

**REAL ESTATE COUNCIL ALBERTA**

**IN THE MATTER OF** a Hearing under Part 3 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5 (the "Act")

**AND IN THE MATTER OF** a Hearing regarding the conduct of **JUSTIN JAMES FRASER**, Real Estate Associate, currently unlicensed, and licensed at all material times with Logic Realty Inc. O/A Logic Realty

Hearing Panel: [K.K], Chair  
[L.M]  
[H.Y]

Appearances: G.Z, counsel for the Registrar of the Real Estate Council of Alberta  
Darin D. Sprake, Holly Spurrell, counsel for the Licensee, Justin James Fraser

Hearing Dates: November 29, November 30, December 1, December 6, and December 15, 2023

**DECISION ON CONDUCT DESERVING OF SANCTION**

**OVERVIEW AND DECISION SUMMARY**

1. This Hearing Panel finds the Licensee, Justin James Fraser, breached section 42(f) of the *Real Estate Act Rules* (the "Rules") on four occasions, as alleged by the Registrar, and that this behaviour is conduct deserving of sanction. The Registrar alleges the Licensee physically, sexually or emotionally abused a client or customer ("[CLIENT]") between March 9 and July 6, 2019. This behaviour is contrary to section 42(f) of the Rules, which prohibits Licensees from physically, sexually, emotionally or verbally abusing a client, customer, licensee or party to a trade in real estate.
2. In total the Registrar alleged the Licensee committed four breaches of section 42(f). The Licensee denied the allegations, and a contested hearing was held on November 29, November 30, December 1, December 6, and December 15, 2023 via video conference. The Licensee was represented by legal counsel for

the first four days of the hearing, and he chose to be self-represented for the final day of the hearing.

3. The Licensee was licensed by the Real Estate Council of Alberta ("RECA") as a real estate associate with Logic Realty Inc. O/A Logic Realty at all material times and was therefore subject to RECA's jurisdiction. Pursuant to the Act and its Regulations and Rules, the powers of RECA include setting and enforcing standards for the real estate industry and the business of real estate licensees in Alberta, as RECA determines necessary, to promote the integrity of the industry, and to protect consumers affected by the industry.

## ALLEGATIONS

4. The Registrar served a Notice of Hearing dated October 4, 2023 on the Licensee, which alleged the Licensee's conduct was deserving of sanction for the following reasons:

Allegation 1: On or around March 9, 2019, the Licensee physically, sexually or emotionally abused his client, [CLIENT], contrary to section 42(f) of the Rules by using inappropriate sexual language and gestures toward her while showing her properties, specifically "[UNIT]."

Allegation 2: On or around March 22, 2019, the Licensee physically, sexually or emotionally abused his client, [CLIENT], contrary to section 42(f) of the Rules: by touching and engaging in sexual acts with [CLIENT] without her consent while driving [CLIENT] to Vegreville and back.

Allegation 3: On or around May 10, 2019, the Licensee physically, sexually or emotionally abused a client, [CLIENT], contrary to section 42(f) of the Rules by using inappropriate sexual language while texting with [CLIENT].

Allegation 4: On or around July 6, 2019, the Licensee physically, sexually or emotionally abused a client [CLIENT], contrary to section 42(f) of the Rules by inappropriately exposing his naked body during a video call.

5. The panel must decide whether each of the above allegations is proven, on a balance of probabilities. Each proven allegation is a serious violation of the Rules and establishes conduct deserving of sanction.

## PRELIMINARY AND INTERLOCUTORY APPLICATIONS

6. The parties did not object to the composition of the Hearing Panel.

### Adjournment application by Registrar

7. The Registrar brought an application to adjourn the hearing before the hearing started. The application was heard through written submissions. The Panel considered the application on November 22, 2023 and dismissed the Registrar's adjournment application with written reasons issued on November 23, 2023.

### Adjournment application by Licensee

8. The Licensee brought an application to adjourn the hearing on December 11, after four days of hearing (November 29, November 30, December 1, and December 6, 2023). The fifth day of the hearing was scheduled to proceed on December 15, 2023. At that point, the Registrar had closed its case and the Licensee had yet to present his case.
9. After hearing from both parties, the Panel dismissed the Licensee's application for adjournment on December 14, 2023. The reasons for that decision are provided here.
10. The RECA Hearings and Appeals Practice and Procedures Guidelines provide that "Panels must not grant adjournments except where compelling reasons exist for doing so, or where proceeding would amount to a denial of natural justice and fairness. For example, if for good reason, one party cannot put their case before the panel on the date the hearing is scheduled, natural justice requires that the party be granted the requested adjournment."
11. The Panel finds the Licensee has not provided compelling reasons to grant the adjournment, nor would proceeding without an adjournment amount to a denial of procedural fairness.
12. The Licensee explained in his adjournment application that he had applied to his RECA Industry Council to permanently withdraw from the industry pursuant to section 54 of the Act. He argued that a successful withdrawal application would result in these proceedings being discontinued. The

approaching holidays would make scheduling of more hearing days challenging, and those hearing days would not even be necessary if the withdrawal application were successful. Therefore, an adjournment pending a decision on the withdrawal application was appropriate.

13. The panel disagrees that merely filing a permanent industry withdrawal application is a compelling reason to grant an adjournment in this case. We acknowledge that the Act specifies proceedings will be discontinued if the withdrawal application is granted. It does not, however, require proceedings to be discontinued simply if a withdrawal application is made. Making an application is not a compelling reason to adjourn discipline proceedings. The date on which the Licensee's application will be considered is not known and the outcome of the application is not certain, rather it is at the Industry Council's discretion. RECA's mandate to prosecute serious allegations of misconduct is an important one and continues even in the face of an application to withdraw from the industry.
14. The additional inconvenience in scheduling potential future hearing dates, considered together with the withdrawal application, is not a compelling reason to adjourn the Hearing. At the time of the Licensee's adjournment application, an additional full hearing day had been scheduled and the parties had all indicated they were committed to finding additional dates if necessary. The need to accommodate schedules is a reality of conduct proceedings and is not a compelling reason to adjourn them.
15. Nor is efficiency an issue that would require an adjournment. At the time of the Licensee's adjournment application, the Registrar's case was closed. An additional full day was already scheduled. Adjourning the hearing pending an unknown outcome at an unknown time in the future, along with the disruption associated with reviewing notes or recordings to refresh memories in case the withdrawal application was not successful does not promote efficiency.
16. The Licensee also explained that he would be continuing the hearing unrepresented if the Panel dismissed the adjournment application. He argued this would be prejudicial to him and possibly unfair, as conduct hearings are arduous.

17. We do not agree. Proceeding with a hearing unrepresented is not inherently unfair nor a compelling reason to adjourn. The Licensee did not provide argument as to why it would be unfair for him to proceed unrepresented or how this was compelling enough to adjourn the Hearing. He did not indicate that he required time to find new legal counsel or time to prepare to be self represented, rather he indicated that he was ready to proceed unrepresented.
18. Finally, the fact that the Licensee had not previously delayed the proceedings or applied for an adjournment is not relevant to this decision. As explained above, the Licensee did not indicate that he needed additional time to proceed unrepresented. The main reason for the adjournment was his lifetime withdrawal application which, as we have explained, is not in itself a compelling reason to adjourn conduct hearings. The Panel appreciates that the Licensee had not previously delayed proceeding, but this is not a compelling reason to adjourn the Hearing, either on its own or in conjunction with the Licensee's other arguments on adjournment.

#### **Registrar's application to amend the Notice of Hearing**

19. In their closing written submissions dated January 2, 2024, the Registrar sought to amend the Notice of Hearing as the complainant's name was inadvertently spelled wrong. The Registrar's counsel provided the correct spelling of the complainant's name and submitted that the misspelling of a name does not and has not prejudiced the Licensee. The Licensee did not respond to the Registrar's request in his closing written submissions dated January 3, 2024.
20. The Hearing Panel grants the Registrar's request to amend the Notice of Hearing to reflect the correct spelling of the complainant's last name. The Hearing Panel finds that this is a correctable misnomer that would not have prejudicial consequences on the Licensee. The facts are sufficiently particularized in the Notice of Hearing such that, upon reading the Notice of Hearing, the Licensee would have known that it referred to the complainant.

#### **ANALYSIS ON CONDUCT DESERVING OF SANCTION**

21. The Hearing Panel finds the Registrar has proven all four allegations, on a balance of probabilities. The Licensee breached section 42(f) of the Rules on four occasions and his conduct is deserving of sanction.
22. Section 42(f) of the Rules addresses client abuse by Licensees. It provides that:

*Licensees must not:*

*(f) physically, sexually, emotionally or verbally abuse a client, customer, licensee or party to a trade in real estate, deal in mortgages, property management service, or condominium service;*

23. There are multiple legal requirements in section 42(f). As a threshold matter, the provision requires that the person who is physically, sexually, emotionally or verbally abused must be a client, customer, licensee or party to a trade in real estate, a deal in mortgages, a property management service or a condominium service.
24. The Panel finds [CLIENT] was the Licensee's client to a trade in real estate on all the dates in question, that is March 9 (viewing of [UNIT]), March 22 (trip to Vegreville), May 10 (text message) and July 6 (shower exposure).

*[CLIENT] was the Licensee's client at all material times*

25. The Hearing Panel finds [CLIENT] was either an express or implied client of the Licensee throughout the period from March 9, 2019 to July 6, 2019.
26. The Exclusive Buyer Representation Agreement<sup>1</sup> between [CLIENT] as the Buyer and the Licensee as the Brokerage Representative began on March 9, 2019 at 9:00am, and ended on April 30, 2019 at 9:00pm. This is an agency agreement, confirming the Licensee exclusively represented [CLIENT] (the client) in buying a property. In addition, the Residential Resale Condominium Property Purchase Contract dated March 11, 2019<sup>2</sup> shows [CLIENT] as the Buyer of a condo property, with the Licensee named as her Brokerage Representative, with a completion date of April 1, 2019, later amended to March 25, 2019.
27. The Exclusive Buyer Representation Agreement included a 15 day "holdover" period at section 6.2:

6.2 During this agreement and 15 days after this agreement exists, you must give us copies of any offers we don't know about that you make or receive for properties that match the search criteria, unless you sign a buyer representative agreement with another brokerage that begins after this agreement ends

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<sup>1</sup> Exhibit-16: Exclusive Buyer Representation Agreement, section 2.4.

<sup>2</sup> Exhibit-17 Purchase Contract and Amendment

28. The Panel finds the holdover clause establishes an express agency relationship for 15 days beyond April 30, 2019. This is because [CLIENT] did not sign an exclusive buyer representative agreement with another brokerage during the 15 day window. In the Panel's view, [CLIENT]'s continuing obligations expressed in section 6.2 come with corresponding obligations by the Licensee. Specifically, all obligations under the agreement remained in effect for both parties during those 15 days. This period ended on May 15, 2019.
29. Beyond May 15, 2019, the Hearing Panel finds the relationship became an implied agency relationship. The Panel finds, on a balance of probabilities, that [CLIENT] thought the Licensee was her agent on July 6, 2019 and the Licensee did nothing to indicate the relationship was otherwise, rather he continued to act as if he was her agent.
30. Based on the evidence, this panel finds there was an ongoing relationship of implied agency, with [CLIENT] and her partner, RR, until at least July 6, 2019. The Rules define a client as "a person who has entered into a service agreement with a licensee in accordance with these rules, whether or not that service agreement is in writing." [CLIENT] had purchased two properties with the Licensee. She contacted the Licensee for real estate advice on July 6, 2019. The Licensee did not advise her that he was no longer her agent. There was no discussion about ending the agency relationship, either express or implied. This indicates an ongoing implied agency relationship. On July 10, 2019, [CLIENT] wrote a text message to the Licensee saying that she could not work with him anymore and was ending the business relationship because he didn't understand what that meant. This is further evidence that [CLIENT] considered the Licensee to be her real estate agent. Finally, on July 11, the Licensee offered to list a property for free to redeem himself, thereby acting as [CLIENT]'s agent.
31. Even if the panel is incorrect about [CLIENT] being the Licensee's client beyond May 15, 2019, there was, at minimum, a customer relationship. Rule 1(1)(i) defines "customer" as "a person who has contacted, but not engaged or employed, a licensee to provide services." [CLIENT] called the Licensee about a real estate transaction (a sale) and she wanted to talk about creative financing regarding a development. The Licensee understood or ought to have understood [CLIENT] called him about providing services related to real estate transactions and that this made her his customer.

*[CLIENT] was a client or customer to a trade in real estate*

32. The Panel finds [CLIENT] was a client or customer to a trade in real estate at all material times. Section 1(1)(x) of the Act provides that "trade" includes any of the following:

- (i) a disposition or acquisition of, or transaction in, real estate by purchase or sale;
- (ii) an offer to purchase or sell real estate;
- (iii) an offering, advertisement, listing or showing of real estate for purchase or sale;
- (v) holding oneself out as trading in real estate;
- (vi) the solicitation, negotiation or obtaining of a contract, agreement or any arrangement for an activity referred to in subclauses (i) to (v);

33. Clause (vi) is broad and covers the Exclusive Buyer Representation Agreement, which is an agreement for purchasing property. As explained above, this was active for the period March 9 to May 15, 2019, covering Allegations 1 through 3.

34. The purposes of the discussion on July 6, 2019 were for arranging a sale of property and exploring creative financing in connection with a development project. This is also covered by clause (vi), which includes negotiations for arrangements to sell properties. Therefore, [CLIENT] was a client to a trade in real estate on July 6, 2019, covering Allegation 4.

*[CLIENT] was physically, sexually, or emotionally abused by the Licensee on four occasions*

35. The parties did not provide definitions or evidence on the definition of abuse, and generally conceded that these allegations, if proven, constituted abuse. The Panel agrees that, if established, the allegations constitute abuse as contemplated by Rule 42(f). Abuse is defined by the Merriam-Webster dictionary as "to use or treat so as to injure or damage" and "to attack in words."<sup>3</sup> The behaviours alleged fit these definitions. They all constitute treatment that caused physical, sexual or emotional harm.

36. The Panel is aware that section 42(f) of the Rules also prohibits "verbal" abuse by Licensees. However, since the Registrar has only alleged physical, sexual

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<sup>3</sup> [Abuse Definition & Meaning - Merriam-Webster](https://www.merriam-webster.com/dictionary/abuse), at <https://www.merriam-webster.com/dictionary/abuse>.



and emotional abuse in the Notice of Hearing, this Panel has only considered those forms of abuse in reaching its decision.

*[CLIENT] was a credible and reliable witness*

37. Much of the evidence in this case revolved around statements made by [CLIENT] and the Licensee during the Hearing and the investigation interviews. The Panel finds, on a balance of probabilities, that [CLIENT]'s testimony and statements were generally reliable and credible, whereas the Licensee's were not.
38. From its review of the evidence, the Hearing Panel found [CLIENT] to be a credible witness. Her accounts of events were generally consistent and detailed. Her responses were thoughtful and considered.
39. There is insufficient evidence for the Hearing Panel to find that [CLIENT] was using notes or being influenced while giving her testimony. The Licensee's counsel expressed concern at one point during the hearing that, in her opinion, [CLIENT] appeared to be using notes and was not alone while she testified via video. However, while being cross-examined under affirmation, [CLIENT] confirmed that nobody was in the room with her and that she did not have any notes or materials in front of her. The Licensee's counsel thanked her for confirming that.<sup>4</sup>

*The Licensee was not a credible or reliable witness*

40. In direct contrast to [CLIENT]'s testimony, the Hearing Panel found the Licensee was not a credible or reliable witness. A number of excerpts from investigation interviews were played during the Hearing. The responses the Licensee gave to the RECA investigators during his recorded interviews contained numerous inconsistencies when compared to his written responses and Hearing testimony. He admitted to being drunk and not remembering certain events in question.
41. His testimony was consistently vague and general. Much of his testimony consisted of bald assertions where he referred to [CLIENT] as "crazy", "delusional" and a "psycho" who was trying to ruin his life. He also made

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<sup>4</sup> Transcript of the contested hearing, December 6, 2023 at pp. 8-9.

several bare allegations that [CLIENT] had “done this kind of stuff before”, saying “you’re trying to make me look like I’m a – I’m a – I’m bad person”, and that “I was warned by a lot of people there to just be very careful with her ‘cause she’s done this to three different men”. He provided no evidence to substantiate his negative comments towards [CLIENT], though he claimed to have access to several witnesses.

42. During his testimony at trial, he alleged that [CLIENT] would call him on the phone from her bathtub, and that they had a disrespectful, flirty relationship which could be seen in their text messages. He did not put these bathtub allegations to [CLIENT], nor did he provide the text messages he spoke of. As discussed further in the analysis of the individual allegations, the Panel is not able to put weight on much of his evidence.

**Allegation 1: Did the Licensee physically, sexually or emotionally abuse his client, [CLIENT], contrary to section 42(f) of the *Rules*, by using inappropriate sexual language and gestures toward [CLIENT] while showing her properties on or around March 9, 2019?**

*The Licensee used inappropriate sexual language and gestures toward [CLIENT] while showing her properties*

43. The Panel finds the Licensee sexually and emotionally abused his client, [CLIENT], contrary to section 42(f) of the *Rules*, by using inappropriate and abusive sexual language and gestures toward [CLIENT] while showing her properties on March 9, 2019.
44. On March 9, 2019, the Licensee met [CLIENT] to show her properties. During a showing of [UNIT], the Licensee commented to [CLIENT] that the countertop was the perfect height to have sex, while making sexual gestures with his body and arms and comparing how his crotch lined up with the height of the countertop. He also told [CLIENT] that the shower would be a good place to have sex, and used the term “smash pad.”
45. [CLIENT] testified that she was uncomfortable with the comments. She relayed an earlier incident where her partner commented in front of the Licensee that [CLIENT] was looking for a smash pad, to which she responded she was not. She testified that she was shocked by the Licensee’s comments and behaviour during the showing at [UNIT]. She did not respond to his

comments, hoping this would give him the hint that she did not welcome them. She was worried because the Licensee had driven her to the property and she would need to drive back with him.

46. The Licensee admitted during interviews with the RECA investigators, a phone discussion with the broker, and in argument during the hearing that he made inappropriate comments to [CLIENT]. He suggested he was joking around. [CLIENT] testified that the joke was not welcome. The Panel accepts [CLIENT]'s testimony about her state of mind at the time, as there is insufficient evidence to suggest otherwise.

47. The evidence is not contested and the panel finds the Licensee's action were sexual abuse. He made comments of a sexual nature that caused [CLIENT] emotional harm.

**Allegation 2: Did the Licensee physically, sexually or emotionally abuse his client, [CLIENT], contrary to section 42(f) of the *Rules*, by touching and engaging in sexual acts with [CLIENT] without her consent while driving [CLIENT] to Vegreville and back on or around March 22, 2019?**

*The Licensee touched and engaged in sexual acts with [CLIENT] without her consent*

48. The Hearing Panel finds that the Licensee physically, sexually and emotionally abused his client, [CLIENT] on March 22, 2019 during a trip to and from Vegreville, contrary to section 42(f) of the *Rules*, by touching and engaging in sexual acts with [CLIENT] without her consent. Specifically, the Hearing Panel finds that the Licensee put his hands between [CLIENT]'s legs during the trip to Vegreville without her consent, and that there was non-consensual penetration of [CLIENT]'s vagina by the Licensee during the trip to Vegreville.

49. [CLIENT]'s testimony was specific regarding the Vegreville incident. She recounted that she made an offer on [UNIT] and texted the Licensee, indicating her intention to meet with a lawyer to close the purchase. After [CLIENT] sent the text message, the Licensee called [CLIENT] and indicated he needed her help to drive a vehicle to Vegreville for his brother-in-law. [CLIENT] asked why the Licensee would need her help, and he indicated that he really needed her help. She questioned him and said she didn't understand why he needed her help. He responded that they're practically family, she has

met his family, and he really needed her help. He seemed like he genuinely needed her help, so she agreed to meet him in a parking lot.

*The Licensee put his hands between [CLIENT]'s legs without her consent*

50. [CLIENT] recounted that once she and the Licensee got out of the city limits, he took his right hand off the gear shift, raised it up and drove it down between her closed legs, moving it towards her crotch. He then turned his hand to face her crotch and pulled it out. [CLIENT] became very quiet and felt stupid for getting into his vehicle, as there was nothing but open fields and farmland in winter weather.
51. The Licensee did not provide any evidence to dispute the allegation that he put his hand between [CLIENT]'s legs and pulled it up toward her crotch without her consent. The panel finds this occurred, on a balance of probabilities, and constitutes sexual abuse.

*The Licensee penetrated [CLIENT]'s vagina with his penis without her consent*

52. [CLIENT] testified that the Licensee turned down a side road and [CLIENT] could see a building behind a fence. The Licensee said they should get in the back. [CLIENT] considered her options. She could fight him or try to get away, but she didn't know where she could get away to. Alternatively, she could comply. [CLIENT] complied. The Licensee instructed [CLIENT] to get into the back of the vehicle. [CLIENT] said she was on her period and the Licensee said that didn't bother him. They got out of the Jeep and the Licensee opened the back part of the Jeep. [CLIENT] recalls he pulled down her pants and pulled out her tampon, and he started having intercourse with her. It did not last long because he could not maintain an erection. After that, [CLIENT] put her pants back on, and they went back to the front of the Jeep. The Licensee took off his sock to clean himself off. They drove to the main road and the Licensee threw the sock out the window onto the ground. They continued to a dealership and dropped off the vehicle. They then walked across the road to a Boston Pizza and they both had a drink. She blamed herself for what happened that day.
53. [CLIENT] testified that she did not consent, and she did not at any time tell the Licensee that she wanted to have sex. She thought if she told him she was having her period that he would change his mind and not force her to have sexual intercourse. She also testified that she was scared, because she and the

Licensee were in a remote area in winter. She complied with the Licensee's sexual penetration because she did not believe she had any other choice.

54. The Licensee did not give evidence to contradict [CLIENT]'s testimony. He did not provide any specific evidence as to what occurred, relying on the Registrar's burden of proving its allegations on a balance of probabilities.
55. The Licensee pointed out inconsistencies in [CLIENT]'s story: He disputed the presence of a tampon, which, he argued, was brought up for the first time at the Hearing and never mentioned during the investigation interviews; He stated in written argument that the Jeep was an automatic, not a standard as [CLIENT] remembered it; He pointed out that there was an inconsistency between [CLIENT]'s testimony and an earlier statement made to police about who threw the sock out the window.
56. In addition, the Licensee said, during an investigation interview played at the Hearing, that [CLIENT] had done this sort of thing before, but offered no additional evidence to substantiate that, and the Panel puts no weight on this evidence both because it is not relevant to this allegation and because it is untested hearsay.
57. The inconsistencies pointed out by the Licensee are not sufficient to impugn [CLIENT]'s detailed and generally consistent account of the trip to and from Vegreville, including her emotional state. Whether or not there was a tampon; whether the jeep was standard or automatic; and whether [CLIENT] or the Licensee threw the sock out the window are peripheral to whether the Licensee forced [CLIENT] to have non-consensual intercourse. On this point, the panel finds [CLIENT]'s testimony credible and uncontradicted. We find the Licensee sexually, physically and emotionally abused [CLIENT] by forcing her to have sex with him.
58. The Panel accepts [CLIENT]'s testimony as to her state of mind at the time and finds she did not consent to the intercourse. We considered the legal authorities cited by the Registrar in relation to the consent. Section 265(3) of the *Criminal Code of Canada* states that no consent is obtained where the complainant submits or does not resist due to situations involving the application of force, fear of the application of force, or the exercise of authority. The Supreme Court of Canada has held that "the absence of consent, however, is subjective and determined by reference to the

complainant's subjective internal state of mind towards the touching, at the time it occurred."<sup>5</sup> Although this is not a criminal case, these sources are instructive to the Panel. [CLIENT] credibly testified as to the events of March 22, 2019, and said she felt she had no other choice than to comply with the Licensee's demand that she get into the back of the jeep. The Panel accepts her evidence.

59. The fact that [CLIENT] did not immediately cease associating with the Licensee after he sexually abused her is not grounds for impugning her credibility. As stated by the Manitoba Court of Appeal, "The accused's submission that the complainant's credibility as to her version of events was undermined because it did not conform to some "idealized standard of conduct" (*R v CMG*, 2016 ABQB 368 at para 60) is unsound. I reject it unequivocally. Credibility determinations must be based on the totality of the evidence, not untested assumptions of a victim's likely behaviour based on myths and stereotypes."<sup>6</sup> The expectation that a victim of sexual violence will stop associating with the perpetrator is an unfounded myth, and the Panel draws no negative inference from [CLIENT]'s behaviour after March 22, 2019.
60. Furthermore, the timing of reporting the sexual assault does not give rise to an adverse inference against [CLIENT]'s credibility in this case. On this point, the Supreme Court of Canada has held "there is no inviolable rule on how people who are the victims of trauma like a sexual assault will behave. Some will make an immediate complaint, some will delay in disclosing the abuse, while some will never disclose the abuse. Reasons for delay are many and at least include embarrassment, fear, guilt, or a lack of understanding and knowledge. In assessing the credibility of a complainant, the timing of the complaint is simply one circumstance to consider in the factual mosaic of a particular case. A delay in disclosure, standing alone, will never give rise to an adverse inference against the credibility of the complainant".<sup>7</sup> The Panel agrees and does not draw a negative inference based on the timing of [CLIENT]'s reporting.
61. Finally, the fact that [CLIENT] did not refer to the sexual penetration in her original complaint does not impugn her credibility. [CLIENT] explained that she did not include the sexual assault in her initial complaint because it was a

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<sup>5</sup> *R. v. Ewanchuk*, 1999 CanLII 711 (SCC), [1999] 1 SCR 330 at para 26.

<sup>6</sup> *R v CAM*, 2017 MBCA 70 at para 52.

<sup>7</sup> *R. v. D.D.*, 2000 SCC 43 at para 65.

very painful and traumatic experience; because her partner made the initial complaint and she had not told him about the incident at that time; because she wasn't certain if RECA had jurisdiction over that incident; and because the Licensee owed her parents money and she didn't want him to lose his license and not be able to pay them back. The Panel accepts that any or all of these reasons could have been factors in her decision to not report the sexual assault in her original complaint and draws no negative credibility inference from the absence of the sexual penetration in her original complaint.

**Allegation 3: Did the Licensee physically, sexually or emotionally abuse his client, [CLIENT], contrary to section 42(f) of the *Rules*, by using inappropriate sexual language while texting with [CLIENT] on or around May 10, 2019?**

*The Licensee used inappropriate and abusive sexual language while texting with [CLIENT]*

62. The Hearing Panel finds the Licensee sexually and emotionally abused his client, [CLIENT], contrary to section 42(f) of the *Rules*, by using abusive sexual language while texting with [CLIENT] on May 10, 2019. The Hearing Panel finds that the text messages sent by the Licensee to [CLIENT] were inappropriate, abusive, unprovoked and not encouraged or wanted by [CLIENT].

63. [CLIENT] provided the investigator with copies of text messages between her and the Licensee from April 26 to May 23, 2019.<sup>8</sup> She testified that she did not modify any of the texts and there is no other evidence to suggest she did. Allegation 3 refers to text messages on May 10, 2019. On that date, the Licensee texted "Hey pretty lady I know your upset wit (sic) me. I am working on a solution, I'm a broken dude and will do anything I can to make it right" (referring to \$40,000 he had borrowed from [CLIENT]'s parents), to which [CLIENT] replied "I'm not angry, but if I let you think I am, will you work harder to make it better". He said he cannot work any harder, and [CLIENT] replied "I was teasing you btw", to which the Licensee replied "Don't tease or I will cum in u ... Oh I mean ... [emoji] ... Ok delete lol". [CLIENT] tried to redirect the conversation by talking about work and her tenants.

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<sup>8</sup> Exhibit-23: Tab 10 - Email from [CLIENT] to Jonathan Gordon with attachments.

64. [CLIENT] felt that the Licensee had power over her, based on what he had done to her in March 2019 on the way to Vegreville and based on her family blaming her for the unpaid loan. In the email to the investigator accompanying the above text messages, [CLIENT] said the money was the main reason she continued to put up with his salacious text messages.
65. The Licensee did not dispute [CLIENT]'s evidence. He argued that some text messages were left out of [CLIENT]'s disclosure but did not provide nor describe the nature of those messages. He did not suggest that this text thread had been altered, or that there are missing text messages within this thread. His comments regarding missing text messages was general and not specific to this text message thread.
66. Furthermore, no evidence was produced to suggest the Licensee's sexually inappropriate comments were provoked in any way, other than him describing the relationship generally as one where they joked with one another. [CLIENT]'s testimony and the documentary evidence containing the text messages, on the other hand, was specific, detailed and consistent and the Panel prefers this evidence to the Licensee's general comments. The panel accepts [CLIENT]'s evidence about her state of mind and finds that the Licensee sexually and emotionally abused [CLIENT] by sending unwanted and abusive text messages on May 10, 2019.

**Allegation 4: Did the Licensee physically, sexually or emotionally abuse his client, [CLIENT], contrary to section 42(f) of the *Rules*, by inappropriately exposing his naked body during a video call with [CLIENT] on or around July 6, 2019?**

*The Licensee inappropriately exposed his naked body during a video call with [CLIENT]*

67. The Hearing Panel finds the Licensee sexually and emotionally abused his client, [CLIENT], contrary to section 42(f) of the *Rules*, by inappropriately exposing his naked body during a video call with [CLIENT] on July 6, 2019.
68. [CLIENT] testified that she called and left a voice message with the Licensee on July 6, 2019. She had not told anyone about the trip to Vegreville at that point and blamed herself for the sexual abuse and assaults from March 22, 2019. The call on July 6, 2019 was on behalf of her partner to talk about the



sale of a property. Her partner had tried to contact the Licensee without success and suggested she call instead, as the Licensee tended to respond to [CLIENT] more quickly. [CLIENT] also wanted to talk to the Licensee about creative financing for a land development project.

69. After she left the voice message, [CLIENT] went to a street festival with friends. The Licensee returned her call while she was at the street festival. She answered and explained why she wanted to speak to him. She did not detect any level of intoxication. The Licensee then sent her a FaceTime request, which she thought was sent in error so she rejected it. He told her he had sent it intentionally and sent another FaceTime request. She felt safe answering the request since she was in public.
70. When she answered the FaceTime request, [CLIENT] saw the Licensee's head and shoulders. He was wearing a shell necklace and did not appear to have a shirt on. He said he had been to a friend's funeral earlier in the day and then panned down his body. He was completely naked. [CLIENT] put the phone to her shoulder, and when she peaked at it again, the Licensee made his penis swing around. [CLIENT] said she had to go and hung up. She was angry but did not want to discuss the incident with her friends because it would consume the rest of the day. [CLIENT] told her partner about the FaceTime call and they called the Licensee together on July 10, 2019 to confront him about the incident. They recorded that call and it was played at the Hearing.
71. The Licensee provided inconsistent accounts of the shower incident. During his interview with the RECA investigators, he said he was with a friend in the bathroom, that he had his shorts on and that he did not expose himself. This differs with his comments in the recorded phone call of July 10 with [CLIENT], where he admitted to being naked in the shower and phoning [CLIENT]. He admitted to telling her to accept his FaceTime request, which [CLIENT] did. He said "I thought I showed you my ass" and said he was "extremely annihilated", referring to his level of intoxication.
72. The Licensee called [CLIENT] on July 11, 2019 to continue the discussion. [CLIENT] also recorded this conversation. The Licensee again admitted to FaceTiming her from the shower and stated that his behaviour was "extremely bad; extremely unprofessional", "unacceptable" and "wrong". He offered to try to make things right by selling a property for them for free.

73. During testimony, the Licensee said he showed [CLIENT] his buttocks and that she said "nice white ass." When cross-examined, the Licensee testified that his memory of certain aspects of the shower incident may have been blurred by intoxication.
74. The Licensee also pointed out that [CLIENT] did not mention seeing the Licensee's penis or his buttocks during her interview with the RECA investigator, suggesting she had fabricated her testimony about the Licensee showing and shaking his penis between the investigation interview and the Hearing.
75. The Panel accepts [CLIENT]'s detailed and consistent account of the shower incident and rejects the Licensee's account. [CLIENT]'s testimony was consistent and detailed, and the panel finds it to be credible and, further, finds that the events of July 6, 2019, occurred as she described them, on a balance of probabilities.
76. The Panel finds the Licensee's testimony about July 6, 2019, to be unreliable. The Licensee did not put his versions of events or [CLIENT]'s alleged "nice white ass" comment to [CLIENT] when she was cross-examined and therefore she did not have the opportunity to comment on it. This diminishes the value of that evidence. His various accounts of the event over time are inconsistent and evolving. Furthermore, he stated repeatedly that he was extremely intoxicated at the time, so much so that his memory could have been affected.
77. With respect to there not being a mention of the Licensee's penis until the Hearing, the Licensee did not enter the transcript of the investigation interview as evidence. Counsel for the Licensee read a portion of the interview to [CLIENT] and suggested she did not mention seeing the Licensee's penis to the investigator. She replied, "Not according to what you have shown me in this statement." The Panel agrees with her sentiment. Without the entire transcript in evidence, the Panel cannot assess whether [CLIENT] made direct or indirect statements about seeing the Licensee's penis to the investigator.
78. The Panel finds the Licensee sexually and emotionally abused [CLIENT] by exposing himself to her over FaceTime. The exposure was unwanted. The Panel accepts [CLIENT]'s testimony and finds the Licensee exposed his front to [CLIENT]. In any case, regardless of whether the Licensee exposed his buttocks or his penis to [CLIENT], it is still sexual and emotional abuse.

## CONCLUSION

79. For the reasons given above, the Hearing Panel finds the Licensee engaged in the following conduct. Each breach is deserving of sanction:
- a. The Licensee sexually and emotionally abused his client, [CLIENT], on March 9, 2019, contrary to section 42(f) of the Rules, by using inappropriate and abusive sexual language and gestures toward [CLIENT] while showing her properties.
  - b. The Licensee physically, sexually and emotionally abused his client, [CLIENT], during a trip to and from Vegreville on March 22, 2019, contrary to section 42(f) of the Rules by putting his hand between her legs without her consent and forcibly penetrating her vagina with his penis without her consent.
  - c. The Licensee sexually and emotionally abused his client, [CLIENT], on May 10, 2019, contrary to section 42(f) of the Rules, by using inappropriate and abusive sexual language while texting with [CLIENT].
  - d. The Licensee sexually and emotionally abused his client, [CLIENT], on July 6, 2019, contrary to section 42(f) of the Rules, by exposing his naked body during a video call with [CLIENT] when such exposure was unwanted.

## SANCTION AND COSTS (PHASE II)

80. If either party wishes to conduct Phase II of this Hearing orally, they must inform the hearing administrator no later than seven (7) days from the date the Registrar and Licensee are served with this decision. They must include in their communication an explanation as to why an oral hearing is requested.
81. If neither party contacts the hearing administrator according to the previous paragraph, the panel requests the parties to provide their written submissions for this Panel's consideration in Phase II of this hearing, in accordance with the following deadlines:
- the Registrar shall provide its written submission on Sanction and Costs to the hearing administrator on or before the expiry of fourteen (14) days from the date the Registrar and the Licensee are served with this decision;
  - the Licensee shall provide his written submission on Sanction and Costs to the hearing administrator on or before the expiry of twenty-one (21) days

- from the date the Registrar and the Licensee are served with this decision;  
and
- the Registrar shall have seven (7) days from the date the Registrar is served with the Licensee's written submission on Sanction and Costs, to provide its written Reply to the hearing administrator.

Dated this 12<sup>th</sup> day of July, 2024 at the City of Calgary in the Province of Alberta.

**"Signature"**

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[K.K], Hearing Panel Chair

**REAL ESTATE COUNCIL ALBERTA**

**IN THE MATTER OF** a Hearing under Part 3 of the *REAL ESTATE ACT*, R.S.A. 2000, c.R-5 (the "Act")

**AND IN THE MATTER OF** a Hearing regarding the conduct of JUSTIN JAMES FRASER, Real Estate Associate, currently unlicensed, and licensed at all material times with Logic Realty Inc. O/A Logic Realty

Hearing Panel Members: [K.K], Chair  
[L.M]  
[H.Y]

Written submissions received: G.Z, counsel for the Registrar of the Real Estate Council of Alberta  
Justin James Fraser, the Licensee

Hearing Dates: Documentary review

**DECISION ON SANCTION AND COSTS**

**OVERVIEW AND DECISION SUMMARY**

82. The Licensee, Justin James Fraser, was licensed by the Real Estate Council of Alberta ("RECA") as a real estate associate with Logic Realty Inc. O/A Logic Realty at all material times and was therefore subject to RECA's jurisdiction. Pursuant to the *Real Estate Act* (the "Act") and its Regulations and Rules, the powers of RECA include setting and enforcing standards for the real estate industry and the business of real estate industry members in Alberta, as RECA determines necessary, to promote the integrity of the industry, and to protect consumers affected by the industry. This includes the authority to make various orders under section 43 of the Act.

83. In its decision dated July 12, 2024, this Hearing Panel found the Licensee breached section 42(f) of the *Real Estate Act Rules* (the "Rules") on four occasions, by physically, sexually and emotionally abusing his client, and that this behaviour is conduct deserving of sanction.

84. In Phase 2 of this hearing, after considering written submissions on sanction and costs from RECA's Registrar and the Licensee, the Hearing Panel orders that the Licensee shall receive a lifetime cancellation of the Licensee's RECA licence, and further orders the Licensee to pay RECA costs of the investigation and hearing in the amount of \$17,950.00.

## **SUBMISSIONS ON SANCTION AND COSTS**

85. The Hearing Panel received written submissions and a Book of Authorities from the RECA Registrar dated July 29, 2024. On August 6, 2024, the Licensee requested and was granted an extension until August 12, 2024 to provide his submissions, however, he did not provide any submissions by the extended deadline.

86. On August 13, 2024, the Licensee wrote an email to the hearings administrator and Registrar's counsel denying the allegations and calling the victim a liar. With respect to sanction, he requested to be allowed to withdraw from the profession in exchange for the Panel not issuing a decision. The Panel does not have the authority to do that.

87. The Hearing Panel proceeded with considering the Registrar's submissions, which requested a lifetime cancellation of the Licensee's licence.

88. The Registrar's key submissions are summarized as follows:

- a. The Licensee's misconduct, and his application for a lifetime withdrawal from the real estate industry, warrants a sanction akin to licence cancellation and a lifetime licensing prohibition on the Licensee. Alternatively, the Licensee should be restricted from reapplying for a licence for at least 10 years. The Licensee's misconduct involved physical, sexual and emotional abuse of a client/customer; aggravating factors include a power imbalance and continuous deceit to the Regulator; and the evidence did not establish significant or compelling mitigating factors.
- b. Imposing a fine of any amount is not appropriate without a significant licensing prohibition, as RECA cannot send a message that licensees can pay their way out of this type of misconduct.
- c. Multiple acts of sexual, emotional and physical abuse, including rape, is one of the most serious types of misconduct, which is compounded by power imbalance, dishonesty, serious lack of judgment and making false statements to the Regulator.

- d. The courts have upheld licence cancellations and lifetime licensing prohibitions in other self-governing professions. In *The Law Society v Ryan*, the Supreme Court of Canada stated that while the professional self-governing regime requires each case to be decided on its own facts, it is relevant to consider if the member's conduct was similar to cases where professional disciplinary bodies have previously imposed a sanction of disbarment. The misconduct must be a serious and egregious breach of a member's professional conduct and responsibilities that undermines public confidence and is so improper that it could only be mitigated by significant or compelling mitigating factors.<sup>9</sup> Similarly, the Alberta Court of Appeal upheld the Law Society of Alberta's finding of disbarment in *Adams v. Law Society of Alberta*. In that decision, the court indicated that conduct need only be "bad enough" rather than the most egregious conduct for disbarment to be an option.<sup>10</sup>
- e. The Ontario Court of Appeal in *The Law Society of Upper Canada v. Abbott*<sup>11</sup> accepted the Law Society of Upper Canada's reasoning in *The Law Society of Upper Canada v. Mucha*<sup>12</sup> regarding the principles of presumptive licence cancellation and lifetime licensing prohibition, and that proof of the misconduct alone is sufficient to impose the presumption.
- f. Various professional regulatory bodies have imposed licence cancellation and lifetime licensing prohibition for sexual misconduct.<sup>13</sup> Accordingly, this Hearing Panel can appropriately seek guidance from other administrative tribunals.
- g. One of RECA's mandates is to protect the public. The Licensee's proven breaches of the *Real Estate Act Rules* involved sexual misconduct. His conduct and lack of candor with RECA must be denounced in the strictest sense.
- h. In *Law Society of Upper Canada v. Matthew Joseal Igbinosun*, the panel found disbarment to be the "rational and proportionate response to the nature and magnitude and to the harm done" by a lawyer who

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<sup>9</sup> 2003 SCC 20 at paras 58-59.

<sup>10</sup> *Adams v. Law Society of Alberta*, 2000 ABCA 240.

<sup>11</sup> 2017 ONCA 525.

<sup>12</sup> 2008 ONLSAP 5.

<sup>13</sup> *Ontario (College of Massage Therapists of Ontario) v Boycott*, 2021 ONCMTO 11; *Ontario (College of Massage Therapists of Ontario) v Puniyanikodan*, 2020 ONCMTO 38; *College of Physicians and Surgeons of Ontario v. Aboujamra*, 2022 ONPSDT 43; *The College of Physicians and Surgeons of Ontario v. Minnes*, 2016 ONSC 1186; *Law Society of Alberta v. Faul*, 2022 ABL 12; *Law Society of Upper Canada v. Matthew Joseal Igbinosun*, 2006 ONLSHP 0081; *Law Society of Ontario v. Hildyard*, 2022 ONLSTH 128; *Scheirer (Re)*, 2023 LSBC 50; *Law Society of Ontario v. Zaitzeff*, 2021 ONLSTH 108.

committed multiples acts of uninvited and aggressive sexual contact with members of the public in his professional capacity. The tribunal found that the lawyer “abused his position as a lawyer and caused significant harm” and that his professional misconduct “represented a gross violation of trust” that “reflects a serious lack of respect for the trust which the complainants put in the member by virtue of the professional relationships he had with them”.<sup>14</sup>

- i. The matter before this Hearing Panel involved multiple acts of sexual misconduct by the Licensee against his client/customer, that he ought to have known was highly inappropriate, with no mitigating factors. He was in a position of power, and his misconduct significantly impacted his client/customer’s dignity and integrity. He has not acknowledged any misconduct and continued to blame the victim, calling her “crazy”, “delusional” and a “psycho”. While under an educational attainment review in 2016, RECA found he made false statements to RECA staff and attempted to bully them into providing him with a passing grade.
  - j. The Registrar is only seeking the actual hearing costs and the costs of preparing the Registrar’s Phase 2 submissions. The costs in this matter range from a low end of \$11,650 to a high end of \$17,950. The Licensee should pay costs in the amount of \$17,950.
89. The Licensee did not provide any written submissions on sanction and costs, despite being given the opportunity to do so, and he failed to provide submissions when the Hearing Panel granted extensions based on his request and the willingness of the Registrar to grant an extension.
90. On October 18, 2024, after reviewing the Registrar’s submissions, the Hearing Panel invited submissions from both parties by October 28, 2024, about the following:
- a. Whether the *Real Estate Act* allows Hearing Panels to order a lifetime cancellation of a Licensee’s carrying on of the business of a licensee
    - i. Under section 43(1)(a)
    - ii. Under section 43(1)(c)
    - iii. Under section 43(1)(d.1)
    - iv. Under any other section.
  - b. To identify and explain whether any other legislation or authority allows Hearing Panels to order a lifetime cancellation of a Licensee’s carrying on of the business of a licensee.

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<sup>14</sup> *Law Society of Upper Canada v. Matthew Joseal Igbinosun* at paras 28-31.



- c. Tribunal decisions in disciplinary matters where a lifetime cancellation is clearly ordered, along with a comparison of the authorizing legislation with RECA's legislation.
- d. Neither party provided submissions in relation to financial penalties or fines. The Registrar noted that financial penalties should not be issued without a licence cancellation or prohibition. The Hearing Panel invited submissions about the appropriate level of fines, if any, if a licence cancellation or prohibition is also issued.

91. The Hearing Panel also notified the parties that it may reference the following decisions and are invited to provide submissions on them or any other decisions the parties would like to direct the Hearing Panel to consider:

2020 ABRECA 140 (CanLII) Merchant (Re) CanLII

2018 BCCA 95 (CanLII) Carvalho v. British Columbia (Medical Services Commission) CanLII

2017 BCSC 381 (CanLII) Carvalho v. British Columbia (Medical Services Commission) CanLII

2008 CanLII 37613 (ON SCDC) Li v. College of Physicians and Surgeons of Ontario CanLII

92. In response to the Hearing Panel's directions, the Registrar provided written submissions and some previous RECA decisions which are discussed below.

93. Following the deadline for additional submissions, the Licensee sent an email to the RECA Hearings Administrator and the Registrar, on October 30, 2024. The email contained some comments and 20 questions for the Hearing Panel to consider, none of which addressed the Hearing Panel's directions. Following a few more email exchanges, the Registrar indicated it would consent to extending the deadline for the Licensee to provide submissions to the Hearing Panel's directions, by the end of RECA's business day on November 7, 2024.

94. During the course of these emails, the Licensee alluded to re-starting the entire hearing process, because he is now "mentally capable to present my

submissions to the panel.” He also indicated he will be seeking advice from counsel.

95. The RECA Hearing and Appeal Practice and Procedure Guidelines (HAPPG) address rehearing or reconsidering matters at Part 13, Section G:

Once a hearing panel has made its decision, the decision is final. A hearing panel may only rehear or reconsider a decision when:

(a) it is necessary to correct a clerical error, an accidental error or omission, or an ambiguity in the decision;

(b) the decision mandated by statute has not yet been made, the decision made is void or voidable for lack of jurisdiction (including breaches of the principles of natural justice or fairness), or an issue remains outstanding;

(c) the decision in question was obtained by fraud, mental disability, or some other circumstance which calls the decision’s integrity into question.

96. The Licensee did not make a proper application for this Hearing Panel to rehear or reconsider its previous findings, and was not clear in his emails starting October 30, 2024, that this was his intention. In any case, his single email alluding to a rehearing, with no accompanying documentation speaking to his psychological state, does not establish any of the HAPPG criteria listed above. He had competent counsel during the majority of the phase 1 hearing, and there was no mention made of his ability to participate in the hearing. In the Hearing Panel’s view, it would be very unfair to the Registrar to entertain any question of rehearing or reconsideration based on what the Hearing Panel has received.

97. The Hearing Panel ordered that the process would continue as indicated, having regard to the Registrar’s consenting to extend the deadline for submissions based on the Hearing Panel’s directions.

98. The Hearing Panel then directed that the Licensee would be granted an extension until 4:30pm on or before November 8, 2024, to provide submissions specifically responding to the Hearing Panel’s directions issued on October 18, 2024. The Panel also invited submissions from the Licensee addressing the Registrar’s objection to his “20 questions” email. If the Licensee provided any submissions by November 8, 2024, the Registrar would have until 4:30pm on November 14, 2024, to respond.

99. The Hearing Panel further directed that, as in any matter, neither party would be barred from making a proper procedural application during the course of this hearing.
100. The Licensee did not provide any submissions in response to the Hearing Panel's directions, nor did he make any procedural applications.
101. In response to the Hearing Panel's directions, the Registrar provided the following submissions:
- a. The Act provides a Hearing Panel the authority to: cancel a licence [section 43.(1)(a)], prohibit a licensee from reapplying for a license for a specified period of time [(section 43(a)(d.1)], and impose any conditions or restrictions on a licensee the Hearing Panel deems appropriate.
  - b. RECA Hearing Panels have previously imposed a lifetime cancellation of a licensee's real estate broker licence,<sup>15</sup> and a RECA Appeal Panel found that the Act did not contain any "limiting or restrictive language in section 43 that would prevent a panel from finding that a licensee should be subject to a lifetime ban or suspension from trading in real estate or any other authorized practices."<sup>16</sup>
  - c. A lifetime is a specific period of time even if its duration is unknown. The effect and result would be the same as the panel specifying the period of time to be, for example, 80 years.
  - d. Other disciplinary bodies have imposed lifetime licence cancellations. In *Carvalho*<sup>17</sup>, a BC doctor's enrolment in the Medical Services Plan was cancelled and he received a lifetime prohibition from re-enrolling under section 15 of the *Medicare Protection Act*. The BC Supreme Court held that the Medical Services Commission had the jurisdiction to order that Dr. Carvalho could not reapply in his lifetime, as "[T]hat order falls within the language of a "period specified by the commission". The Registrar argued that section 15 of the *Medicare Protection Act* contains similar language as section 43(1)(a) and 43(1)(d.1) of the Act.
  - e. The *Li* decision is distinguishable, as the Ontario Superior Court of Justice, in holding that a lifetime ban was not an available sanction, held that "indefinite" does not mean "permanent". The Act uses different statutory language than the *Health Professions Procedure Code*.
  - f. Although the Registrar is not seeking fines, section 43(1)(d) of the Act gives the Hearing Panel the discretion to impose fines if it considers it

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<sup>15</sup> Kennedy (Re), 2022 ABRECA 70 at para 28(1); Cowley (Re), 2021 ABRECA 86 (CanLII).

<sup>16</sup> Merchant (Re), 2020 ABRECA 140.

<sup>17</sup> Carvalho v. British Columbia (Medical Services Commission), 2017 BCSC 381.

appropriate. A lifetime cancellation is also appropriate, given the findings of multiple acts of sexual misconduct against the Licensee in the Phase 1 proceedings. Also, a lifetime licence cancellation would be similar to a section 54 lifetime withdrawal from the industry, and the Licensee has indicated that he wishes to permanently withdraw from the industry.

## ANALYSIS ON SANCTION AND COSTS

### Interpretation of section 43 of the Act

102. Section 43 of the Act grants a hearing panel the discretion to impose sanctions against a licensee:

**43(1)** If a Hearing Panel finds that the conduct of a licensee was conduct deserving of sanction, the Hearing Panel may make any one or more of the following orders:

(a) an order cancelling or suspending any licence issued to the licensee by an Industry Council;

(b) an order reprimanding the licensee;

(c) an order imposing any conditions or restrictions on the licensee and on that licensee's carrying on of the business of a licensee that the Hearing Panel, in its discretion, determines appropriate;

(d) an order requiring the licensee to pay to the Council a fine, not exceeding \$25 000, for each finding of conduct deserving of sanction;

(d.1) an order prohibiting the licensee from applying for a new licence for a specified period of time or until one or more conditions are fulfilled by the licensee;

(e) any other order agreed to by the parties.

**(2)** The Hearing Panel may, in addition to or instead of dealing with the conduct of a licensee under subsection (1), order the licensee to pay all or part of the costs associated with the investigation and hearing determined in accordance with the bylaws. [Emphasis added]

103. The modern principle of statutory interpretation is the recognized approach to statutory interpretation followed by administrative tribunals in

Canada. Under the modern principle, the words in a statute are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.<sup>18</sup>

104. Using the modern principle of statutory interpretation, the Hearing Panel interprets section 43 of the Act to give it jurisdiction to impose lifetime licence cancellations:
- a. It is clear that section 43(1)(a) of the Act authorizes a hearing panel to cancel a licence. Furthermore, section 43(d.1) authorizes a hearing panel to prohibit a licensee from applying for a new license for a specified period of time or until the licensee fulfils any conditions a hearing panel imposes.
  - b. Section 43 (d.1) uses the terms "new licence" and "licensee."
    - a. A "new licence" means any licence issued by RECA, meaning it is not restricted to a particular licence or the licence a licensee held before it was cancelled or suspended.
    - b. Under section 1(1)(o) of the Act, "licensee" means "any person who holds a licence as a real estate broker, a property manager or a mortgage broker, or as any category or class of real estate broker, property manager or mortgage broker, issued by an Industry Council".
    - c. There is no dispute, and the Hearing Panel agrees, that the Licensee is a licensee to which section 43(d.1) applied, and that he can be prohibited from applying for any licence for a specified period of time or until he fulfils a condition imposed by this panel. What remains to be determined is whether a "specified period of time" in that section allows for a lifetime or requires the time period to be a known or specific number of days or years.
  - c. The Hearing Panel interprets a "specified period of time" to include a licensee's lifetime.
  - d. The object of the Act is described, in part, in its two purpose sections, section 5 and 7.2. It is evident throughout the Act, and in particular Part 3 of the Act (Conduct Proceedings) that an important aspect of the Act is to protect the public from the actions of a RECA licensee that are deemed to be conduct deserving of sanction, and to ensure the integrity of the

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<sup>18</sup> EA Driedger, *Construction of Statutes* (2nd ed), 1983, Butterworths, Toronto at page 87.

profession is upheld. A lifetime licence cancellation could achieve these objectives.

- e. Looking at the broader context within the Act to ascertain the intention of Parliament, the Act provides for specific maximums for certain sanctions, such as fines. No such limit is provided for suspensions or the inability to reapply for a RECA licence. If the legislature had intended a maximum time limit on licence cancellations, "a specified period of time" could have included wording similar to that of 43(1)(d) for fines, to the effect of "a specified period of time not to exceed...".
- f. The Hearing Panel would reach the same conclusion if the wording was a "period specified", as in the *Carvalho* case, or "specified period". If a "specified period" means only a pre-determined number of years, the Hearing Panel could impose a ban of 50 years, which would effectively amount to a licensee's lifetime in any case. In the Panel's view, this is not required. A specific person's lifetime is a clear, discernable, specified period of time. Therefore, an order prohibiting a licensee from applying for a new licence for that licensee's lifetime is a specified period of time contemplated under section 43(d.1) of the Act.

105. Licence cancellations have been considered in prior RECA decisions that the Registrar cited. However, these cases are distinguishable on their facts. The Hearing Panel notes that the *Kennedy* and *Cowley* decisions did not impose a lifetime licence cancellation with no possibility to reapply for any licence in the future. In *Kennedy* (Re) the Hearing Panel imposed a 36 month prohibition for applying for any real estate licence from the date of Kennedy's section 53 suspension, after which time Kennedy could reapply for a licence, but only at the level of associate. The parties in that case also agreed to that sanction by way of a Joint Submission on Sanction. Similarly, the Hearing Panel in *Cowley* (Re) decided that Cowley should be permanently prevented from holding a broker's licence in the future and after one year he should be permitted to apply for an associate licence and to take all required education. As stated above, the Appeal Panel in *Merchant* noted there is no restriction on a lifetime licence cancellation, but did not impose one.

### **Factors to consider when determining an appropriate sanction against a licensee**

106. In *Jaswal*<sup>19</sup>, the Newfoundland Supreme Court Trial Division set out a non-exhaustive list of factors that administrative tribunals should consider when determining a sanction. Those factors are discussed here.

#### *The nature and gravity of the proven allegations*

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<sup>19</sup> *Jaswal v. Medical Board (Nfld.)*, 1996 at para 35.

In the Phase 1 hearing of this matter, this Hearing Panel found that the Licensee breached section 42(f) of the *Real Estate Act Rules* on four occasions, by physically, sexually and emotionally abusing his client, and that this behaviour is conduct deserving of sanction. The Licensee's conduct was extremely grievous. It should go without saying that any client or customer who agrees to have a licensee represent them should feel safe that the licensee will not sexually abuse them. This is extremely aggravating.

*The age and experience of the offending Licensee*

The Licensee was born in 1985 and was licensed by RECA in 2016. The age and experience of the Licensee is irrelevant to the sanction in this case, as the Licensee's proven conduct is extremely aggravating for any licensee, regardless of age or experience.

*The previous character of the Licensee*

There is no evidence of previous complaints against the Licensee. While this is potentially mitigating, the Hearing Panel has given this particular factor little weight, due to the nature of the conduct. In the Panel's view, a lack of disciplinary history does not mitigate the professional sanction for sexual assault.

*The age and mental condition of the victim*

There is evidence that the Licensee's conduct seriously affected the victim's state of mind. Prior to the Phase 1 hearing, [CLIENT] requested to not be in the same room with the Licensee. She blamed herself for what happened, and testified that her relationship with her family became more stressful following the misconduct. She testified that she did not include the sexual assault in her initial complaint because it was a very painful and traumatic experience. The main reason [CLIENT] continued to tolerate the Licensee's salacious text messages was because she did not want him to lose his licence and not be able to pay back the money he owed her parents. When asked what was traumatic about the Vegreville trip, she testified that she could not talk about or think about that incident, she blamed herself and did not want to think about it. The Hearing Panel accepts [CLIENT]'s evidence about her state of mind. The experience was painful and traumatic and continues to bother [CLIENT] today. This is extremely aggravating; the panel accepts that it has caused [CLIENT] trauma.

*The number of times the offence was proven to have occurred*

The Licensee breached the *Real Estate Act Rules* on four occasions, and some incidents contained multiple breaches. This is extremely aggravating, as there was consistent abuse over time.

*The role of the Licensee in acknowledging what had occurred*

The Licensee admitted to making comments during a property showing and that they were inappropriate. He acknowledged that the FaceTime call he made to [CLIENT] was unacceptable, he felt bad about the shower incident and agreed to list a property for free. The Licensee continues to blame [CLIENT] and refers to her as a predator. He has generally repeated baseless allegations made against [CLIENT] and wants the Hearing Panel to investigate [CLIENT], which is not the role of this Hearing Panel. In the Panel's view, the Licensee has shown a serious lack of remorse for his actions throughout these proceedings. Overall, the Hearing Panel finds that the Licensee is not remorseful, he has not accepted responsibility for the severity of his actions, he has not gained any insight into the effects of his behaviour, and he continues to blame the victim, [CLIENT]. This is aggravating.

*Whether the Licensee has already suffered other serious financial or other penalties as a result of the allegations having been made*

There is no evidence that the Licensee has already suffered other serious financial or other penalties as a result of the allegations that were made. The Licensee testified that he has been re-employed. The Hearing Panel finds that there is insufficient evidence that the Licensee's ability to make a living has been impacted. This is neither mitigating nor aggravating.

*The impact of the incident on the victim*

The impact that the Licensee's conduct has had on [CLIENT] has been discussed above. This is extremely aggravating.

*The presence or absence of any mitigating circumstances*

The Hearing Panel is not aware of the outcome of criminal proceedings against the Licensee that were previously scheduled. The Hearing Panel finds that this is not a mitigating factor. In any case, these proceedings and the criminal proceedings are different proceedings with different burdens of proof. The outcome of a criminal proceeding, even if it were acquittal, would not mitigate the sanction in a professional discipline hearing where misconduct is found to have occurred.

*The need to promote specific deterrence and thereby protect the public and ensure safe and proper practice*

These allegations and findings are severe. The need to promote specific deterrence is high, given the nature and severity of the proven allegations. This is aggravating and warrants imposing a harsher penalty.



*The need to promote general deterrence and thereby protect the public and ensure safe and proper practice*

As noted above, these allegations and findings are severe. There is a high need to promote general deterrence, given the nature and severity of the proven allegations. There is no place in this profession for this type of conduct. This is aggravating.

*The need to maintain the public's confidence in the integrity of the profession*

As stated above, there is no place in this profession for this type of conduct. The Hearing Panel is of the view that a severe penalty is required to maintain the public's confidence in the profession. This type of conduct cannot be tolerated. This is aggravating.

*The degree to which the offensive conduct was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct*

It cannot be stated enough that there is no place in this profession for this type of conduct. It is very far outside the range of permitted conduct. The Hearing Panel is of the view that a severe penalty is required to maintain the public's confidence in the profession. This type of conduct cannot be tolerated. This is aggravating.

*The range of sentence in other similar cases*

There were no RECA precedents provided that dealt with similar conduct and allegations of this nature. The proven allegations in this matter are among the most severe types of misconduct. This is aggravating.

107. Based on the totality of the evidence, the Hearing Panel has found almost no mitigating circumstances in this matter. The proven allegations and the Licensee's conduct are among the most severe type of misconduct. Accordingly, the sanction needs to be severe to maintain the public's confidence in the profession. A lifetime licence cancellation is appropriate based on the nature and severity of the misconduct. For clarity, a lifetime license cancellation means the Licensee is prohibited from applying for any category or class of RECA licence for the remainder of his natural life.
108. The Hearing Panel is aware that this sanction does not recognize the possibility of rehabilitation of the Licensee. However, in the Panel's view, the Licensee's misconduct in this case is such that a lifetime cancellation is required to maintain the integrity of the profession, including the public's trust and confidence in the profession. The Licensee is not precluded from earning a living as a result of the sanction, and he has sought employment in another industry.

109. The Registrar is not seeking fines, and a lifetime licence cancellation is among the most severe sanctions that a hearing panel can impose. The Hearing Panel is confident that not imposing fines in this case will not undermine the integrity of the profession, as a lifetime licence cancellation sends a very strong message.

110. The Registrar has requested costs in the amount of \$17,950, representing the high end of the range for hourly legal costs and the costs attributed to the Hearings Administrator and the Hearing Panel. The Registrar is not requesting costs for the investigation, the investigator's time during the hearing, transcripts or hearing preparation time. The Licensee did not provide any argument regarding costs. The Hearing Panel finds that costs are appropriate in this case and agrees that the Registrar is taking a very generous approach to costs. We interpret this to mean the actual costs are likely much higher than those presented. The Hearing Panel agrees with the Registrar's assessment of the section 10.4 bylaw factors and accepts that costs in the amount of \$17,950 are reasonable and appropriate. In this case the breaches were especially severe, and a costs order is consistent with the principles set out in the *Jinnah* decision.

## CONCLUSION

111. For the reasons given above, the Hearing Panel orders the following sanction against the Licensee:

- e. Any and all licences of any category or class issued to the Licensee by RECA are hereby permanently cancelled.
- f. The Licensee is prohibited from reapplying for a RECA licence of any category or class for the remainder of his natural life.
- g. The Licensee shall pay costs in the amount of \$17,950 to RECA.

Dated this 20<sup>th</sup> day of December, 2024 at the City of Calgary in the Province of Alberta.

**"Signature"**

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[K.K], Hearing Panel Chair