the testimony, the Seller’s residence was located approximately 25 minute drive away from the Property [sic].

[20] The communication received by the Seller included a mass-produced business card containing the Respondent’s name and a handwritten note on a lined piece of paper which said, *“Dear Christian, Would you consider selling your Property on Robinson St to a Prospect of mine? Thank you, Cameron [telephone number]”*.

- [21] The Complainant testified that he contacted the Respondent on October 14, 2023. He wanted to confirm that the Property was available, but also to let the Respondent know that he was aware of the note that was dropped off at the Seller's home.
- [22] The text messages between the Complainant and the Respondent were reviewed during the hearing. The Complainant confirmed in his testimony that the Respondent asked about the renovations occurring at the Property after the Complainant sent him an image of the note sent to his client. To his knowledge, the Respondent did not show the Property to any potential buyers in October 2023.
- [23] The Complainant further testified that the Respondent had contacted him previously in August 2023 to view the Property and was made aware of the renovations that were taking place at that time.
- [24] The Complainant testified that the Property ultimately sold on October 31, 2023. The Respondent was not involved in the sale.
- [25] On cross-examination, the Complainant agreed that the communication from the Respondent was sent after the August 2023 visit and that he was speculating that the Respondent drove out to the Seller's home address to deliver the note and business card. He further confirmed that he was not aware of the Respondent calling the Seller to try to negotiate with the Seller. He also agreed that the Respondent had attempted to call him, but he did not answer the call.

Testimony of the Respondent

- [26] The Respondent testified that he had been a REALTOR® since 2020. He has a background in marketing and has used different marketing approaches including billboards, social media and direct mailing.
- [27] The Respondent explained that he obtained a database of mailing addresses of owners of properties in Moncton from a third-party business contact (the "Excel File"). He was not certain where the information included in the list had originated. He used the Excel File to engage in a marketing campaign targeting properties in the Moncton downtown core.

- [28] The Respondent testified that this marketing campaign was intensive, and he used the Excel File to prepare mailouts to the owners of properties which were zoned for multi-family housing (R2 properties) which were the types of properties in which an investor-type buyer might be interested. The Respondent prepared the mailouts, including handwritten notes, and placed them in envelopes with his marketing business card, and sent them by regular mail. He testified that all mailouts had the same message personalized to the owner's name.
- [29] The Respondent testified that he had shown the Property in June and August 2023. His evidence was that he did not realize that the Mountain Road address was the Property when he sent out his mailouts.
- [30] The Respondent testified that the mailout with the handwritten note was the only communication that he had with the Seller. He confirmed the handwritten note and business card were sent to the Seller by mail, likely around October 7, 2023, and that the Seller's address was taken from the Excel File.
- [31] The Respondent testified that he did not have a buyer for the Property but was speaking to a few prospective buyers with an interest in a duplex-type property in the Moncton or Halifax areas at the time.
- [32] The Respondent attempted to contact the Complainant when he received the Complaint but there was no answer. He stopped the marketing campaign when he received the Complaint.
- [33] The Respondent testified that he did not cross-reference the Excel File with active listings. He testified that this would have been almost impossible as it was a mass-marketing program. He testified that when the Complainant texted him on October 14, 2023, and sent an image of his mailout to the Seller, he cross-referenced to find that the Robinson address mentioned was the same property as 166 Mountain Road and then he asked about the renovations.
- [34] On cross-examination, the Respondent confirmed that he understood if his mailouts reached an owner under contract with another REALTOR®, the agent for that owner would reach out to him.

Findings and Reasons

[35] The Committee considered all the evidence, and the submissions presented. The Committee considered the case law presented in this hearing before making its finding but notes that it is not bound by decisions from other jurisdictions or decisions from other regulated professions.

[36] Having regard for the evidence and for the submissions made by Counsel for the Association and Counsel for the Respondent, for the reasons below, the Committee finds that the Respondent committed acts of professional misconduct in breach of Articles 12 and 20 of the REALTOR® Code of Ethics. The Committee finds that there was no breach of Article 3 of the REALTOR® Code of Ethics.

i) Article 3 of the REALTOR® Code of Ethics

[37] Article 3 of the REALTOR® Code of Ethics provides that:

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.

[38] The Committee finds that there was no breach of Article 3 of the REALTOR® Code of Ethics as the Respondent's actions occurred outside of a transaction. The Respondent did not have a client in this matter and his actions cannot therefore be said to have breached the above duty to the client. As a result, Article 3 is not applicable based on the facts of this matter and the Committee finds no breach of this duty.

ii) Article 12 of the REALTOR® Code of Ethics

[39] Article 12 of the REALTOR® Code of Ethics provides a duty to provide skilled and conscientious services and states as follows:

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.

- [40] The Committee finds that the Respondent had the onus of properly and skillfully implementing his chosen marketing process in a manner that accounted for those properties that were already active listings under contract. The Respondent admitted that he did not cross-check his Excel File with active listings but chose to issue handwritten notes which were individualized to each property owner. The Respondent submitted that he understood that the protocol would be that even if he directly contacted an owner who was represented already, it would be the other REALTOR® who had the onus to contact him. The Committee does not agree. It was the Respondent's responsibility to refrain from directly soliciting business from those with active listings with another REALTOR®.
- [41] The Committee finds that the Respondent's conduct was negligent and does not reflect the duty to render skilled or conscientious services. While the Respondent may not have created the list he was using for his marketing processes, he was responsible for the integrity of the information in the Excel File if he decided to use it, and, in this instance, he failed to meet the standards expected of a REALTOR® undertaking this type of marketing.
- [42] Further, the Respondent's personalized handwritten message confused the Seller in this instance, as indicated by the Seller's messages to the Complainant. The handwritten note indicated that the Respondent had a "prospect" buyer for the Property when in fact he did not have a client who was interested in the specific Property and did not show the Property in October 2023. The Committee finds that this was misleading and was in breach of the expectations of a REALTOR® to provide skilled and conscientious service.

iii) Article 20 of the REALTOR® Code of Ethics

- [43] Article 20 of the REALTOR® Code of Ethics provide as follows:

The agency or other contractual relationship of a Registrant shall be respected by all REALTORS®. Negotiations regarding an offer or the

acceptance of an offer with any party who is exclusively represented shall be carried on with the Registrant representing the party except with the consent of the Registrant.

- [44] While the Respondent testified that all the handwritten notes sent in his marketing were essentially the same. Regardless, Committee finds that, based on the evidence, the Respondent's handwritten note to the Seller constitutes a direct communication with the Seller and is not akin to the mass-marketing mailouts. This piece of communication was personalized by including: the first name of the owner; the specific address of the Property owned; and a suggestion that the Respondent had a prospective buyer for the Seller's Property. Finally, the note itself was handwritten and not mass-produced.
- [45] The Respondent sent the handwritten note to a Seller of the Property that he had shown twice. The Committee accepts that the Respondent ought to have known the Property was under contract with another REALTOR® and that, if even he did not know, his failure to confirm was negligent.
- [46] The Committee considered the interpretation notes in Article 20.2 as raised by Counsel for the Respondent and finds that this interpretation note does not apply as there was no new agency agreement made with the Respondent and the Seller. The direct communication was not initiated by the Seller but by the Respondent in this case, who was subject to the general requirement to respect contractual relationships.
- [47] While the Respondent could have used mass-marketing materials such as his business card to advertise his services, including the handwritten note, suggesting that he had a potential buyer constituted a direct contact with the Seller and was a breach of his obligations.
- [48] The Committee considered the submissions of Counsel for the Respondent regarding the importance of freedom of expression. Again, the Committee notes that it is not bound by decisions from other jurisdictions or decisions from other regulated professions. In this case, the Committee finds that there was still an ability to freely communicate the existence of the Respondent's services in a manner that respected the obligations of Article 20.

[49] As a result of the above, the Committee finds that this direct contact from the Respondent with the Seller was a breach of his obligation to respect the Seller's existing contractual relationship with another REALTOR®.

Decision

[50] Having regard for the evidence and for the submissions made, the Committee finds that, on the balance of probabilities, the Respondent:

- a. Failed to provide skilled and conscientious service; and
- b. Failed to respect contractual relationships.

Order

[51] The Committee will hold a second hearing to hear arguments with respect to the appropriate penalty.

[52] 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 8th day of May 2025.

// Original Signed by Committee Chairperson//

Karl Merrill, Chair
on behalf of the Discipline Committee,
Complaint 2023-066

Schedule “A” – Documents reviewed by the Discipline Committee

Exhibit	Description
1.	<i>Book of Documents</i> consisting of a bound book of documents including: • Complaint and enclosures, dated October 14, 2023 • Respondent’s Response and enclosure, dated October 31, 2023 • Reply from the Complainant, dated February 17, 2024 • Decision of the Complaints Committee, dated July 24, 2024 • Notice of Panel Composition, dated February 20, [2025] • Notice of Discipline Hearing, dated February 24, 2025 • Additional Information from the Complainant • Additional Information from the Respondent • The REALTOR® Code of Ethics
2.	Excel Sheet entitled <i>Downtown Moncton (1)</i>