

THE REAL ESTATE COUNCIL OF ALBERTA  
IN THE MATTER OF SECTIONS 39(1)(b) and 41 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 GREG ALAN STEELE,  
a Real Estate Associate, registered with Excellence Real Estate Edmonton Ltd.  
operating as REMAX Excellence

Case Number: 010995.001

Hearing Panel Members: [C.W], Chair  
[S.D], Panel Member  
[M.W], Panel Member

Appearances: Andrew Bone, for the Registrar of the Real Estate  
Council of Alberta

Darin Sprake, Counsel for the Licensee  
Greg Alan Steele, Licensee

Hearing Date(s): March 15 and 16, 2023 and April 6, 2023, all virtual hearings

**DECISION OF HEARING PANEL**

**A. INTRODUCTION**

1. This is a Hearing under Part 3 of the *Real Estate Act* into alleged conduct deserving of sanction. It is alleged by the Registrar that:

On or about January 15, 2020, Greg Alan Steele, a Licensee, physically, sexually or emotionally abused [M.A], also a Licensee, contrary to s.42(f) of the *Real Estate Act* Rules by touching her back and buttocks without her consent.

2. The location of the alleged incident was the [RAE] ("RAE") 2020 [CONFERENCE] (the "Conference"), held at the [CONFERENCE CENTRE] (the "Conference Centre").
3. The *Notice of Hearing*, dated July 18, 2022, was marked as **Exhibit 1** (the "Notice of Hearing").

4. This Hearing was conducted by a three (3) person Hearing Panel of the Real Estate Council of Alberta (the "Panel"), and proceeded by virtual hearings on March 15 and 16, 2023 and April 6, 2023.
5. The parties did not object to the composition of the Panel. The parties did not object to this Hearing being conducted by way of video conference.
6. This Decision is the Panel's decision on Phase 1 of the hearing process. Under Phase 1 the Panel heard and considered each party's case with respect to the allegations of conduct deserving of sanction as outlined in the *Notice of Hearing*. Each party called witnesses, which were examined, cross-examined, and re-examined under oath. A summary of the testimony of each witness will be given below.
7. The onus of proving the misconduct allegations is on the Registrar. The standard of proof is on a balance of probabilities. The Panel must decide on a balance of probabilities whether or not there is conduct deserving of sanction.
8. The Registrar called four (4) witnesses during its case:
  1. [M.A] ("[M.A]");
  2. [C.S] ("[C.S]");
  3. [N.R] ("[N.R]"); and
  4. [INVESTIGATOR] ("[INVESTIGATOR]"), Senior Investigator with the Real Estate Council of Alberta.
9. The Licensee called two (2) witnesses during its case:
  1. Greg Steele, the Licensee ("Steele"); and
  2. [D.L] ("[D.L]").
10. The parties tendered a total of twenty (20) exhibits, labelled Exhibits 1 to 20. They are summarised below in Section G "Exhibits Tendered".
11. With agreement of the Panel, the parties elected to make their closing arguments through written submissions. The Panel received three (3) documents:
  1. Phase One Submissions of the Registrar.
  2. Phase One Submissions of the Licensee.
  3. Phase One Submissions of the Registrar – Rebuttal.

The Panel has reviewed these written submissions. The parties did not ask to supplement them by oral argument, and the Panel did not require them to do so.

12. The Panel paid close attention to the testimony of the witnesses. Further, before making this decision, the Panel revisited each of their evidence by reviewing transcripts of the oral testimony. It has examined the twenty (20) exhibits and assessed the written closing submissions.

13. For the reasons that follow, the Panel finds:

### PHASE 1 – BREACH OF THE ACT

The Licensee intentionally touched the buttocks of [M.A] without her consent, and that this conduct constitutes physical or sexual abuse in contravention of section 42(f) of the *Real Estate Act* Rules.

### B. PROCEDURAL HISTORY

#### The Proceedings before the REALTORS® Association of Edmonton

14. This is not the first time that a decision-making body has considered these allegations. They were previously considered by the [RAE] ("RAE"). It is necessary to consider the procedural history before RAE because the Registrar has asked this Panel to place certain weight on findings of fact made by RAE.

15. Below is an explanation of the proceedings before RAE:

- a) The date of the alleged incident was January 15, 2020. Shortly after, [B.A] made a written complaint to RAE (the "RAE Complaint"). We were not provided with a copy of this complaint. RAE's Rules and Regulations required the *Arbitration and Professional Standards Committee* to investigate the alleged misconduct.
- b) RAE sent a letter to Steele and his broker, dated January 22, 2020, enclosing a copy of the RAE Complaint and requesting a response. This letter (but not the RAE Complaint itself) was tendered in these proceedings as **Exhibit 16**. The letter included detailed instructions on how to prepare a response, who the response would be given to, and how the complaint may proceed which included the possibility of a hearing before a Review Panel. In particular, the instructions on how to respond stated that:

*"If some of the facts are not reflected in documents, consider obtaining one or more affidavits from persons with relevant knowledge. Filing an affidavit with a response is not required but is often a good practice because it tells the review panel that you have evidence to support your position. An **affidavit will also document testimony you may later present** through a witness and **helps pin down facts** before recollections wane" (emphasis added).*

....

*"The response should address directly and clearly each element of alleged misconduct. It **should be accurate about facts** and explain why the relevant Rule/Article was not violated" (emphasis added).*

- c) On February 5, 2020, Steele swore a three (3) paragraph Affidavit that addressed the complaint (the "Steele Affidavit"). It was tendered in these proceedings as **Exhibit 13**.
- d) For the RAE proceedings, [M.A] was represented by legal counsel, Mr. Jamie Pytel of Kingsgate Legal. Mr. Pytel provided a six (6) page written submission, dated November 2, 2020 (the "Pytel Submissions"). Steele provided a written response to these submissions, and that response appears in blue font within the Pytel Submissions. The Pytel Submissions were tendered in these proceedings as **Exhibit 14**.
- e) The Panel pauses this chronology of the RAE proceedings to address one legal issue. It is important to note that the Steele Affidavit and the Pytel Submissions were not tendered by the Registrar to prove the truth of their contents, and the Panel has not considered them as such. Instead, the Pytel Submissions and Steele Affidavit were tendered to challenge Steele's credibility and reliability by:
  - i. highlighting alleged inconsistencies between these two documents, and
  - ii. highlighting any inconsistencies between those documents and his testimony during the RECA Hearing.
- f) In relation to the Pytel Submissions, the Registrar relied only on one passage of Steele's response that stated:

*"She [[M.A]] introduced herself and we shook hands. I picked up my coffee, as did [D.L] and [M.A]. [M.A] had her back to me and turned with hot beverage in hand and almost bumped into my hot coffee. I reacted quickly to avoid spilling hot coffee on her and placed my hand on her back for the purpose of proper spacing. She even commented 'that was close'"*

- g) On December 1, 2020, a hearing commenced into the RAE Complaint (the "RAE Hearing") before a five (5) member Review Panel of the RAE *Arbitration and Professional Standards Committee* (the "RAE Hearing Panel"). [M.A] was represented by Mr. Pytel. Mr. Steele was represented by his broker, Mr. Patterson.

- h) On December 7, 2020, Mr. Pytel sent a letter to the RAE Hearing Panel advising that Armstrong had concerns about the fairness and impartiality of the hearing process. After much back and forth between the parties and the RAE Hearing Panel, the Chair of the RAE Hearing Panel stepped down, a new Chair was appointed from the existing panel members, and the hearing proceeded with the remaining four panel members.
- i) On February 26, 2021, the RAE Hearing Panel responded to the bias and procedural fairness issues, and mandated procedures for the continuation of the hearing (the "RAE Procedural Fairness Decision"). Three (3) pages of this decision was tendered in these proceedings as **Exhibit 3**.
- j) On June 14, 2021, the RAE Hearing was completed.
- k) On July 2, 2021, the RAE Hearing Panel delivered a five (5) page decision (the "RAE Conduct Decision"). The RAE Conduct Decision was tendered in these proceedings as **Exhibit 4**. The RAE Hearing Panel found that Steele had breached Article 21 of *The REALTOR® Code* which states:

*Article 21 – Conduct Unbecoming*

*A REALTOR® shall not engage in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR®.*

- l) Paragraph 18 of the RAE Conduct Decision found that, "*as she [[M.A]] and Steele reached their tables on the walk back from the coffee station, he touched the small of her back again and then touched her buttocks*". It was this action that the RAE Hearing Panel found gave rise to unprofessional conduct and a breach of Article 21.
- m) On September 8, 2021, the RAE Hearing Panel delivered its decision on sanction (the "RAE Sanction Decision"). A recommendation on sanction was not submitted on behalf of Steele. Mr. Pytel submitted a recommendation on behalf of Armstrong, requesting a \$5,000 penalty, completion of a workplace harassment and gender discrimination course, and publication of the outcome of the RAE proceedings including names of the parties. The RAE Hearing Panel imposed a \$4,000 fine for breach of Article 21. It refused to publish the names of the parties and did not direct that Steele complete a harassment/gender discrimination course. The RAE Sanction Decision is within **Exhibit 4**.
- n) Steele appealed the RAE Conduct Decision. The appeal hearing took place on November 18, 2021 (the "RAE Appeal"). On November 25, 2021, a decision was rendered by a three (3) person Professional Standards Appeal Hearing Panel (the "RAE Appeal Panel"). It found that the RAE Hearing Panel's determination was correct in having found Steele in breach of Article 21 (the "RAE Appeal Decision"). The RAE Appeal Decision was tendered as **Exhibit 5**.

## The Proceedings before RECA

16. Sometime between December 2020 and March 2021, [M.A] made a complaint to the Real Estate Council of Alberta (the "RECA Complaint"). [M.A] candidly admitted during testimony in these proceedings that she brought the RECA Complaint because she was unsatisfied with the RAE proceedings. This Panel does not reach any conclusions regarding the fairness of the RAE proceedings.
17. The RECA Complaint was investigated by [INVESTIGATOR], RECA Investigator. Once that investigation was completed, RECA issued a *Notice of Hearing* on July 18, 2022 (**Exhibit 1**) that scheduled a Panel Hearing for September 7 and 8, 2022 (the "RECA Hearing").
18. On August 31, 2022, Darin Sprake, legal counsel for the Licensee, applied for an adjournment of the RECA Hearing, as Steele was in the process of retaining Mr. Sprake, and Mr. Sprake was not available for the September dates. The adjournment was granted, and the RECA Hearing was rescheduled for December 13 and 14, 2022.
19. On December 6, 2022, Mr. Sprake applied for another adjournment for reasons personal to Mr. Sprake. The adjournment was granted, and the RECA Hearing was re-scheduled for March 15 and 16, 2023.
20. The RECA Hearing took place on March 15 and 16, 2023, and on April 6, 2023.

## C. APPLICABLE SECTIONS OF THE REAL ESTATE ACT & REAL ESTATE ACT RULES

21. Rule 42(f) of the *Real Estate Act Rules* prohibits abusive conduct. It states:

### ***Licensee prohibitions***

42. 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 management service.*

## D. ELEMENTS OF THE ALLEGED CONDUCT DESERVING OF SANCTION

22. The parties agreed upon the elements of the prohibition. To prove a contravention of Rule 42(f), the Registrar must prove that on January 15, 2020:

Element 1: Steele was a licensee;  
Element 2: [M.A] was a licensee;  
Element 3: Steele intentionally touched the buttock of [M.A]; and  
Element 4: Such touching constituted sexual, physical, or emotional abuse.

23. To narrow the focus of this decision, the Panel will deal now with Elements 1 and 2. Steele's licence history was tendered as **Exhibit 11**. [M.A]'s licence history was tendered as **Exhibit 12**. The evidence is clear that both were licensees as of January 15, 2020. Steele did not dispute this. Therefore, Elements 1 and 2 are proven on the balance of probabilities.
24. Turning to Element 4, neither the Act, the Regulations, the Bylaws or the Rules define the phrase, "physically, sexually, emotionally or verbally abuse". The parties have not provided any case authorities on this point. However, decision makers can rely on plain language for definitions without resort to legal precedent. The Registrar submits that purposely touching someone without their consent on their buttocks is clearly physical and sexual abuse <sup>1</sup>. Further, Steele admits that if the Panel finds that he intentionally touched Armstrong's buttocks then this conduct constitutes sexual abuse.<sup>2</sup> The Panel agrees. As the Registrar succinctly submitted, "this is common sense".<sup>3</sup>
25. Therefore, the focus of the rest of this decision will be on Element 3 – **Did Steele intentionally touch the buttocks of [M.A]?**

## E. GENERAL LEGAL PRINCIPLES TO APPLY

### The Standard of Proof

26. The standard of proof is on a balance of probabilities. It requires the Registrar to prove that its case is more likely true than not. Essentially, a greater than 50% likelihood that the elements of the conduct deserving of sanction are made out.
27. Balance of probabilities is significantly different from the criminal standard of beyond a reasonable doubt. The latter is the highest standard of proof known to the law. It requires the prosecuting authority to prove a defendant's guilt so clearly that there would be no reasonable doubt in the mind of the trier of fact. This higher standard is not to be applied in this case.
28. However, even though the civil standard must be applied, a Panel must remain vigilant and thorough in its evaluation of the evidence to ensure that the decision

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<sup>1</sup> Phase One Submissions of the Registrar at para. 125

<sup>2</sup> Phase One Submissions of the Licensee at para. 115

<sup>3</sup> Phase One Submissions of the Registrar at para. 124

is just and fair. As the Licensee's closing submissions aptly pointed out, the gender-related stereotypical thinking that led to negative assumptions about the credibility of complainants must not be replaced by equally pernicious assumptions about the believability of complainants. The Panel will add that it has also avoided gender-related stereotypical thinking that may lead to negative assumptions about an accused person. To put it simply, the Panel has assessed this case based on the evidence and is conscious that the onus always remains on the Registrar.

### Assessment of the Witnesses - Principles about Credibility and Reliability

29. To arrive at a decision, this Panel must determine the relevant facts. To make factual findings, a Panel assesses the evidence, which in this case consists of witness testimony and the exhibits tendered. This assessment requires the Panel to determine the credibility and reliability of the witnesses. It involves more than just listening to witnesses and observing their demeanor to determine who seems to be truthful.
30. There is an important distinction between credibility and reliability. A trier of fact must be live to this difference and consider both when assessing a witness's testimony. **Credibility** relates to the veracity or sincerity of the witness. That is, their willingness to speak the truth as the witness believes it to be. **Reliability** relates to the **actual** accuracy of the testimony. That is, the witness's ability to accurately observe, recall and recount the events in issue. A witness whose evidence on a point is not credible cannot give reliable evidence on that point. But evidence of an honest, that is, a credible witness can still be unreliable.<sup>4</sup> As Counsel for Steele correctly noted, a convincing witness is often convinced of their own testimony.
31. One of the most frequently referenced cases regarding the factors and approach to assessing credibility is *Faryna v. Chorny* <sup>5</sup>:

*"If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility.*

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor*

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<sup>4</sup> See generally *R v Morrissey*, 1995 CanLII 3498 (ONCA) at paras 33-35.

<sup>5</sup> *Faryna v. Chorny*, 1951 CanLII 252 at p.356



*of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of the witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions (....) Again, a witness may testify to what he sincerely believes to be true, but he may be quite honestly mistaken."*

32. Credibility and reliability are issues of fact. A strict set of rules does not exist. It is a nuanced exercise that requires a variety of factors to be considered. These factors include: <sup>6</sup>

1. Did the witness appear honest? Is there any reason the witness would not be telling the truth?
2. Did the witness have a reason to give evidence that is more favorable to one side than to the other?
3. Was the witness able to provide an accurate and complete observation about the event?
4. Was the particular observation routine or unusual?
5. Did the witness appear to have a good memory?
6. Did the witness have a reason to remember things about which they testified?
7. Did the witness seem genuine when displaying an inability or difficulty to remember events, or did it seem like an excuse to avoid answering questions?
8. Was the witness's report based on personal observation, or was it based on information from other sources?
9. Was the witness's testimony reasonable and internally consistent? Were there inconsistencies between the witness's own statements? One must consider the materiality of the inconsistency. For example, was it one inconsistency on a material matter or a series of inconsistencies on more minor matters?
10. Was the witness's testimony consistent with the evidence of other witnesses? Again, one must consider the materiality of any inconsistency.
11. What was the witness's demeanor in giving evidence? However, limited emphasis should be placed on demeanor because people react and appear differently depending on their backgrounds, abilities, values and life experience.
12. What was the level of detail in the witness's account. How much would the witness be reasonably expected to recall?

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<sup>6</sup> See Greenspan & Rondinelli, Prosecuting and Defending Sexual Offence Cases, A Practitioner's Handbook, (Toronto: Edmond, 2018) at p.190 to 193 citing David Watt, Watt's Manual of Criminal Jury Instructions, 2<sup>nd</sup> ed (Toronto: Carswell, 2015) at 267.

33. To make its factual findings, the Panel has evaluated the above factors, and decided whether each witness's testimony aligns with what a practical and informed person would consider reasonable in the circumstances, based on a "preponderance of probabilities".

## **F. SUMMARY OF THE EVIDENCE**

34. Below is a summary of the witness evidence. It is not meant to be 'chapter and verse'. However, it does summarise the salient portions, and uses the words and phrases employed by the witness as accurately as possible. To avoid repetition, the cross-examination of each witness is summarised by just highlighting additional or clarified evidence, or evidence of inconsistencies, exaggerations, falsehoods or other such challenges to the witness's testimony.

### **Evidence of [M.A]**

#### *- Examination-in-Chief*

35. [M.A] is a REALTOR®, and at the time of this Hearing, co-owns a brokerage called [R.U]. At the time of the alleged incident [M.A] was a newer licensee at that brokerage. On the morning of January 15<sup>th</sup>, 2020, she attended the RAE's [CONFERENCE] at the [CONFERENCE CENTRE] with her colleagues, [C.S] ("[C.S]"), and [N.R] ("[N.R]"). [M.A] and [N.R] sat at one table. [C.S] sat at another.
36. At the morning break, [M.A], [C.S], and [N.R] went to the coffee table. The table was located at back left of the conference hall as you faced away from the stage. [C.S] and [N.R] got their coffee and walked away from the coffee table.
37. [M.A] was the last of the three to get her coffee. As she was putting cream in her coffee she heard a voice to the right of her. There is no dispute the voice was that of Steele. Steele said words to the effect of, "Hey, are you using non-dairy Creamer?" and that Mr. Steele's "girlfriend would want him to use that kind of stuff".
38. In response, [M.A] faced Steele and introduced herself. A conversation ensued during which they talked about work, and what kind of training Steele had. As they turned to walk towards the tables Steele placed his hand on the small of [M.A]'s back, which she did not like. It was for a second or something. It wasn't long.
39. As they walked back to the tables, Steele was telling [M.A] about his various accreditations. When they arrived at the tables [M.A] felt that she was done with the conversation and said some kind of closing remark to Steele.

40. As Steele turned to leave, he put his right hand on [M.A.]’s left buttocks and just placed it there for a little while. He touched her for half a second to a second. [M.A.] believed the touch of the buttocks to be exacting and purposeful. It was not a brush of a hand or a bag or something like that. Instead, it was his palm, it was his fingers, and it cupped her buttocks.
41. [M.A.] was stunned, and immediately walked over to [C.S.] and [N.R.] asking whether they had seen that Greg Steele had just patted her ass. Later in [M.A.]’s evidence-in-chief she stated that she ran over to [C.S.] and [N.R.].
42. [M.A.] described in various ways her reaction and feelings in the moment. She felt very shaken up, shocked, paralyzed, violated and humiliated. At some point after the coffee break had ended and the presentations had re-commenced, [C.S.] walked over to [M.A.] and asked if she was okay because she was crying a little bit.
43. [M.A.] was asked why she didn’t leave the conference. She stated that she didn’t know that was an option as she was there in a professional capacity. She froze for the rest of the conference not knowing what to do.
44. She submitted a complaint to RAE a few days after the incident.

- *Cross-Examination*

45. Each table had 8 seats. In addition to herself and [N.R.], there were 3 other people at her table leaving 3 empty seats. Her table was 2 or 3 tables back from the stage and was right of centre if you were facing the stage.
46. [M.A.] was asked to draw a diagram of the conference room, which was tendered as **Exhibit 6**. An annotated version was tendered as **Exhibit 7**. The following annotations appear on **Exhibit 7**:
- a) ‘Myself’ marks where [M.A.] was seated.
  - b) ‘B’ marks the approximate location of the initial interaction between [M.A.] and Steele at the coffee table.
  - c) ‘A’ marks the approximate location of the alleged buttocks contact. It was a tiny bit south of [M.A.]’s table.
  - d) ‘C’ marks where [C.S.] and [N.R.] were standing by the food table.
  - e) The green dotted line is the approximate path taken by [M.A.], [C.S.] and [N.R.] to the coffee table.
  - f) The red dotted line is the approximate path taken by [M.A.] and Steele back to her table.
47. The event was well attended, with people from real estate, the media, and politicians from multiple levels of government.

48. On the issue of lighting, [M.A.] didn't think it was bright inside the conference room. The lights were dimmed during the presentations and came on a little bit more when it was time for a break. To her, the conference room seemed dark. [M.A.] was shown **Exhibit 8** and she agreed that the photos accurately represented the different lighting during the event. [M.A.] was shown **Exhibit 9**, and she agreed it was an accurate representation of the lighting at the coffee break, but would not describe it as well lit. **Exhibit 9** accurately depicted how the tables were arranged.
49. The first time [M.A.] realised there was someone behind her in the coffee line was when Steele said the words, "Is that non-dairy creamer". Steele was on her right-hand side. [M.A.] responded that it was full-fat cream. Steele commented that his girlfriend wanted him to use non-dairy creamer. [M.A.] did not recall Steele saying that he wanted the high test.
50. [M.A.] interpreted Steele's comment as a bid for attention, that it was a bad joke, and that Steele wanted to talk to her about something that they weren't there for. [M.A.] believed that Steele wouldn't have said that to a man.
51. Counsel suggested to [M.A.] that as she and Steele were leaving the coffee table, Steele grabbed his cup with his left hand and turned towards [M.A.], who at the same time grabbed her cup with her right hand and turned towards Steele. [M.A.] does not remember this. It was further suggested that there was a near miss as they turned into each other while carrying their coffees, which prompted Steele to place his hand on her lower back. [M.A.] agreed that Steele placed his hand on her lower back but did so to usher her towards the tables. [M.A.] stated that she didn't know anything about a near miss. She believed the placing of his hand on her lower back was a gesture of power or control. [M.A.] agreed with counsel's suggestion that from this point she was on high alert with respect to Steele.
52. On the way back to the tables Steele talked about his experiences and education. [M.A.] had checked out of the conversation because she didn't feel good after being touched on her lower back. When they got back to [M.A.]'s table she asked if he was a broker. Steele said he wasn't, but he had done the education. At this point [M.A.] ended the conversation.
53. The entire interaction lasted 90 seconds to 2 minutes. The walk back to the tables from the coffee bar was approximately 45 seconds. During this time [M.A.] did not see Steele interact with anybody else. [M.A.] and Steele were talking on the way back to the tables, the conversation ended, and as Steele turned to leave, he put

his right hand on [M.A.]’s buttocks. He then walked away. [M.A.] was facing the stage when her buttocks were touched. Steele was on her left side facing the stage.

54. It was suggested to Armstrong that the conversation ended when Steele turned to meet [C.P]. [M.A.] did not see [C.P] and did not know who he was until Steele brought him forward as a witness during the RAE proceedings.
55. [M.A.] did not recall anyone being at her table upon her return. She did not recall how many people were at the tables to the immediate right and left. After being touched she was paralyzed, she froze, and didn’t care who else was around. She put her cup down on the table, saw [C.S] and [N.R], and ran over to them, or walked over really fast. She remained for the rest of the event and cried intermittently.
56. [M.A.] was shown **Exhibit 8** and directed to the photo underneath the title, “[CONFERENCE]”. [M.A.] agreed that the photo depicted the level of activity during the coffee break.
57. [M.A.] confirmed that Steele never made sexual comments or jokes of a sexual nature to her, nor did he give her any unwanted sexual attention. However, she believes the creamer comment and the placing of the hand on the back was sexist in nature.
58. [M.A.] disagreed that representatives of the RAE offered tips on how to make the complaint as solid as possible.
59. [M.A.] did not report the matter to Police because she feared that her complaint might not be taken seriously. Since it occurred at the RAE event, she felt the appropriate complaint forum was the real estate sector.
60. [M.A.] did request video from the [CONFERENCE CENTER], but she was advised that it had been deleted after 30 days. It is not clear from the evidence when [M.A.] requested the video.
61. It was suggested to [M.A.] that the contact on her buttocks could have been caused by people passing by, and/or chairs moving in and out, but whatever it was, Steele had nothing to do with it. [M.A.] disagreed with this suggestion stating, “I felt his palm. I felt his fingers. I am certain.”

## Evidence of [C.S]

### *- Examination-in-Chief*

62. They went for coffee. [M.A] was behind [C.S] in the line, and Steele was behind [M.A]. After getting coffee, [N.R] and [C.S] went off to the side of the conference room.
63. [C.S] saw [M.A] and Steele walking together to their tables. [C.S] asked [N.R] whether Steele knew [M.A] because Steele was very close to her. In his opinion, inappropriately close.
64. Shortly after, [M.A] approached them very distressed. [M.A] said that Steele had put his hand on her lower back and had patted her on her ass.
65. [C.S] noticed a distinct difference in [M.A]'s demeanour between the time they went for coffee and when she approached them. Her demeanor had radically changed. She was very distressed.

### *Cross-Examination*

66. [C.S] agreed it was a large gathering, with people from real estate, the media, and politicians from multiple levels of government.
67. Regarding the issue of lighting, the lights did come up somewhat during the coffee break.
68. [C.S] did not notice [M.A] and Steele talking at the coffee bar. He saw them talking when they were walking from the coffee bar to their tables. They walked in front of him and [N.R]. [C.S] could not give an approximate distance between them. He was able to observe [M.A] and Steele from the beginning of their walk from the coffee bar to where they departed from each other at the tables. But, he couldn't recall an unobstructed view.
69. While they were walking together, Steele was very close to [M.A], a lot closer than two strangers just meeting.
70. [C.S] could not recall whether Steele was on [M.A]'s right or left side. [C.S] was referred to **Exhibit 10**, being his testimony during the December 2020 RAE Hearing that Steele was on [M.A]'s right side. [C.S] acknowledged that this was truthful testimony, but as of the date of this hearing, he could not recall if it was the right or left.

71. At no time did he observe Steele come into physical contact with [M.A].
72. [C.S] agreed that the room had an elevated noise level, and that leaning in and speaking closely is one technique to ensure one is heard.
- *Re-Examination*
73. Counsel for the Registrar asked whether it was possible that Steele touched [M.A]'s buttocks without [C.S] noticing. [C.S] agreed it was but didn't elaborate why it was possible.
74. [C.S] believed whatever happened to [M.A] "distressed her person to the core".

#### **Evidence of [N.R]**

- *Examination-in-Chief*
75. [N.R] noticed [M.A] and Steele talking at the coffee station and then walking away together.
76. [N.R] was standing at the outside of the event space with [C.S]. He noticed Steele and [M.A] walking from his left to right, across his line of sight, towards the tables and seats that were to the right of [N.R] and [C.S]. [M.A] and Steele were walking in close proximity to each other.
77. [C.S] asked [N.R] if [M.A] and Steele knew each other. [N.R] was wondering something similar given their physical proximity to each other.
78. Within a minute or two, [M.A] came over very visibly shaken asking if they had just seen Steele put his hand on her lower back and pat her on the ass. He told [M.A] he did not see it.
79. [M.A] was very shaken and seemed in shock. [N.R] comforted her as they walked back to their seats. They sat there for the remainder of the event.
80. [N.R] described the room as busy. He did not have a 100% unobstructed view of [M.A] and Steele the whole time.

81. He had never seen [M.A] in such distress before. She was clearly shaken and appeared in shock. She was bug-eyed, had shaky hands and struggled to put a whole sentence together.

82. The Panel pauses this summary to clarify one issue. [N.R] provided testimony about his experience as a paramedic. Specifically, about his experience with people in shock. Although the Registrar did not present this testimony as expert medical opinion, the Panel emphasizes that the weight of [N.R]'s evidence is limited to his observations. No weight is given to any purported medical diagnosis of 'being in shock,' and the Panel makes no such finding. The Panel simply notes [N.R]'s observations of [M.A]'s demeanor.

- *Cross-Examination*

83. [N.R] agreed that during the coffee break there were a lot of people moving around, including people sitting down and getting out of chairs. The room 'wasn't bright, but it wasn't dark'.

84. [N.R] clarified where he and [C.S] were standing when observing [M.A] and Steele. [N.R] had his back to one of the sidewalls. In front of him was a clear aisle leading directly to the coffee bar. The tables started on the other side of this aisle. Near the front of the stage was a set of tables, with another aisle behind them that separated them from the tables at the back.

85. [N.R] watched Steele and [M.A] as they walked down the aisle from the coffee table. Steele was on [M.A]'s left side. His view became obstructed as they turned off the aisle into the tables. He didn't watch them at the tables.

86. When [M.A] came over, she said, "Did you see that? Greg just put his hand on my lower back and patted me on the ass".

87. [N.R] did not see any physical contact between Steele and [M.A].

**Evidence of [INVESTIGATOR]**

88. The Panel does not feel it is necessary to separate the summary of examination-in-chief and cross-examination. The evidence of [INVESTIGATOR] is summarised below.



89. [INVESTIGATOR] works for the Real Estate Council of Alberta (RECA) as a Senior Investigator and Team Lead. She had been with RECA for 10 years, serving as a Senior Investigator for the last 6 years.
90. Her duties included reviewing complaints against licensees, gathering information, and preparing reports for the Registrar to determine if there has been a breach of the *Act*.
91. She was the Investigator assigned to this case, starting with receiving the complaint from [M.A]. The investigation was started by sending out opening letters to the involved parties and reviewing their responses.
92. [INVESTIGATOR] identified certain documents from the complaint package and investigation, including licensing history records from RECA.
93. [INVESTIGATOR] confirmed that she contacted the RAE to request certain information but was informed that she needed to obtain it directly from the parties involved. Regarding photographs and/or videos specifically, [INVESTIGATOR] did not pursue further inquiries with the RAE to obtain them, instead relying on the parties to provide such evidence.

### **Evidence of Greg Steele**

#### ***- Examination-in-Chief***

94. Steele had been in the real estate industry for 34 years. He has extensive experience in its many facets, including involvement in various professional and community committees. He is a past President of the RAE. He has cultivated a significant public presence, through his face being on billboards, bus benches, bus tails, websites, neighbourhood brochures and newsletters.
95. The Conference had about 950 people, including dignitaries, politicians, economists, bankers and members of the media.
96. He knew lots of people at the Conference, and lots of people knew him. He believed most of the people knew who he was. Steele considered himself to be a recognisable person.
97. Steele and [D.L] were sitting three tables back from the stage near the centre.

98. Steele was shown **Exhibit 18**, being a photo of the coffee table in question. The lighting depicted represents the 'temperature of light' during the presentations.
99. He met [M.A] at the mid-morning break at the coffee bar. He had never met her before.
100. Steele approached the coffee bar with [D.L]. LeBlanc was on his right and Armstrong, whom he later came to know, was on his left.
101. Steele was looking for the cream, which [M.A] was holding. He joked by saying something to the effect of, "is that the high test, my girlfriend is vegan and doesn't want me to have creamer". He doesn't believe [M.A] found it funny, but [D.L] laughed. He has said this joke in the past.
102. [M.A] put the cream down, extended her hand and introduced herself.
103. After putting cream in his coffee, [M.A] and Steele turned away from the table at the same time. Steele is left-handed and had his coffee in his left hand. [M.A] had hers in her right. As they turned, [M.A] turned into Steele, and Steele turned into her. They bumped and Steele reacted by placing his hand on her left hip for a split-second. It was a natural reaction to avoid spilling.
104. They started walking back towards the tables. [D.L] moved away to take photos. [M.A] was on Steele's right side. During this time Steele told [M.A] about the trajectory of his career and the training opportunities provided by the RAE.
105. They walked about 75 feet down the aisle away from the coffee table, turned left, and went in about four tables to reach Steele's table. They were together for about 45 seconds.
106. The conversation ended as they neared Steele's table. At this time Steele noticed [C.P] standing at his table. [C.P] was a past President of the RAE and a MLA. Steele and [C.P] were about 25 feet apart when they locked eyes and exchanged smiles. Steele went over to shake his hand. He looked over his shoulder and saw [M.A] walking away.
107. At that moment, the presentations were about to resume, and many people were returning to their tables.
108. Steele denied any physical contact with [M.A], other than the bump at the coffee table.

109. Steele did not call [C.P] as a witness at the RAE Hearing because until the RAE Hearing had commenced, he was uncertain about the specifics of [M.A.]'s allegation. He attempted to call [C.P] as a witness at the RAE Appeal, but wasn't allowed.
110. Steele first became aware of [M.A.]'s allegation from his broker, Mr. [D.P], about ten (10) days after the Conference.
111. After seeking legal advice, he wrote his response into an Affidavit. Steele had never prepared an Affidavit and had to use 'Google' to figure out how. He identified **Exhibit 13** as the Affidavit he wrote and swore.
112. Counsel for Steele drew his attention to paragraph 2 of the Steele Affidavit, where it states, "At no time, however, did I touch the buttocks or any area of the lower back of any attendee". When asked about the difference between this and his testimony at the present Hearing, Steele stated:

*"Yes, when I was filling out the affidavit, I was made, it was made clear to me that I had to state that I did not touch [M.A] and that's all I was focusing on. Umm I, at the time I didn't even recollect that. The the coffee, um, when we turned around there, the reaction, I was thinking about later on in the, in the, as we got back to the table like, I never touched her and I kept thinking in my head. I never touched her. I did not touch her and they said well, you have to state that so I guess the only word I'm missing is I did not inappropriately touch her, and I regret that. I, I, I know I made a mistake. I've never had to fill it an affidavit before, this shook me to the core that I was being accused of this and I was so nervous and everybody was giving me advice. And I, I made a mistake in my affidavit by not putting in that word 'inappropriately touched', I have, and after I read that when it once it was commissioned. I, I read it and read it and then I went, 'Oh my God. I did touch her', and at that time I mentioned it to my broker and a couple of other people that, that and they, I was advised do not change your story. You're going to convict yourself. And I said well in a hearing, I have to be, I'm under oath. I have to tell the truth. I have to tell the whole truth and I honestly, I, I made a mistake by not putting in the word 'inappropriately' and I didn't even remember that so. I've, I've, I've regretted it ever since, but I don't regret telling the truth. I, I, after I reread it, yes, I did touch her at the coffee station, but never did I touch her inappropriately."*<sup>7</sup>

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<sup>7</sup> This, and other extracts, are reproduced from the Transcript. The Panel acknowledges that the Transcript serves as an aid only, with the oral testimony constituting the actual evidence. Such extracts have been corrected for syntax by listening to the audio recording of the Hearing to ensure the wording aligns with the spoken testimony.

113. Steele was adamant that the only physical contact between he and [M.A] was at the coffee station. He stated:

*"That was the contact at the coffee bar when we both turned at the same time with full cups of coffee, like, I mean really full cups of coffee and we almost, it was almost like, 'cheers'. We almost hit coffee cups. It was that she was right next to me, and I just reacted and just my hand went down just like, whoa. And that was it. That's the one and only time I touched her."*

- Cross-Examination

114. Steele was shown **Exhibit 14**, being the Pytel Submissions outlined above at paragraph 15(d) and 15(e). Counsel for the Registrar drew attention to Steele's response to paragraph 5 written in blue font:

*"I reacted quickly to avoid spilling hot coffee on her and placed my hand on her back for the purpose of proper spacing".*

115. When confronted with the alleged inconsistency between the 'left hip' (which Steele stated during Examination-in-Chief) and the 'lower back', Steele described touching the far-left portion of her back where her hip bone was. It was on the left side of her hip on the corner of her back.

116. When cross-examined about the Steele Affidavit (**Exhibit 13**), he stated:

- a) Steele composed it a couple of weeks after the allegation had been made.
- b) He was receiving advice from his lawyer, as well as from his broker (who was, or had been a lawyer). Steele wrote that he did not touch [M.A] because they were both 'hammering' him, saying he had to state that he did not touch her.
- c) He should have said that he did not touch her 'inappropriately'. When writing the Affidavit, he did not recall the split-second interaction at the coffee bar.
- d) He was under a great deal of stress when writing the Affidavit because he had never been accused of anything like this before.

117. Steele did not agree that the Affidavit was false when compared to his evidence at both the RAE Hearing and at this Hearing. Instead, the inconsistency was a 'clerical error' and a 'simply mistake'.

118. When asked why he did not amend the Affidavit upon realising the error, Steele asserted that:

- a) He did not know that he could change his Affidavit.

- b) His lawyer and/or his broker said that he couldn't change it. Steele told them that he had to tell the truth because he was under oath. They (his lawyer and/or broker) said, 'you have to go with this statement'.
- c) Steele believed he owned up to the mistake 'right away'. He would have changed the Affidavit had he known he could change it. He denied lying in his Affidavit and stated:

*"...I did not lie. I made a simple mistake and I, I owned up to it right away and I didn't know I could change this. I would have changed this right away. I didn't know I had the opportunity. I thought once you swore an oath, it was my understanding that it was part of the record, so I, the only thing I could do is admit my mistake and make myself look guilty and I was advised not to do that, but I did it and here we are."*

- 119. When asked when he realised the 'mistake' in the Affidavit, Steele said it was months after writing the Affidavit when he re-read it.

- *Re-Examination*

- 120. Steele clarified that in his mind the left hip and lower back were the same part of the body.

- *Panel Questions*

- 121. After consulting with the parties, the Panel asked Steele several questions to clarify two (2) key topics, being (1) the contents of the Steele Affidavit, and (2) [C.P]'s evidence as contained within **Exhibit 19**.

- 122. The Panel asked Steele when he realised the mistake in the Affidavit, and how he tried to fix it. Steele said that:

- a) He realised the mistake after reviewing the Affidavit about a month to six weeks before the RAE Hearing.
- b) He tried to fix the mistake by asking his broker what to do. He told his broker that he should have "put in the word" (referring to inserting the word, 'inappropriately'). His broker said he couldn't change anything, and "it is what it is."
- c) He took no other steps to fix the mistake.

- 123. The Panel asked Steele when he first became aware of [C.P]'s observations. Steele became aware after the first day of the RAE Hearing, after Steele discovered from the testimony where and when the alleged incident happened. He tried to call [C.P] as a witness at the RAE Hearing but wasn't allowed, nor was he allowed to at the RAE Appeal.

124. The Panel also asked Steele whether the 'creamer' comment was directed at anyone specific. Steele stated that it was directed at no one in particular. It was directed to the audience, that is, to [M.A] and [D.L].

#### Evidence of [D.L]

125. The Panel does not feel it is necessary to separate the summary of examination-in-chief and cross-examination. The evidence of [D.L] is summarised below.

126. There were approximately 600 people at the Conference.

127. Prior to the Conference beginning, she walked around networking with Steele. Steele knew a lot of people there. Various people were waving and saying hello. These people were from various walks of life including the real estate sector, politics and others of notoriety.

128. During the coffee break the room was more brightly lit. There was a buzz in the room and that would have made it more difficult to hear the person standing next to you.

129. She went with Steele to the coffee bar. Steele made a comment about his girlfriend 'endearingly trying to suggest that he should have vegan creamer and things like that'. [D.L] chuckled. She assumed this comment was directed at her.

130. [D.L] left [M.A] and Steele at the coffee table. She took a photo (**Exhibit 9**) that captured the brightness of the room.

131. She did not see Steele make physical contact with anyone at the Conference.

#### Evidence of [C.P]

132. By consent of both parties, a statement of [C.P] was admitted into evidence. The statement took the form of a typewritten letter dated July 15, 2022, and was signed by [C.P] (the "[C.P] Statement"). It was marked as **Exhibit 19**. The admissibility of the letter, and the weight to be accorded to it, will be discussed below. For ease of reference, the statement is reproduced below:

*"I attended the [CONFERENCE] on January 15, 2020 at the [CONFERENCE CENTRE]. At the second coffee break (approximately 10:00 am), I was standing at Mr. Greg Steele's table in conversation with [L.D] and a few other colleagues. I was facing towards the aisle and saw Greg walking towards me. I locked eyes with Greg (from a distance), smiled and watched him as he approached. I greeted him "Good Morning Mr. President" and I reached out to shake his hand. Greg smiled as*

*he approached, extended his hand to accept my handshake and returned the greeting "Good Morning Mr. President". We shook hands, greeted each other, and engaged in conversation.*

*I saw Greg approaching from a distance (approximately 20-30 feet) and can confirm that at no time did I see Greg interact or physically touch anyone. He walked directly to me and accepted my handshake"*

#### **G. EXHIBITS TENDERED**

133. Below is a list of the exhibits tendered, and where necessary, a summary of the purpose for which the exhibit was tendered.

NO.	DESCRIPTION
1.	The Real Estate Council of Alberta <i>Notice of Hearing</i> , dated July 18, 2022 (the "Notice of Hearing").
2.	Statutory Declaration of [A.M], sworn July 22, 2022, proving service of the <i>Notice of Hearing</i> upon Steele.
3.	RAE Procedural Fairness Decision, dated February 26, 2021 (3-page extract).
4.	RAE Conduct Decision, dated July 2, 2021, and RAE Sanction Decision, dated September 8, 2021.
5.	RAE Appeal Decision, dated November 24, 2021.
6.	Diagram of Conference Centre (hand drawn by [M.A] during Hearing).
7.	Annotated Diagram of Conference Centre. Diagram shows [M.A]'s recollection of: <ol style="list-style-type: none"> <li>1. the location of the initial interaction between [M.A] and Steele;</li> <li>2. the path of travel by Steele and [M.A] from the coffee bar back to the tables;</li> <li>3. the location of the alleged incident; and</li> <li>4. the location of the witnesses [C.S] and [N.R] after leaving the coffee bar.</li> </ol>
8.	Collage of Photos from 2020 Housing Forecast. Photos were tendered as evidence of: <ol style="list-style-type: none"> <li>1. the number of attendees;</li> <li>2. the diverse group of people from various (and high profile) backgrounds;</li> </ol>

	<ul style="list-style-type: none"> <li>3. the lighting of the Conference while presentations were being made versus during breaks;</li> <li>4. the layout of the event, including the coffee bar, stage, media stage, aisles, tables and chairs;</li> <li>5. the relative proximity of people to each other, and</li> <li>6. the relative proximity of people to the tables, chairs and other obstructions.</li> </ul>
9.	Single photo of event space taken by [D.L]. Photo was tendered for the same purpose as Exhibit 8 above.
10.	1-page excerpt from the transcript of evidence of [C.S] during the RAE Hearing on December 1, 2020. Only Lines 10 to 14 were relied upon.
11.	Licence History of Greg Alan Steele.
12.	Licence History of [M.A].
13.	Affidavit of Greg Steele, sworn February 5, 2020 (the "Steele Affidavit").
14.	Pytel Submissions, dated November 2, 2020, that include Steele's responses in blue font (6-pages, the "Pytel Submissions")
15.	Letter from Greg Steele to Sherry Hillis, RECA Investigator, dated April 5, 2021 (1-page).
16.	Letter from the RAE to RE/MAX Excellence, dated January 22, 2020, that enclosed the RAE Complaint. The tendered letter included four pages that described how to respond to a professional standards complaint, and how to prepare a response. The RAE Complaint itself was not tendered.
17.	Email exchange dated March 9, 2021, between the RAE, Steele, [D.P] and Pytel advising that Steele was no longer advancing the 'credibility argument' (2-pages)
18.	Photograph of Conference Centre, showing coffee bar in the background.
19.	Statement of [C.P], dated July 15, 2022 (1-page, the "[C.P] Statement").
20.	Brochure of 2020 REALTORS® Housing Forecast (24-pages).



## H. SPECIFIC LEGAL ISSUES THAT AROSE IN THIS CASE

### Issue 1: Relevance of the RAE Conduct Decision and RAE Appeal Decision

134. The parties agreed that the RAE Conduct Decision and RAE Appeal Decision are admissible in evidence in this Hearing. Where the parties differ, and the important question to be determined by this Panel, is what weight to put on the evidence. Surprisingly, there is little Alberta authority on this point.
135. The Registrar argues that the RAE Conduct Decision and RAE Appeal Decision are *prima facie* evidence that the touching of the back and buttocks occurred. Put another way, these two decisions prove presumptively on a balance of probabilities that the alleged incident occurred. The Registrar further submits that, "[T]his does not require a review of the hearing itself, only the findings of fact in the decision".
136. The Registrar's sole authority was *Phillips v Law Society of Saskatchewan*, 2021 SKCA 16 ("Phillips"). In this case the Hearing Committee of the Law Society of Saskatchewan (the "Committee") accepted a Small Claims Decision as *prima facie* proof of certain disciplinary charges. The Small Claims Decision was a decision of a Provincial Court Judge of the Provincial Court of Saskatchewan. At paragraph [72] the Court of Appeal stated that, "*I preface the analysis that follows with the observation that it applies only to the use of previous civil decisions in disciplinary proceedings. Somewhat different considerations apply in the case of decisions in criminal matters*". Further, at paragraphs [77] to [79] it is stated:
- "On the basis of the above excerpts, Rosenbaum (properly understood) stands for the principle that a disciplinary tribunal may treat previous court findings as prima facie evidence in support of the disciplinary charge before it, at least where the lawyer was a party to and actively participated in the civil proceeding.*
- Rosenbaum has been subsequently cited with approval: for example, Del Core v College of Pharmacists (Ontario) (1985), 1985 CanLII 119 (ON CA), 10 OAC 57 (CA) [Del Core] (leave to appeal to SCC refused, [1986] 1 SCR viii); and Law Society (British Columbia) v Ewachniuk, 2003 BCCA 223, [2003] 6 WWR 459.*
- Based on the foregoing authorities, I conclude that findings of fact made in a previous civil proceeding to which the lawyer was a party or has actively participated, such as the Small Claims Decision, may be admitted as prima facie evidence in support of disciplinary charges and not proof thereof."*
137. The Licensee argues that *Phillips* is not binding because it has not been adopted by our Alberta Court of Appeal. The Licensee argues that the Alberta cases of *Spectra Architectural Group v. St. Michael's Extended Care Centre Society*, 2001

ABQB 887, and *Dallin v. Montgomery*, 2010 ABQB 178, require this Panel to adopt a contextual and flexible approach to the RAE decisions. Although such decisions are admissible, the weight to be accorded should be determined by considering the legitimacy of the findings.

138. This Panel has reviewed the cases of *Phillips*, *Spectra* and *Dallin*, referred to by the parties. The Panel has also reviewed the cases of:

1. *Trang v. Alberta (Edmonton Remand Centre)*, 2002 ABQB 658 (referred to in *Dallin*) ("*Trang*"); and
2. *Clarkson v. Elding*, 2020 BCSC 72 ("*Clarkson*").

139. In *Spectra*, the issue to be determined by Justice Burrows was whether evidence as to the result of a disciplinary proceeding taken against an individual by the Alberta Architects Association was admissible in the contractual/negligence action before the learned Justice. At paragraph [19] of *Spectra*, the Court cited an excerpt from Sopinka, Lederman and Bryant, *The Law of Evidence in Canada*, 2nd edition, 1999, that states:

*"A judgment of a civil court, however, need only be based on proof to a balance of probabilities. A civil judgment is, therefore, worthy of less respect in a subsequent proceeding and should not, as a general rule, be admissible as prima facie proof of the commission of the relevant acts or the existence of negligent conduct. It cannot logically raise such a presumption of fact or law. It is not, however, logically irrelevant; it just has less weight. If the rule in Hollington v. Hewthorn is not to be recognized so far as it relates to a previous criminal conviction, then logically it also should not apply so far as it relates to previous civil judgment. The fact that it is a civil judgment only would be significant in terms of weight. The party against whom the judgment was rendered would have a greater opportunity to explain it or suggest mitigating circumstances. So, for example, if an auditor is found to owe a duty of care to a shareholder of a company arising out of her or his negligent preparation of financial statements, that judicial finding would have some evidential value in a subsequent proceeding brought by another shareholder. The weight to be given to it may, however, be quite low if the auditor were to show that she or he did not vigorously defend the first proceeding because the damages in issue were minimal or that it was a consent judgment to implement a settlement."*

140. At paragraph [29] Justice Burrows states that the Court was, "*...in agreement with the reasoning expounded by Sopinka, Lederman and Bryant...*". The Panel interprets this to mean Justice Burrows agreed that, in Alberta, there is no general rule that civil judgments are admissible as *prima facie* proof of the commission of the relevant acts. Instead, it is a question of weight to be determined on a case-by-case basis. At paragraph [32], the Court deferred for further argument the

weight to be given, but importantly noted that, “...the fact that the disciplinary body was not bound by the rules of law respecting evidence applicable to judicial proceedings may have significant effect on the weight”.

141. In the recent 2020 decision of *Clarkson*, Justice Horsman of the Supreme Court of British Columbia followed *Spectra*, stating at paragraph [53] that:

*“Evidence of the result of a prior disciplinary proceeding may be admissible in a negligence action on the issue of whether the defendant breached the standard of care. The weight to be given the finding will depend on such issues as the nature of the process that led to the finding, the evidence that was before the discipline committee, and the relevance of the finding to the matters in issue in the action: Spectra Architectural Group Ltd. v. St. Michael’s Extended Care Centre Society, 2001 ABQB 887 at paras. 27-31; Sparataro v. Handler, [1988] O.J. No. 841 (Dist. Ct.); Etienne v. McKellar General Hospital, [1994] O.J. No. 2602 (Dist. Ct.).”*

142. In *Trang*, Justice Marceau of the Court of Queen’s Bench of Alberta (as it then was) stated at paragraphs [59] to [61] that:

*[59] In my view, a contextual and flexible approach regarding the treatment of prior proceedings at a civil hearing is most logical. Any doubts as to the legitimacy of the findings made at the earlier proceedings, for whatever reason, properly go to weight and not admissibility. Although a contextual and flexible approach creates some uncertainty, it is a fair price for achieving a balance between finality and fairness concerns (Toronto (City) v. Canadian Union of Public Employees, Local 79, at para. 111).*

*[60] Considering the lack of clarity in Alberta law, it is necessary to develop a principled approach respecting judicial treatment of prior court or tribunal proceedings in subsequent civil matters. An appropriate guide is supplied by the “pragmatic and functional” approach for judicial review, as enunciated in the seminal Supreme Court of Canada decision U.E.S., Local 298 v. Bibeault, 1988 CanLII 30 (SCC), [1988] 2 S.C.R. 1048 and developed in Pushpanathan v. Canada (Minister of Citizenship and Immigration), 1998 CanLII 778 (SCC), [1998] 1 S.C.R. 982.*

*[61] I am of the opinion that the amount of regard to be given to evidence of this nature should be viewed as falling somewhere on a spectrum. At one end, the evidence demands such a high degree of deference that it effectively becomes conclusive. At the other end, the evidence has less authority and serves as mere evidence to be assigned weight. Several factors must be taken into account in determining how much deference to afford. Criminal and civil courts, and administrative tribunals employ varying standards of proof, grounds for judicial review and evidence rules affects the degree of deference. Moreover, within each*

*court or administrative tribunal, and within the different types of administrative bodies, decisions are made on legal principles calling for different standards of proof and review. The nature of the issue being addressed is therefore significant. And where the findings of the prior proceedings are held to be relevant to the subsequent civil matter, a lack of identity of parties or issues is a factor affecting the degree of deference to be given.'*

143. Based on the above analysis, the Panel concludes that the findings of the RAE Hearing Panel and RAE Appeal Panel are relevant and admissible to the issues this Panel must decide. However, Alberta law does not support a general principle that prior proceedings of a disciplinary tribunal are automatically deemed *prima facie* evidence of the acts complained of. The case of *Phillips* is not binding on this Panel, and has not been adopted or commented upon, at least to date, by our Alberta Court of Appeal.
144. Instead, the Panel will follow the reasoning of our (now) Court of King's Bench in *Spectra, Dallin* and *Trang*. The Panel will adopt a contextual and flexible approach, requiring this Panel to accord weight based on a multi-faceted analysis of the legitimacy of the findings made within the RAE proceedings.
145. For the following reasons, the Panel gives no weight to the RAE Conduct Decision and RAE Appeal Decision:
  - a) The reasons for decision themselves do not provide sufficient detail to accord more weight. This is not a criticism of the RAE tribunals. The RAE decisions were written to ensure that the parties understand the rationale behind the respective panel's decision, and to facilitate effective review in the case of an appeal. They were not written with the expectation that another disciplinary tribunal would be asked to accept their factual findings on a *prima facie* level.
  - b) For example, the summary of evidence in the RAE Conduct Decision is just over one page. The Transcript of the evidence in this Hearing is 679 pages (including some legal argument). This Panel does not conclude that reviewing the transcript or recording of a previous tribunal's hearing is necessary for a subsequent tribunal or Court to assign greater weight to its findings. However, in this case, this Panel is unwilling to assign greater weight without reviewing the transcript or recording of [M.A]'s and Steele's evidence. Neither was tendered in these proceedings.
  - c) The RAE Hearing Panel and RAE Appeal Panel did not have the [C.P] Statement before them. Neither panel heard any evidence from [C.P]. For the Licensee, the [C.P] Statement is an important piece of evidence. For any significant weight to be accorded to a previous tribunal's decision, there must be a mutuality of not only the parties and issues to be decided, but also the evidence adduced. The

Panel will discuss below the weight to be accorded to the [C.P] statement. However, in deciding the weight attributable to the RAE decisions, it would be unfair to the Licensee for this Panel to accept findings of a tribunal that, for whatever reason, did not have before it evidence from [C.P].

- d) During the RAE proceedings, Steele argued that a possible motive for [M.A.]'s complaint related to past allegations Steele had made about [N.R] concerning a previous real estate transaction. Steele later retracted this argument during the RAE proceedings. It is clear from the RAE Conduct Decision (**Exhibit 4**, paragraph 19) that Steele's accusation and later retraction negatively affected their assessment of Steele's testimony. The RAE Hearing Panel stated that Steele's 'deflection' did not have any bearing on their decision, but it obviously did, because the RAE Hearing Panel expressly stated that the allegation and retraction 'hurt the credibility of Steele's testimony'. Steele did not allege such a motive before this Hearing Panel and did not raise the allegation against [N.R]. Whatever this allegation was, this Panel makes no findings about it, and therefore does not, and could not, impugn Steele's credibility because of it. This is another example of how the issues before the RAE panels are not sufficiently identical to those before this Panel.
- e) For the above reasons, this Panel gives no weight to the findings of fact within the RAE Conduct Decision and RAE Appeal Decision.

### **Issue 2: Weight to be accorded to [C.P]'s Statement**

- 146. Steele adduced a 'Will-Say' statement from [C.P]. It was tendered by consent as **Exhibit 19**. Unfortunately, [C.P] passed away prior to this Hearing.
- 147. Section 42 of the *Act* provides procedural and evidentiary rules to be adopted during a Hearing. Section 42(a) of the *Act* provides that in respect of a hearing before it, "*the Hearing Panel shall receive evidence that is relevant to the matter being heard...*". Further, Section 42(h) of the *Act* provides that, "*the laws of evidence applicable to judicial proceedings do not apply*".
- 148. The Court of Appeal of Alberta in *Lavallee v. Alberta (Securities Commission)*, 2010 ABCA 48, considered the wording of sections 29(e) and 29(f) of the *Securities Act*, which is the same wording as sections 42(a) and 42(h) of the *Act*. The following principles from *Lavallee* are applicable to this Hearing, given the similarity of the wording to sections 42(a) and 42(h) of the *Act* (see paragraphs 15 to 18 of *Lavallee*):
  - a) Panels are to employ less formal procedures than would be required in a Court. It is open for panels to admit, for example, hearsay evidence.

- b) While panels are not bound by the rules of evidence, this does not mean a panel is obliged to ignore them entirely.
  - c) Panels retain a discretion to determine what relevant evidence it will admit. Panels have a discretion to refuse evidence. For example, evidence that it considers to be inherently flawed.
  - d) The Act must be interpreted to reflect legislative intent that relevant evidence will be generally admissible, while at the same time honouring the requirements of procedural fairness and giving regulators control over their own process.
  - e) Panels have considerable latitude to determine what evidence to admit and, if admitted, the weight to assign to that evidence. As part of that assessment, panels consider the policy and legal requirements of evidentiary rules.
  - f) This discretion is essential to the efficient and effective conduct of administrative hearings.
149. Applying the principles outlined above, the Panel agrees with the parties that the [C.P] Statement is admissible. There is no absolute restriction against admitting hearsay evidence. Under section 42(a) of the Act, the Panel must ask itself whether the evidence is relevant. The Panel finds that the [C.P] Statement is relevant. Next, the Panel should consider whether the evidence is "inherently flawed" or so unreliable that its admission would be procedurally unfair. The Registrar did not argue this, and the Panel does not find that its admission would be procedurally unfair.
150. The Panel must now consider what weight to assign to the [C.P] Statement. The Licensee's written submissions do not cover this point. However, it was clear during the oral Hearing when admission of the [C.P] Statement was discussed that the Licensee asks this Panel to give significant weight to the statement. The Registrar's written submissions submit that the [C.P] Statement should be given very little weight for the following reasons:
- a) The fallibility of memory over time. The Panel notes that the statement is dated July 15, 2022, approximately 30 months after the alleged incident.
  - b) Cross-examination of [C.P] may have yielded 'additional facts' that would have put his statement into a different context. The Registrar did not expand upon what those additional facts might be.
151. The Panel has decided to give limited weight to the [C.P] Statement. The Panel has considered the following:
- a) No evidence was adduced that challenged [C.P]'s credibility. For example, there is nothing to suggest that his statement was made under stress or coercion. There is no evidence to suggest a nefarious motive to provide the statement, other than civic duty.

- b) The hearsay evidence was direct. The statement relates observations and statements made by [C.P] himself. It is not double hearsay.
- c) Aspects of the statement are corroborated by, and consistent with, the evidence of Steele. [C.P] confirms that he was standing at Steele's table talking to [L.D] when he saw Steele walk towards him. They smiled at each other and shook hands. He saw Steele approach from approximately 20 to 30 feet.
- d) However, the statement lacks crucial detail and specificity as to the timing of [C.P]'s observations. [C.P] states that, "*I saw Greg approaching from a distance (approximately 20-30 feet), and can confirm that at no time did I see Greg interact or physically touch anyone*" (emphasis added). To the contrary, the testimonies of [M.A], [N.R], [C.S], and even Steele himself, agree that Steele did 'interact' with [M.A, either by walking with or talking to her, at least until they reached the general vicinity of their respective tables. That being the case, it is a reasonable to infer that [C.P] only noticed or saw Steele after he had walked away from [M.A]. The Panel accepts the [C.P] Statement on this basis.

## **I. THE PARTIES POSITIONS**

152. The Panel has carefully reviewed the *Phase One Submissions of the Registrar*, the *Phase One Submissions of the Licensee*, and the *Phase One Submissions of the Registrar – Rebuttal*. The arguments are paraphrased below. The omission of specific details within the summaries does not imply that a party's argument was not fully considered.

### **Summary of Registrar's Arguments**

153. The Registrar's closing argument can be summarised as follows:

- a) [M.A] was a candid and straightforward witness. She clearly and cogently described how Steele touched her back and cupped her buttock.
- b) Her account about material events did not change or waver during cross-examination.
- c) [M.A]'s account is corroborated by [N.R] and [C.S]. First, they both saw [M.A] and Steele walking very close. Second, [M.A] immediately reported the touch to them, and was distressed doing so.
- d) To the contrary, Steele's version has changed multiple times.

- i) First Version: Within the Steele Affidavit, dated only 3 weeks after the Conference, Steele claims that he didn't touch the buttocks or any area of the lower back of any attendee.
  - ii) Second Version: At the December 2020 RAE Hearing, Steele testified that he touched [M.A.]'s back briefly to avoid spilling coffee.
  - iii) Third Version: At this Hearing, Steele claimed he touched [M.A.]'s left hip, not her back.
- e) Steele's explanation for the apparent contradiction between his Affidavit and subsequent versions should be disbelieved. His evidence that he forgot the back touch when making the Affidavit lacks credibility, considering the seriousness of the allegation he was responding to and the short time that had passed. Further, Steele's claim that his broker (who was a lawyer) and his lawyer advised him not to amend the Affidavit once the mistake was realised also lacks credibility.
- f) [D.L.]'s evidence adds nothing material. At best, she was not watching Steele and [M.A.] at the material times.
154. Notably, the Registrar argues that the events beginning with the back touch, and concluding with the buttocks touch, should be seen as one interaction between [M.A.] and Steele. The Registrar argues that this 'full interaction' is a breach of Rule 42(f) of the *Real Estate Act* Rules. Alternatively, the Registrar argues that:

*"In the event that the Panel wishes to consider the first and second touches separately, we are not specifically arguing that the first touch as described by Mr. Steele or [M.A.] is in itself a breach of Rule 42(f). However, the Registrar would argue that the first touch as described by [M.A.] does make the second touch more likely as there had already been a purposeful unwanted touch on [M.A.]'s back."*

### **Summary of Licensee's Arguments**

155. Steele's closing argument can be summarised as follows:
- a) Steele categorically denies touching [M.A.]'s buttocks. He gave clear and cogent evidence of the Conference and surrounding circumstances, and of his interaction with [M.A.].
  - b) The evidence of the back touch at the coffee bar is not probative of whether Steele intentionally touched [M.A.]'s buttocks near the tables. The back touch was either a 'reactive touch' to avoid coffee being spilled, or an ushering gesture 'founded in an outdated sense of paternalism'. Neither had undertones of 'sexual dominance or entitlement'.



- c) It defies the preponderance of probabilities that Steele would deliberately touch [M.A.]’s buttocks in a room full of hundreds of people who were familiar to him.
- d) [M.A.]’s evidence was not credible or reliable because:
  - i) The events occurred over 3 years ago.
  - ii) [M.A.] had a motive to fabricate, borne out of dissatisfaction with the RAE’s previous decisions.
  - iii) The Affidavits provided by [C.S], [N.R] and [M.A] are ‘eerily consistent’, raising significant concerns about possible collusion.
  - iv) [M.A] failed to acknowledge what Steele considered to be basic facts, such as the lighting level in the room, or the number and/or notoriety of people attending. This suggests that she was tailoring or shaping her narrative to make it appear more credible.
  - v) [N.R], [C.S] and [M.A] gave inconsistent evidence on material issues, such as the request to the Conference organisers for video footage.
- e) If [M.A] was touched on the buttocks, it wasn’t by Steele. Instead, it is likely that it was inadvertent, considering the presence of numerous people returning to their seats and moving chairs in and out.

156. Before making its findings, the Panel will address one argument of the Licensee. At paragraph 101 of the *Phase One Submissions of the Licensee*, it is argued that [M.A.]’s account was materially inconsistent because, for the first time at the end of her testimony, she claimed to have seen Steele’s fingers and palm while he was touching her. The Panel finds that [M.A] did not make such an assertion. Her testimony was that she felt his palm and fingers. She did not claim to have seen them.

## **J. APPLICATION OF PRINCIPLES TO THIS CASE AND THE PANEL’S FINDINGS OF FACT**

157. As explained before, balance of probabilities is significantly different from the criminal standard of beyond a reasonable doubt. Balance of probabilities requires the Registrar to prove that its case is more likely true than not. The criminal standard is the highest standard of proof known to the law and requires the trier of fact to have no reasonable doubt. If the criminal standard were to be applied to the present case, the Panel would not find that the Registrar’s case is proven.

158. On the balance of probabilities standard, the Panel makes the following findings:

- a) Steele’s licence history was tendered as **Exhibit 11**. [M.A.]’s licence history was tendered as **Exhibit 12**. Both were licensees as of January 15, 2020.

- b) On January 15, 2020, [M.A], Steele, [C.S], [N.R] and [D.L] attended the Conference.
- c) The Conference was well-attended, drawing nearly one thousand participants, including individuals from the real estate sector, the media, and politicians from various levels of government.
- d) At the morning break, [M.A], [C.S] and [N.R] went to the coffee table. [M.A] was the last of the three to get her coffee. Steele was behind [M.A] in the coffee line. [D.L] was behind Steele.
- e) While [M.A] was adding cream to her coffee, Steele inquired about which milk option she was using and commented on his girlfriend's preference. The Panel finds that although the question was directed to [M.A], the comment was made more generally. The Panel finds no evidence that this initial interaction between [M.A] and Steele carried any sexual, sexist or other underlying implications.
- f) As Steele and [M.A] turned away from the coffee bar, Steele placed his hand on [M.A]'s lower back. It is not necessary for this Panel to determine whether this contact was an ushering gesture or one to avoid coffee spillage. The evidence on this point is inconclusive. The Panel does not find that this touching was a gesture of power or control. The Panel does not find that it carried any sexual undertones. The touching of the back did not constitute sexual, physical, or emotional abuse.
- g) However, the Panel finds that this physical contact demonstrated a willingness, reactive or otherwise, by Steele to disregard personal boundaries. It is evidence that this Panel will consider when determining whether the subsequent alleged touching of the buttocks occurred on the balance of probabilities.
- h) Steele and [M.A] left the coffee bar and conversed in close proximity to each other as they made their way back to their respective tables.
- i) [N.R] and [C.S] observed [M.A] and Steele walking very close to each other, so close that they believed they knew each other.
- j) [M.A] and Steele reached the vicinity of [M.A]'s table. As Steele turned to leave, he deliberately put his right hand on [M.A]'s left buttocks. His palm and fingers cupped her buttocks for half a second to a second. Steele then walked away.
- k) [M.A] immediately approached [N.R] and [C.S] and told them that Steele had patted her ass. [M.A] was very distressed by the incident. Both [C.S] and [N.R] observed her distress immediately following the incident, and again after the presentations had resumed.

- l) [M.A] reported the incident to the RAE a few days after the incident. The Panel notes that the timing of the RAE Complaint, and the complaint itself, is not evidence of the abuse itself. However, [M.A]'s account has remained consistent, which enhances [M.A]'s credibility and reliability.
- m) [C.P] did not see Steele interact or physically touch anyone. The Panel concludes that [C.P] only noticed or saw Steele after he had walked away from [M.A].

159. In assessing credibility and reliability, as well as assessing the arguments of the Registrar and Licensee, the Panel makes the following comments:

- a) The Panel finds that [M.A] provided credible and reliable testimony. The Panel finds no reason to doubt her truthfulness. The Panel does not find any motivation for [M.A] to fabricate her account. The Licensee argues that [M.A] was motivated by dissatisfaction with RAE's previous decisions. The Panel does not accept this argument. The RAE Hearing Panel concluded that Steele touched [M.A]'s lower back and buttocks, and imposed a sanction accordingly. While [M.A] did express some dissatisfaction during this Hearing with the fairness of the RAE proceedings, the Panel does not accept that this dissatisfaction constitutes a motive to fabricate her allegations.
- b) [M.A]'s evidence was accurate and complete. Despite the incident being over 3 years prior, [M.A] had a strong memory of details material to the case, and it was internally consistent. The Panel did not identify any material inconsistencies in her accounts provided to [C.S] and [N.R], to RAE or during these proceedings.
- c) Some aspects of [M.A]'s memory lacked specificity. For example, the number of attendees, the precise layout of the Conference Centre and the level of lighting. The Panel recognises that surrounding details are crucial in cases like these, where it is 'word against word'. However, [M.A]'s lack of precision on non-core issues did not undermine the overall credibility and reliability of her account. Furthermore, [M.A] appeared genuine when expressing difficulty recalling certain details. The Panel did not perceive such difficulty as an avoidance technique.
- d) [C.S] and [N.R] did not see the alleged touching. Nevertheless, [M.A]'s evidence concerning the remainder of the incident, both before and after, was consistent with that of [C.S], [N.R], as well as [D.L].
- e) In particular, the evidence of [C.S] and [N.R] provides important corroboration. The Panel expressly recognises that [M.A]'s immediate complaint to them is not admissible for the truth of the content of the complaint. In plain language,

because [M.A] said she was touched doesn't make it true. However, [N.R]'s and [C.S]'s observations of [M.A]'s demeanour at the time of the complaint are probative. [M.A]'s demeanour aligns with that of someone who had experienced a traumatic incident. While the Panel acknowledges that reactions to such events can vary, [M.A]'s observable reaction supports the credibility of her account.

- f) The Licensee argues that it defies the preponderance of probabilities that Steele would deliberately touch [M.A]'s buttocks in a room full of hundreds of people who were familiar to him. The Panel does not accept this argument. Human behavior is complex, and individuals may act impulsively or recklessly without regard for the presence of others, especially in environments where they feel a false sense of security or familiarity. The presence of friends and acquaintances does not inherently prevent inappropriate behavior. To the contrary, it may embolden someone who believes that their actions will not be scrutinized or reported. Therefore, the mere fact that others, even hundreds of others, were present does not negate the probability of the touching having occurred.
- g) Although not explicitly stated, a recurring theme in the cross-examination conducted by Steele's counsel, and in Steele's written submissions, is that the room was well-lit. The Panel, mindful of addressing all arguments, interprets this as suggesting that well-lit conditions make it improbable that Steele would intentionally touch [M.A]'s buttocks. The Panel accepts that the lighting conditions were good. However, good lighting does not necessarily negate the possibility of the alleged events, as such incidents can and do happen regardless of visibility.
- h) The Licensee argues that the affidavits of [C.S], [N.R], and [M.A] are suspicious due to them being "eerily consistent". This Panel finds no evidence of collusion. Such consistency can often indicate accurate and honest testimony rather than collusion. When witnesses independently observe and recall the same events, it is natural for their accounts to align, especially if the events were significant or memorable. Without additional evidence of collusion, their consistent testimonies should be viewed as a strength rather than a cause for suspicion.
- i) The Licensee argues that if [M.A] was touched, it was inadvertent. The Panel does not accept this argument. The Panel accepts the evidence of [M.A]. She felt a cupping of her buttocks and felt his palm and fingers. The Panel finds it was a purposeful touch by Steele.
- j) Steele gave detailed testimony regarding the events of January 15, 2020. To the Panel, it appeared that Steele genuinely believed his version of the events. However, as counsel for the Licensee noted, a witness may convince

themselves of the accuracy of their testimony. In other words, personal conviction does not always equate to objective truth.

- k) The Registrar submitted that Steele provided three different versions, as outlined in paragraph 153(d) above. However, the Panel finds that Steele's account at this hearing did not differ materially from his account at the RAE Hearing. Specifically, the Panel places no significance on the distinction between Steele's description of touching [M.A.]'s back versus her hip.
- l) However, the Panel concludes that there is a significant inconsistency between the Steele Affidavit and his testimony in this Hearing. In his Affidavit, Steele states unequivocally that, *"At no time, however, did I touch the buttocks or any area of the lower back of any attendee"*. At the RAE Hearing and at this Hearing, he revised this account, acknowledging that he had touched [M.A.]'s back at the coffee bar. At this Hearing, Steele explained that the Affidavit should have stated that he never 'inappropriately touched' [M.A.]. He realised the 'mistake' in the Affidavit just before the RAE Hearing but was counselled against changing it by his broker and his lawyer. In summary, Steele attributes the inconsistency to (1) not recalling the touch of the back when he wrote the Affidavit, (2) to inexperience in providing an Affidavit, and (3) to legal advice.
- m) The Panel finds that this explanation lacks cogency and fails to explain the material change in Steele's account. It was much more than a 'simple mistake' or 'clerical error'. The integrity of an Affidavit relies on its accuracy, and omitting such a crucial detail raises questions about the completeness of his initial statement. The importance of the Affidavit must have been known to Steele, given his 34 years of broad experience in the real estate sector, and given the purpose of the Affidavit was clearly explained in the RAE letter that enclosed the complaint (see **Exhibit 16**). Additionally, the change in Steele's account calls into question the accuracy of his memory. While memory lapses can occur, especially over time, this inconsistency involves a significant aspect of the allegation, and adversely affects the overall credibility and reliability of Steele's testimony.
- n) Steele has raised concerns regarding the scope of the investigations conducted by [M.A], RAE and those leading to these proceedings, including the absence of video footage and follow-up on certain corroborating evidence. While these areas were highlighted as potential avenues for further inquiry, it is important to recognize that investigations must be conducted within practical constraints and based on available resources and information. The Panel does not make a finding that the investigation was thorough, nor that it was wanting. The Panel must focus on the evidence presented before it, rather than speculating on what additional information might have been uncovered through further investigation.

- o) Regarding [D.L.]’s testimony, she provided valuable insights into the events leading up to and including the interaction at the coffee bar. However, [D.L.] did not observe any further interactions between Steele and [M.A.] after they had obtained their coffee, as she moved away from the coffee table to take photographs. Consequently, her evidence offers useful context but does not directly corroborate or refute the specific allegations of abuse.
160. As explained above in paragraph 22, to prove a contravention of Rule 42(f), the Registrar must prove that on January 15, 2020:
- Element 1: Steele was a licensee;  
Element 2: [M.A.] was a licensee;  
Element 3: Steele intentionally touched the buttocks of [M.A.]; and  
Element 4: Such touching constituted sexual, physical, or emotional abuse.
161. Elements 1 and 2 are uncontested and are proven on the balance of probabilities.
162. Addressing Element 3, based on the above findings of fact, the Panel finds on the balance of probabilities that Steele intentionally put his right hand on [M.A.]’s left buttocks. Element 3 is proven.
163. Regarding Element 4, the Panel finds that the deliberate touching of [M.A.]’s buttocks without her consent constitutes physical and sexual abuse under s.42(f) of the *Real Estate Act* Rules.

## **K. CONCLUSION**

164. The Panel recognizes that the delivery of this decision has taken longer than anticipated. This delay was due in part to the complexity and sensitivity of the issues involved, which required thorough consideration and careful deliberation, as well as certain personal circumstances of the Chair. The Chair appreciates the patience and understanding of all parties as the Panel has worked to ensure that a fair and just decision is rendered.
165. The Panel’s decision is as follows:

On January 15, 2020, Greg Alan Steele, a Licensee, physically and sexually abused [M.A.], also a Licensee, contrary to s.42(f) of the *Real Estate Act* Rules by touching her buttocks without her consent. This conduct is deserving of sanction.

## L. REQUEST FOR SUBMISSIONS ON SANCTION AND COSTS

166. As a result of the Panel's findings, this matter moves to Phase Two, being the sanctioning phase of the hearing process.
167. The Panel recommends the following procedure and invites the parties to suggest any modifications:
- a. The Registrar is asked to supply written submissions to the Hearings Administrator within 21 days of receiving this decision. The Hearings Administrator will supply those written submissions to Counsel for the Licensee immediately on receipt.
  - b. Steele is asked to supply written submissions to the Hearings Administrator within 21 days of receiving the Registrar's written submissions. The Hearings Administrator will supply those written submissions to Counsel for the Registrar immediately on receipt.
  - c. The Registrar may, at its discretion, submit a rebuttal within 7 days of receiving Steele's written submissions.
  - d. In addition to the above, should either party want a formal sanction hearing before the Panel they must advise the Hearings Administrator within 5 days of the Registrar's rebuttal submissions being served on Steele. The Panel will then decide whether a formal hearing on sanction will be held.
168. The Panel would like the parties to specifically address the following points:
- Each of the factors set out in *Jaswal v Newfoundland* (Medical Board).
  - Based on the materials presented to the Panel, it is agreed that the RAE Hearing Panel imposed a \$4,000 fine for breach of Article 21 of The REALTORS® Code. However, it is important to note that the RAE is a voluntary organisation, and not a regulatory body. In contrast, RECA is an independent governing authority with the mandate to regulate and enforce standards within the real estate profession. As a regulator, RECA has a broader and more serious range of available sanctions under the *Act*. The Panel requests that the parties address how Steele's prior sanction by RAE should be considered in the context of these sanction proceedings.
169. The Panel extends its gratitude to both counsel for their very fair, helpful and professional conduct of this case. The Chair of the Panel extends his personal

gratitude to all those involved for their patience as he navigated a challenging year.

170. This Decision is dated this 14<sup>th</sup> day of August, 2024.

"Signature"

[C.W], Hearing Panel Chair



THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF SECTIONS 39(1)(b), 41 and 43 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 GREG ALAN STEELE,  
a Real Estate Associate, registered with Excellence Real Estate Edmonton Ltd.  
operating as REMAX Excellence

Hearing Panel Members: [C.W], Chair (Public Member)  
[S.D], Panel Member (Licensee Member)  
[M.W], Panel Member (Licensee Member)

Appearances: Andrew Bone, for the Registrar of the Real Estate  
Council of Alberta

Darin Sprake, Counsel for the Licensee  
Greg Alan Steele, Licensee

Hearing Date(s): Phase 1: March 15 and 16, 2023 and April 6, 2023, all virtual  
hearings  
Phase 2: By Written Submissions

DECISION OF HEARING PANEL – PHASE TWO – SANCTION AND COSTS

A. INTRODUCTION

1. On August 14, 2024, this Panel found that:

On January 15, 2020, Greg Alan Steele, a Licensee, physically and sexually abused [M.A], also a Licensee, contrary to s.42(f) of the *Real Estate Act* Rules by touching her buttocks without her consent.

The Panel concluded that this conduct was deserving of sanction (the "Conduct Decision").

2. This is the Panel's decision on Phase 2 of the hearing process. It will decide the appropriate sanction to be imposed on Mr. Steele in response to that conduct (the "Sanction Hearing").

3. The Sanction Hearing proceeded through written submissions. Neither party requested an oral hearing.
4. The Panel adopts the same definitions as set out in the Conduct Decision.
5. For the reasons that follow, the Panel:
  - a. Imposes a two (2) month suspension of Mr. Steele's licence pursuant to Section 43(1)(a) of the *Real Estate Act*; and
  - b. Imposes no costs on Mr. Steele.

## **B. PANEL'S AUTHORITY ON SANCTION & COSTS**

6. The Panel's authority to impose a sanction and/or costs in respect of conduct found deserving of sanction is set out in Section 43 of the *Real Estate Act*.

### ***Decision of Hearing Panel***

**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.*

### C. THE PANEL'S FINDINGS OF FACT

7. The Panel's findings of fact are set out at paragraph 158 of the Conduct Decision. For ease of reference, a summary is provided below. Any omission is not intended to diminish the importance of any finding. The Panel found that:

- n) Both [M.A] and Steele were licensees as of January 15, 2020.
- o) On January 15, 2020, [M.A] and Steele attended the Conference. At the morning break, [M.A] and Steele were at the coffee table. While [M.A] was adding cream to her coffee, Steele made a comment about milk options [M.A] was using and commented on his girlfriend's preference. The Panel found no evidence that this initial interaction between [M.A] and Steele carried any sexual, sexist or other underlying implications.
- p) As Steele and [M.A] turned away from the coffee bar, Steele placed his hand on [M.A]'s lower back. The Panel found that this touching of the back did not constitute sexual, physical, or emotional abuse. However, the Panel found that this physical contact demonstrated a willingness, reactive or otherwise, by Steele to disregard personal boundaries.
- q) Steele and [M.A] left the coffee bar and conversed in close proximity to each other as they made their way back to their respective tables.
- r) Eventually, [M.A] and Steele reached the vicinity of [M.A]'s table. As Steele turned to leave, he deliberately put his right hand on [M.A]'s left buttocks. His palm and fingers cupped her buttocks for half a second to a second. Steele then walked away.

### D. FACTORS RELEVANT TO THE DETERMINATION OF SANCTION

- 8. The Panel must consider the individual circumstances of the conduct, the circumstances of Steele, and supporting case law when deciding the appropriate sanction.
- 9. *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SC) at [35] ("Jaswal") lists factors relevant to a decision about penalty.
  - a. The **nature and gravity** of the proven allegation.
  - b. The **degree** to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct.
  - c. The **age and experience** of the licensee.

- d. The **previous character** of the licensee and the presence or absence of prior complaints or convictions.
- e. The **number of times** the offence was proven to have occurred.
- f. The role of the licensee in **acknowledging what occurred**.
- g. Whether the licensee had **already suffered serious financial or other penalties** because of the allegations having been made.
- h. **Impact** of the incident **on the victim**.
- i. **Mitigating** circumstances.
- j. **Aggravating** circumstances.
- k. The need to promote **specific and general deterrence** and thereby protect the public and ensure the safe and proper conduct of the profession.
- l. The need to **maintain the public's confidence** in the integrity of the profession.
- m. The **range of sentence** in other similar cases.

## **E. THE PARTIES' POSITIONS**

10. The Panel has carefully reviewed the *Registrar's Submission on Sanction and Costs*, the *Licensee's Written Submissions on Sanction and Costs*, and the *Registrar's Rebuttal Submission on Sanction and Costs*. The arguments are paraphrased below. The omission of specific details within the summaries does not imply that a party's argument was not fully considered.

### **Summary of Registrar's Arguments**

11. The Registrar proposes a **five (5) month suspension**, pursuant to Section 43(1)(a).
12. Steele's abusive conduct was entirely unacceptable. Its severity clearly falls outside the bounds of acceptable behaviour. It has caused [M.A] significant emotional distress, has coloured the way she now interacts with colleagues, and has made her question her place in the real estate industry.
13. The need for general deterrence is high. The public is entitled to have confidence that licensees will not engage in egregious behaviour that violates the bodily integrity of others, and licensees must be deterred from such conduct. RECA must demonstrate to the public that it will prosecute abusive conduct, treat such matters with the seriousness they deserve, and convey that these issues are of genuine and significant concern by imposing an appropriately severe sanction.
14. The need for specific deterrence is high. The failure to take accountability or to express remorse increases the risk of recidivism. Steele is 61 years old, has approximately 36 years of experience, and should have known better.

15. The RAE Hearing Panel imposed a \$4,000 fine. This is a mitigating factor. Absent this prior sanction, the Registrar would have sought a six-month licence suspension.
16. In its initial submissions, the Registrar asserted that Steele's failure to accept responsibility for his conduct was an aggravating factor. In its rebuttal submissions, the Registrar appropriately withdrew that position. It is well-established that individuals are entitled to require the regulator to prove its case without adverse inference being drawn from the exercise of that right. Accordingly, the Panel will not consider Steele's failure to accept responsibility as an aggravating factor.
17. Steele's misconduct history includes a \$2,000 administrative penalty in 2003 for trading in the name of a brokerage other than the one with which he was registered, and for failing to provide written disclosure of a referral fee. In 2021, he received a Letter of Reprimand for leaving a buyer and property inspector at a residence without the seller's permission. The Registrar submits this history is 'slightly' aggravating.
18. There are no RECA precedents. However, the Registrar provided five (5) decisions from other regulatory bodies, each of which the Panel has reviewed.

#### **Summary of Licensee's Arguments**

19. The Licensee proposes a **two (2) month suspension**, pursuant to Section 43(1)(a).
20. Such a suspension will serve the goals of general deterrence, reflect society's condemnation of the conduct, demonstrate RECA's denunciation of such behaviour, and maintain public confidence in the profession's integrity.
21. Steele's age and lengthy experience are neutral factors. No other allegations of this nature have arisen over the course of his career.
22. The impact on [M.A] is aggravating as described by the Registrar.
23. The prior misconduct described in paragraph 17 above should be considered a neutral factor, as it is wholly dissimilar in nature to the present conduct.
24. Steele has already been specifically deterred through the RAE proceedings and the penalty imposed. Further specific deterrence can be achieved through the imposition of a two-month suspension.
25. The failure to acknowledge or admit the conduct is not an aggravating factor. The Panel agrees and has addressed this issue at paragraph 16 above.

26. Steele has suffered significant personal, financial, and professional consequences. These arise from the burden of facing proceedings in multiple forums, the adverse findings made against him, and the uncertainty pending the final resolution of this matter.
27. The Licensee provided three decisions from other regulatory bodies, each of which the Panel has reviewed.

#### **F. THE PANEL'S DECISION ON SANCTION**

28. The Panel has carefully considered the submissions of counsel for the Registrar and counsel for the Licensee. It has applied the *Jaswal* factors. It is the Panel's decision to impose a two (2) month licence suspension. Below is the Panel's reasoning.
29. Steele's intentional and non-consensual touching was serious. Such misconduct represents a significant breach of the professional standards of behaviour expected of licensees. His actions were wholly unacceptable and fell substantially outside the bounds of permitted professional conduct.
30. The right to personal autonomy and bodily integrity is fundamental. It is a cornerstone of individual dignity and respect. Non-consensual physical contact, particularly in a professional setting, is a profound violation of that right. It disregards the basic entitlement of every person to control how and when their body is touched. Such conduct not only harms the individual directly affected but also undermines public trust and confidence in the profession.
31. Steele is 61 years old and has approximately 36 years of real estate experience. Without question, he should have fully understood that his actions were inappropriate. The Panel finds his age and experience to be aggravating factors in this regard.
32. Steele's prior disciplinary record consists of unrelated and relatively minor infractions. The Panel considers his previous record to be a neutral factor.
33. As explained above, Steele's failure to acknowledge or admit responsibility for the conduct is not treated as an aggravating factor.
34. The Panel accepts that Steele has experienced personal, financial, and professional consequences because of the multiple proceedings he has faced, the findings made against him, and the prolonged uncertainty pending the resolution of this matter. Although, these consequences are largely the natural and foreseeable result of his own actions.

35. However, the Panel accepts that where a licensee has been penalized in another forum for the same underlying conduct, even if by a different and independent disciplinary body, this may properly be considered a mitigating factor. It would be unfair and disproportionate to disregard the fact that sanctions have already been imposed in response to the same misconduct. While each disciplinary body must maintain its own standards and protective objectives, the cumulative impact of multiple penalties must be considered when determining an appropriate sanction to avoid undue duplication or unfairness.
36. Turning to the impact of the incident, the Panel finds that [M.A] suffered significant emotional harm. She was left feeling violated and humiliated. She has expressed ongoing anxiety and a loss of confidence in her professional interactions, effects that continue to this day. The Panel considers the impact on [M.A] to be an aggravating factor.
37. The Panel has considered the range of sanctions imposed in the cases provided by counsel. While precedents are useful to an extent, it is impossible to find one that is perfectly analogous. The Registrar cited precedents involving sustained harassment, repeated misconduct, previous histories of related misconduct, or violent actions (*Parente, Faul, Grabowski, Tye, and Davis*). The Panel finds those precedents distinguishable and does not find that they support a suspension of five months. The precedents cited by Steele were closer in nature to the matter before the Panel, although some involved more serious circumstances in certain respects and less serious circumstances in others.
38. The Panel does not find it necessary to determine which, if any, of the cited authorities is most analogous to the present matter. The Panel has reviewed the decisions provided, considered the principles affirmed therein, and fashioned the sanction to reflect the unique circumstances of this misconduct and this Licensee.
39. In assessing sanctions, the Panel is mindful of the importance of promoting both general and specific deterrence. As stated in *Law Society of Upper Canada v. Lambert*, 2014 ONLSTH 158 at para. 17, a profession's "most valuable asset is its collective reputation." The public is entitled to expect that a self-regulated profession will take seriously any conduct that undermines the dignity, safety, or trust required of its members.
40. The Panel notes the passage of time between the misconduct and the imposition of sanction and has taken this into account. The procedural history of this matter is outlined at paragraphs 14 to 20 of the Conduct Decision. Further, we have considered the adjudicative delay arising from matters unrelated to either the Licensee or the Registrar. The Panel considers this in light of the recent decision of the Alberta Court of Appeal in *Kherani v. Alberta Dental Association*, 2025 ABCA 2 (see paragraphs 46 to 52), and regards it as an additional mitigating factor.

41. In all the circumstances, the Panel is satisfied that a two (2) month suspension appropriately addresses the seriousness of the misconduct, the need for specific and general deterrence, and the need to maintain public confidence in the integrity of the profession.

#### **G. THE PANEL'S DECISION ON COSTS**

42. Both parties rely on the recent case of *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 ("Jinnah"), and accept that, under this Court of Appeal authority, there is a presumption that no costs should be awarded following discipline proceedings unless compelling reasons exist to do so.

43. The parties agree that a compelling reason to award costs may include the following:

- where the professional has engaged in serious unprofessional conduct;
- where the professional is a serial offender, having engaged in unprofessional conduct on two or more occasions;
- where the professional has failed to cooperate with investigators, causing unnecessary expenditure of resources to ascertain the facts related to the complaint; or
- where the professional engaged in hearing misconduct that prolonged the proceedings or increased costs unjustifiably.

44. The Registrar relies on the seriousness of the conduct to justify a departure from the presumption against costs. At paragraphs [140]-[141] of *Jinnah*, the Alberta Court of Appeal stated:

*"A compelling reason exists in four different scenarios. While we refer to dentists in this discussion, our observations apply to all professionals regulated by the Health Professions Act.*

*"First, a dentist who engages in serious unprofessional conduct — for example, a sexual assault on a patient, a fraud perpetrated on an insurer, the performance of a dental procedure while suspended or the performance of a dental procedure in a manner that is a marked departure from the ordinary standard of care — can justifiably be ordered to indemnify the College for a substantial portion or all of its expenses in prosecuting a complaint. A dentist guilty of breaches of this magnitude must have known that such behavior is completely unacceptable and constitutes unprofessional conduct. It is not unfair or unprincipled to require a dentist who knowingly commits serious unprofessional conduct to pay a substantial portion or all the costs the regulator incurs in prosecuting a complaint."*



45. The Registrar relies on this passage to assert that Steele's misconduct — being sexual in nature — constitutes "serious unprofessional conduct" and thus amounts to a compelling reason to impose a significant portion of the costs upon him. The Registrar does not allege that Steele is a serial offender, failed to co-operate nor engaged in hearing misconduct.
46. The Panel does not accept that submission. While non-consensual touching of the buttocks is unquestionably serious and represents a significant breach of professional standards, *Jinnah* does not stand for the proposition that *any* conduct characterized as "serious" automatically justifies a costs award. The examples cited by the Alberta Court of Appeal in *Jinnah* — including a case involving sexual intercourse between a dentist and a patient - involved much more serious misconduct, greater violations of trust, and different professional dynamics. Moreover, it is relevant that the Court in *Jinnah* was addressing professionals regulated under the *Health Professions Act*, where the nature of the trust relationship with patients is particularly heightened and any breach of that trust is correspondingly more serious.
47. The Panel finds that the conduct in this case is not of such seriousness as to constitute a compelling reason to depart from the general presumption against ordering costs. Accordingly, no cost order will be made against Steele in this matter.

## H. CONCLUSION

48. The Panel makes the following Order:

**Mr. Greg Alan Steele's licence is suspended for a period of two (2) months, pursuant to Section 43(1)(a) of the *Real Estate Act*.**

**The suspension shall commence within one month of April 30, 2025, on a date to be arranged between the Licensee and the Registrar, but in any event no later than June 1, 2025.**

49. There shall be no order as to costs.
50. The Panel expresses its appreciation to both counsel for their professionalism, fairness, and valuable assistance in the conduct of this matter.
51. This Decision is dated this 30<sup>th</sup> day of April 2025.

"Signature"  
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[C.W], Hearing Panel Chair