

# The Regulator June 2011

---

## **OIPC Decision:**

### **Real Estate Council of Alberta had authority to disclose personal information**

A recent decision of the Office of the Information and Privacy Commission of Alberta (OIPC) has determined the Real Estate Council of Alberta (RECA) had authority to disclose the personal information of an industry member vis a vis a disciplinary decision posted on RECA's website.

The industry member complained that RECA posted a disciplinary decision on its website about him, therefore disclosing his personal information in contravention of the *Personal Information Protection Act* (PIPA).

In making its decision, the OIPC identified five issues for consideration.

- Did RECA disclose the industry member's personal information as that term is defined in PIPA?
- Is the disclosure excluded from PIPA by virtue of section 4(3)(k)?
- Did RECA disclose the information contrary to, or in compliance with section 7(1) of PIPA? (No disclosure without either authorization or consent.)
- Did RECA disclose the information contrary to, or in accordance with, section 19(1) of PIPA? (Disclosure for purposes that are reasonable.)
- Did RECA disclose the information contrary to, or in accordance with section 19(2) of PIPA? (Disclosure to the extent reasonable for meeting the purposes.)

The Administrative Penalty issued to the industry member contained his name, information regarding his failure to report a criminal conviction, which resulted in a breach of the *Real Estate Act* Rules, as well as the type of criminal conviction that was not reported. OIPC found that all of the above information falls under the definition of personal information in PIPA.

The OIPC had to determine if this disclosure was excluded from PIPA by virtue of section 4(3)(k), which states that PIPA does not apply to personal information contained in a court file. RECA took the position that the exclusions in this section of the legislation applied to the personal information in question because it originated from a court file. OIPC disagreed and found that section 4(3)(k) of PIPA does not exclude this information. Though the personal information of this individual is likely found in a court file, for the information to fall under this section of the legislation, it would have had to have been taken directly from or copied from a court file. Information held by RECA is not excluded from the relevant privacy legislation simply because it has the same content as that which is contained in a court file.

The next step was to determine whether RECA disclosed the information contrary to, or in compliance with section 7(1) of PIPA, which states that an organization must not disclose an individual's personal information unless it is disclosed pursuant to another provision of PIPA, such as section 20 or individual consent. Section 20 allows an organization to disclose personal information without consent if certain criteria are met. Did RECA have the authority to disclose the information without consent, as permitted by section 20 of PIPA?

RECA applied sections 20(b) and 20(j) of PIPA to the information at issue. Section 20(b) allowed for the disclosure of the information if it's pursuant to a statute or regulation of Alberta or Canada that authorizes or requires the disclosure. At the time, section 55(c) of the *Real Estate Act* read that the Executive Director may publish information respecting prosecutions and disciplinary actions taken under the *Real Estate Act* and those publications have qualified privilege.

The OIPC found RECA had the authority to disclose the industry member's disciplinary decision under section 20(b) of PIPA in that it was authorized by section 55(c) of the *Real Estate Act*.

Section 2 of PIPA states that the standard for determining whether a thing or matter is reasonable is what a reasonable person would consider appropriate in the circumstances. RECA's purposes for disclosing disciplinary decisions are directly related to its mandate in section 5 of the *Real Estate Act*. At the time, section 5 stated that the purpose of Council is to set and enforce standards of conduct for the industry and the business of industry members in order to promote the integrity of the industry and to protect consumers.

RECA maintains that publishing its disciplinary decisions promotes the integrity of the industry and protects the public.

- It gives consumers the information they need to make an informed decision about whether they want to engage the services of that member;
- it provides transparency and demonstrates RECA's accountability to its members and the public regarding its disciplinary process;
- it deters industry members from engaging in such conduct; and,
- it provides access to precedential decisions that other members may access should they also be subject to the disciplinary process.

Taking these factors into consideration, OIPC found the purposes are reasonable under section 19(1) of PIPA. Additionally, section 19(2) of PIPA allows an organization to disclose information only to the extent reasonable for meeting the purposes for which the information was disclosed. In other words, RECA had to establish that its disclosure of personal information is reasonably related to RECA's purposes for disclosure. RECA disclosed the industry member's personal information for the purpose of promoting the integrity of the industry and protecting the interests of the general public. The OIPC found that, pursuant to section 19(2), a reasonable person would consider the extent of the personal information disclosed was reasonable for meeting these purposes.

When the industry member complained to the OIPC, he included a copy of a pardon he received for the Criminal Code offence. He suggested that it was not reasonable for RECA to continue disclosing the disciplinary decision once the pardon was granted. However, RECA issued an administrative penalty to the industry member for failing to report the criminal conviction, not for the conviction itself. The office of the OIPC found that receiving a pardon after the fact does not have a retroactive effect on the penalty imposed by RECA for failing to disclose the conviction nor on its ability to publish its disciplinary decision in that regard.

To read the complete OIPC decision, click [here](#).

To read the RECA Publications Policy, click [here](#).

---

## **RECA modifies Certified Criminal Record Check policy**

Effective October 1, 2011, the Real Estate Council of Alberta will no longer authorize individuals without a Certified Criminal Record Check.

For the past few years, RECA had policies and procedures in place that would enable individuals to become authorized prior to receiving their CCRC. In those circumstances, RECA would issue the authorization on the condition that the individual provide their CCRC to RECA within a specific time period. Failure to meet that condition would result in suspension or cancellation of the individual's licence pursuant to section 38.1(1)(a) of the *Real Estate Act* Rules.

The change in policy will streamline the process for new industry members, and it will serve as encouragement for those individuals joining the industry for the first time or re-entering the industry after more than one year unregistered to ensure they apply for their CCRC from the Royal Canadian Mounted Police in Ottawa well in advance of when they hope to become authorized through RECA.

In the past year alone, there have been more than three dozen suspensions as a result of a failure to provide CCRCs in the specified time limit. These suspensions are time consuming for all involved. And, in terms of consumer protection, industry members and consumers are better served by waiting until a CCRC is obtained before RECA issues an authorization.

---

## **Information Bulletin: Brokers - Accountability**

**Summary: A real estate or mortgage broker may be held accountable for the misconduct of an associate broker, associate or employee of the brokerage in certain situations where they have failed to carry out their broker responsibilities. [See: *Real Estate Act* Rules, s.51(3), s.67(3)]**

*Note: For purposes of this Information Bulletin, and where the context permits, "broker" means an individual who holds a "real estate broker" or "mortgage broker" licence issued by the Real Estate Council of Alberta.*

As a general rule, individual industry members are accountable to the Real Estate Council of Alberta for any actions they engage in that may constitute conduct deserving of sanction within the meaning of the *Real Estate Act*. See RECA *Information Bulletin: Conduct Deserving of Sanction*.

In addition to being accountable for their own actions, the Real Estate Council of Alberta may hold a broker accountable for the conduct of associate brokers and associates registered with the brokerage, and employees, if the broker:

- was not actively engaged in the management of the brokerage. See RECA *Information Bulletin: Brokers – Active in Brokerage Management*;
- failed to ensure an adequate level of supervision;
- was willfully blind to the conduct in question;
- was a participant in the misconduct;
- had knowledge of the misconduct and failed to take reasonable steps to stop such misconduct;
- upon becoming aware of the misconduct, failed to take reasonable steps to correct the misconduct or reduce the harm that may have resulted; or,
- upon becoming aware of the misconduct, failed to notify the executive director of the Real Estate Council of Alberta of misconduct relating to fraud, deception, theft, or unlawful activities on the part of the associate broker, associate or employee.

When situations involving misconduct or potential misconduct come to a broker's attention, whether or not a complaint has been filed with RECA, the broker must take reasonable steps to correct the misconduct and reduce any harm that may have resulted from the misconduct.

RECA strongly recommends the following process:

- speak with the associate broker, associate or employee as the case may be;
- speak with relevant clients or customers;
- speak with all relevant witnesses;
- confirm that all relevant documents are in the brokerage file, and that the documents are authentic and accurate;
- take appropriate action based on the results of your review. If you have doubts as to what course of action is appropriate given the situation, consult a lawyer. Take reasonable steps to immediately end the misconduct where the misconduct is of an ongoing nature and to correct and reduce the impact of the misconduct. At minimum, advise the associate that the conduct was inappropriate and should never be repeated. Provide an explanation or training to the associate on how things are to be done in future;
- document everything pertaining to the review; and,
- notify the executive director about misconduct relating to fraud, deception, theft, or unlawful activities (see Practice Tips below).

If the outcome of your review identifies weaknesses in the brokerage processes, consider amending or adding to existing policies and procedures or supervisory practices to prevent future misconduct. Ensure changes are clearly communicated to brokerage staff. If an industry member from another brokerage is involved, report the information related to their involvement directly to their broker for review.

## Practice Tips

The requirement to notify the executive director about misconduct relating to unlawful activities includes any industry member's breach of fiduciary duties such as undivided loyalty, confidentiality, disclosure of conflicts of interest or receiving secret profits.

A brokerage's expectations with respect to the conduct of associates should be communicated through policies and procedures. The policies and procedures manual should be a living document subject to amendment and additions as different situations arise and there should be a system in place to ensure compliance and general knowledge about the consequences of non compliance.

---

## News Bytes

### RECA formalizes social media policies

The Real Estate Council of Alberta's foray into social media has been extremely well-received, particularly in the Twitterverse, where the RECA account (@RECA) has more than 1,200 followers. Now, RECA has formalized its policies for social media usage by RECA staff. For any industry members who are interested in reading how RECA will use social media, especially with respect to Twitter, check [here](#). As RECA grows its social media presence on other platforms, you can expect the policies to be expanded upon.

As always, if you have any questions or concerns, you're encouraged to send an email to [communications@reca.ca](mailto:communications@reca.ca)

### Province to begin licensing home inspectors as of September 1, 2011

The much anticipated introduction of licensing and regulation for Alberta home inspectors will take effect on September 1, 2011. Though the Real Estate Council of Alberta will have no role to play in the licensing, education and/or regulation of home inspectors, it wants to remind industry professionals who may be referring clients or customers to home inspectors to ensure that any person to whom they are referring people is licensed once September 1 rolls around.

Service Alberta's website has a tool to search for licensed businesses in Alberta. Once the new home inspector licensing regulations take effect, the Service Alberta website tool will include home inspectors. For more information about the new licensing regulations or to search for a licensed home inspector (after September 1), visit the Service Alberta website at: <http://www.servicealberta.ca>.

### Investigation process seminars

RECA investigation staff recently held four seminars in Calgary and two in Edmonton for brokers interested in learning more about the new investigation process, including the highlights

of the Voluntary Broker Resolution Process. These seminars were in addition to the real estate board and brokerage visits that investigation staff have been participating in over the course of the past few months. One of the Calgary seminars was video-taped and will be posted on the RECA website in the coming weeks for all industry members to view, particularly those brokers who were unable to attend one of the seminars in person. Almost 100 brokers attended the seminars in Calgary and Edmonton, and more have expressed an interest in reviewing the video.

Brokers who are interested in having RECA staff present such a seminar for industry professionals at their brokerage are invited to contact RECA at (403)228-2954 or 1-888-425-2754.

### **Tweet-Up**

Are you following RECA on Twitter? Stay up to date on RECA news releases, industry news and events, and associated news stories by signing up for Twitter and following the RECA account at <http://twitter.com/RECA>.

RECA hopes to see many followers at the next Calgary Industry Member Tweet-Up on June 23 at the RECA office. For more information – and to RSVP – check out: <http://industrytweetup.eventbrite.com>.

### **Tax Relief for Those Affected by Fires**

Industry professionals who are working with consumers affected by the Slave Lake fires – or those industry professionals who themselves were affected, may want to look into tax relief being offered by the Canada Revenue Agency.

With the recent wildfires that have affected many in northern Alberta, including Slave Lake, the Canadian Revenue Agency has reiterated their policies regarding relief for taxpayers. CRA's [Information circular IC07-1 paragraph 25](#) or [GST Memorandum 16-3 paragraph 11](#) cover the current situation and provide relief from penalties and interest in extraordinary circumstances beyond a person's control. To apply for relief the taxpayer can use [form RC4288](#) and send it to the Winnipeg Tax Centre. Relief from penalties and interest must be requested after the assessment of the late filed return is completed. More information can also be found on the CRA website.

---

## **Council Members 2010-2011**

### **BILL BUTERMAN**

**Appointed from non-AREA industry members**

### **KEVIN CLARK**

**Appointed from residential real estate industry members**

### **CINDY DUBRAY**

**Appointed from the property management sector**

**GORDON GRAYDON**

**Appointed from the public**

**CONNIE LECLAIR**

**Appointed from the public**

**WAYNE MCALISTER, CHAIR-ELECT**

**Appointed from the Calgary Real Estate Board**

**KEN MCCOY**

**Appointed from the Edmonton Real Estate Board**

**WENDY ROBSON**

**Appointed from boards outside of Calgary and Edmonton**

**RALPH SALOMONS, PAST CHAIR**

**Appointed from commercial real estate sector**

**CHERYL SCHINDEL**

**Appointed from boards outside of Calgary and Edmonton**

**GARY SIEGLE**

**Appointed from the mortgage brokerage sector**

**ROBERT TELFORD, CHAIR**

**Appointed from the real estate appraisal sector**

---

## **Contact RECA**

Case Summaries is published by the Real Estate Council of Alberta. Please forward your comments and suggestions to [communications@reca.ca](mailto:communications@reca.ca).

Executive Director - Bob Myroniuk

Director of Audit and Investigations - Joseph Fernandez

Director of Corporate Services – Dale Cawsey

Director of Education – Kirk Bacon

Director of Industry Standards – Charles Stevenson

Director of Legal Services - Jean Flanagan