

IN THE MATTER OF
THE REAL ESTATE ACT
AND
IN THE MATTER OF ELAINE ELDER

DECISION OF THE DEPUTY SUPERINTENDENT OF REAL ESTATE

Before: Ian McIntosh, Deputy Superintendent of Real Estate

Appearances: Elaine Elder
Aaron Friedman, Counsel representing Elaine Elder
Aaron Tetu, Legal and Compliance Manager, on behalf of the
Saskatchewan Real Estate Commission

Hearing Date: February 19, 2013

Decision Date: November 21, 2013

DECISION OF THE DEPUTY SUPERINTENDENT OF REAL ESTATE

This decision addresses the appeal by Elaine Elder pursuant to section 43 of *The Real Estate Act* (the Act) of the decision of the Saskatchewan Real Estate Commission (the "Commission") in the Matter of Elaine Elder, dated October 19, 2012.

Elaine Elder was registered with the Commission, at all relevant times, as a salesperson under the provisions of the Act, in the Province of Saskatchewan.

I. Facts

Elaine Elder was charged with and plead guilty to a charge of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act* having breached the following:

- Commission Bylaw 701, by making or permitting to be made a statement, record, report, notice or other document required by this Act, the regulations or the bylaws that contained an untrue statement of a material fact and/or omitted to state a material fact.
- Commission Bylaw 702, by failing to protect and promote the interests of her client and failing to deal fairly with all other parties to the transaction.
- Commission Bylaw 714, by failing to take reasonable steps to discover facts pertaining to every property for which she has accepted an agency agreement that a prudent registrant would take in order to fulfill the obligation to avoid error, misrepresentation or concealment of pertinent facts.
- Commission Bylaw 726, by making or permitting an advertisement to the public as an inducement to trade in real estate which was false, inaccurate, reasonably capable of misleading the recipient or intended recipient, and was harmful to the best interests of the public.

The following is a summary of the facts admitted to by Elaine Elder in her Statement of Facts and Admissions, provided in the record, and accepted at appeal:

- 1) Ms. Elder has been continuously registered as a salesperson under the provisions of *The Real Estate Brokers Act, 1987* and *The Real Estate Act* in the Province of Saskatchewan with the Commission since April 11, 1984.
- 2) Ms. Elder is presently registered under the provisions of *The Real Estate Act* as a salesperson with Maunula Holdings Ltd. o/a Re/Max of the Battlefords.

- 3) On or about August 8, 2007, Ms. Elder entered into an MLS Exclusive Seller's Brokerage Contract with Cindy Blanchette for the listing of Part of SW 4-44-22 in Wilbert, Saskatchewan (the Property). The list price for the Property was \$149,900.00.
- 4) As part of the listing, Ms. Elder stated that the water supply to the Property was "from own well approx. 50' deep" and this information became part of the MLS listing 251053. Ms. Elder represented that the Property lot was approximately two acres by two acres, rectangular in shape, and had a gravel driveway.
- 5) Ms. Elder did not take any steps to verify the information set out in the listing contract as she had listed and sold the Property in 2002. In 2002, she listed the Property for \$24,900.00 on behalf of Gale Stonehouse. Cindy Blanchette purchased the Property from Gale Stonehouse for \$22,000.00 with a closing date of February 15, 2003.
- 6) As part of the transaction in 2003, it was stated in the Residential Contract of Purchase and Sale that "surveyor certificate to be included: This writing was crossed out and initialed "EE" followed by the statement, "sellers will assist purchaser in finding the property boundaries (NO MONETARY VALUE)". In the Notice to Remove Conditions dated January 31, 2003, it is stated that the "Property boundaries will be determined in spring 2003."
- 7) On or about May 2003, Ms. Elder attended the property to attempt to locate the corner pin on the Property with a metal detector, and was unable to do so. She then used some wooden stakes to mark one square acre on the Property. It was not intended that these markings were the boundaries of the Property.
- 8) In listing the Property in August 2007, Ms. Elder relied on information she had in May 2003, that the property was a rectangular shape, including the house, the garage, the water well that serviced the Property and the access road to the Property. In doing so, she relied on her own information and did not take steps to verify the Property Boundaries.
- 9) On October 26, 2007, she agreed with Cindy Blanchette to withdraw the listing agreement for the Property made August 8, 2007.
- 10) After August 8, 2007, Cindy Blanchette negotiated a sale of the Property with Russell Prescott Holmes for \$80,000. The parties obtained legal services to formalize their agreement and it was decided that a Surveyor's Certificate was required.
- 11) In or about March 2009, Cindy Blanchette obtained the services of a qualified surveyor to survey the Property. The survey disclosed that the water well servicing the property was wholly situated on another parcel of land owned by a third party; the access road that connects the Property to the municipal roadway

was partially situated on another parcel of land owned by a third party thereby eliminating access to the Property; and a portion of the yard site thought to be part of the Property was situated on another parcel of land owned by a third party.

- 12) Russell Holmes then agreed to pay \$60,000.00 for the Property if an easement could be arranged for the purpose of accessing the well and use of the driveway. No agreement for an easement could be reached and Russell Prescott Holmes ended negotiations for the Property.
- 13) Cindy Blanchette moved from the Property as the owner of the neighbouring and adjacent property took the position that it was trespassing to access the Property.
- 14) Between purchasing the Property in 2003 for \$22,000.00; listing in August 2007 for \$149,900.00; and then agreeing to sell for \$80,000 in November 2007, Cindy Blanchette made the following improvements to the Property:
 - (i) new soffits and fascia in 2006;
 - (ii) installed a reverse osmosis system and water softener in 2006;
 - (iii) new paint in 2006;
 - (iv) new shingles in 2007;
 - (v) installed patio blocks in 2007; and
 - (vi) new septic pump in 2007.
- 15) The Property has essentially been abandoned since 2008 while a lawsuit between the parties continues.

II. The Commission's Decision

A Mitigation Hearing with the Commission took place on August 27, 2012. The Commission's Hearing Committee (the Committee) accepted the Statement of Facts and Admissions wherein Elaine Elder acknowledged the violations and the Committee heard representations on sanctions.

On October 19, 2012, the Committee rendered its Decision (the "Decision") wherein it stated:

In accordance with *The Real Estate Act*, Bylaws and Regulations, the Committee made the following orders:

Count 1

- a) Elaine Elder receive an order of reprimand for the violation of Bylaw 701;
- b) Elaine Elder, prior to December 31, 2012, pay to the Saskatchewan Real Estate Commission, a \$5,000.00 fine for the said violation of the Act, and

c) Elaine Elder's registration shall be suspended if she fails to pay any portion of the fine within the said period of time.

Count 2

d) Elaine Elder receive an order of reprimand for the violation of Bylaw 702;

e) Elaine Elder, prior to December 31, 2012, pay to the Saskatchewan Real Estate Commission, a \$3,000.00 fine for the violation of the Act; and

f) Elaine Elder's registration shall be suspended if she fails to pay any portion of the fine within the said period of time.

Count 3

g) Elaine Elder receive an order of reprimand for the violation of Bylaw 714;

h) Elaine Elder, prior to December 31, 2012, pay to the Saskatchewan Real Estate Commission, a \$2,000.00 fine for the said violation of the Act; and

i) Elaine Elder's registration shall be suspended if she fails to pay any portion of the fine within the said period of time.

Count 4

j) Elaine Elder receive an order of reprimand for the violation of Bylaw 726;

k) Elaine Elder, prior to December 31, 2012, pay to the Saskatchewan Real Estate Commission, a \$5,000.00 fine for the said violation of the Act; and

l) Elaine Elder's registration shall be suspended if she fails to pay any portion of the fine within the said period of time.

Costs

m) Elaine Elder, prior to December 31, 2012 pay to the Saskatchewan Real Estate Commission costs in the amount of \$1,404.00. Elaine Elder's registration shall be suspended if she fails to pay any portion of the costs within the said period of time.

The Committee's stated rationale for these penalties is as follows:

"The Committee, in considering the disciplinary action, considered Elaine Elder's lack of previous sanction history and length of time she had been in the real estate industry.

The Committee was struck by the severity of the consequences in this action and the significant breach of all Bylaws. While dealing with acreage properties may raise more issues than normal residential real estate, it was incumbent upon the Registrants to properly do their job. It is not sufficient to make representations

with regard to factual matters without ensuring that the facts are correct. If the Registrant is not aware of particular facts such as the exact number of acres, it must be made clear that there was no representation as to the size of the acreage, the shape of the property or any other unconfirmed matters. The Committee is not accepting that it is simply okay to make statements based on previous representations without independent verification of the facts. Each time registrants enter into a new listing, they are acting, and must act, in the interests of all parties to the transaction. The failure to determine the facts and to make unwarranted representations is very apparent in this matter. Ms. Elder should never have stated that the property was rectangular when indeed it was actually somewhat triangular and many difficulties arose because of lack of proper investigation. The fact that the adjoining neighbour is not cooperative in helping to resolve these matters does not mitigate or remove the issue of Ms. Elder being required to properly determine the facts before they are presented.

There are few cases which have come before the Real Estate Commission for mitigation or otherwise, which have more serious ultimate consequences than those in this particular situation. It appears that the value of the Property has been severely impacted by these circumstances. Transactions over the last number of years have led to serious issues between the parties and for the Property to have been abandoned for approximately four years. The sanctions recommended by the Investigation Committee Representative are not incongruent with the seriousness of the breaches by Ms. Elder. The Committee is prepared to accept that Ms. Elder did not act intentionally in regard to the situation; however, the failure of Ms. Elder to properly comply with her legislative and personal obligations to act in the best interests of the parties has created a situation of extreme difficulty for the parties, especially for the Seller. Again, it should be stressed that the purpose of the sanction is both to ensure that Ms. Elder understands the consequences of her failure to act appropriately and to make sure all registrants know that they must verify these facts before they are set out in a listing agreement, advertisement, or in any other fashion presented to the public. The public is entitled to rely on the professionalism and actions of registrants to disclose what they know; not for registrants to act on assumptions and unverified information.

With regard to the issue of costs, the Committee is of the opinion that while in some circumstances full costs are appropriate, when there has been some cooperation, and it appears there has been in this matter by Ms. Elder, it has saved the Commission some costs compared to the holding of a formal hearing or further extending the investigation. Therefore, in the circumstances one-half costs is appropriate and have been awarded.

The Hearing Committee again stresses the importance to all Registrants to ensure that they properly investigate and determine the facts surrounding the property with which they are dealing. If there are facts of which they are not sure, they cannot make representations until they have confirmed them or advise all the parties that they are unclear, so the parties themselves can determine the risk on

their own. When property is said to be of a certain dimension and have certain characteristics when these have not been determined, the consequences for their failure must therefore fall back on the Registrant.”

III. Appeal

Elaine Elder’s appeal hearing took place on February 19, 2013 at the office of the Superintendent of Real Estate. Ms. Elder was represented by counsel, Mr. Aaron Friedman. Mr. Aaron Tetu, Legal and Compliance Manager represented the Commission.

Ms. Elder appealed the decision of the Committee on the following grounds:

- 1) The Saskatchewan Real Estate Commission erred in determining the appropriate time limitation for conducting an investigation pursuant to Section 810 of the Saskatchewan Real Estate Commission Bylaws and in fact the Commission was time barred from conducting some or all of its investigation into the conduct of the Registrant;
- 2) The Saskatchewan Real Estate Commission erred in determining the appropriate time limitation for allowing the commencement of disciplinary proceedings pursuant to *The Real Estate Act* and in fact was time barred from commencing disciplinary proceedings against the Registrant;
- 3) In the event the Saskatchewan Real Estate Commission was not time barred from conducting its investigation and/or commencing disciplinary action, which is denied, then the Commission erred in hearing and sentencing the registrant with respect to 4 counts of misconduct all relating to the very same cause or matter and in fact should have only proceeded and/or sentenced the registrant with respect to one count (see: Commission File #2010-35, Shahzad Admed);
- 4) The Saskatchewan Real Estate Commission erred in determining the amount of the appropriate fines levied against the Registrant for the admitted misconduct (see: Commission File #2010-35, Shahzad Admed);
- 5) Such other grounds as counsel may advise.

I understand the reference to the Saskatchewan Real Estate Commission under grounds 3 and 4 of Ms. Elder’s Notice of Appeal to be a reference to the Hearing Committee.

The Commission objected to Ms. Elder’s appeal on all grounds, and requested costs of the appeal.

IV. Issues

- a. What is the applicable standard of review?
- b. Was the Saskatchewan Real Estate Commission time barred from conducting an investigation into the conduct of the Registrant pursuant to Bylaw 810?
- c. Was the Saskatchewan Real Estate Commission time barred from commencing disciplinary proceedings against the Registrant pursuant to Section 89 of the Act?
- d. Did the Committee err in hearing and sentencing the registrant with respect to four counts of misconduct all relating to the very same cause or matter?
- e. Was the Committee's decision on quantum reasonable?

V. Analysis

a. What is the applicable standard of review?

The Supreme Court of Canada has set out the judicial review process in *Dunsmuir v. New Brunswick*, 2008 SCC 9 (hereinafter *Dunsmuir*), as follows:

In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review. (para 62)

In previous decisions the Deputy Superintendent of Real Estate determined that the appropriate degree of deference to be accorded to the Committee when reviewing the reasoning and quantum associated with a penalty is met by the reasonableness standard (see: *In the Matter of Kevin Wouters* (08-54A), *In the Matter of Realty Executives* (08-56A), *In the Matter of Christian Didur* (08-56)). I find that the appropriate degree of deference with regard to reviewing matters of fact, such as quantum, to be reasonableness.

Additionally, there are the issues in this case that deal with the interpretation of the Committee's home statute, *The Real Estate Act*. In *A.T.A. v. Alberta (Information and Privacy Commissioner)*, 2011 SCC 61, the court held that the standard of review applicable to a tribunal interpreting its own statute is that of reasonableness. I find that in this matter, as in the precedents cited, that the standard of review of issues regarding the interpretation of the Committee's home statute to be reasonableness.

This case also deals with questions of law that are not unique to the Committee's home statute. As per *Dunsmuir*, cited above, the standard of review is correctness where the question at issue is one of general law that is both of central importance to the legal

system as a whole and outside the adjudicator's specialized area of expertise (para 60). In particular, the standard of review is correctness when the question of law at issue is the jurisdiction of the tribunal, as per *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, [2004] 1 S.C.R. 485 (S.C.C.), *PEI Music & Amusement Operations Assn. Inc. v. Prince Edward Island*, 2011 CarswellPEI 48 (*PEI Music & Amusement*), and *Malanchuk v. Fairley*, 2012 YKSC 20 (*Malanchuk*).

b. Was the Commission time barred from conducting an investigation into the conduct of the Registrant pursuant to Bylaw 810?

Bylaw 810 of the Saskatchewan Real Estate Commission reads as follows:

Limitation on Investigation

810 – Subject to section 34.1 of the Act, if a complaint is not received within six years of the date of the alleged contravention; the Commission will not proceed with an investigation involving a possible contravention of the Act, its regulations or the Commission Bylaws.

Elder argued before the Committee that Bylaw 810 bars the Commission from investigating matters that occur six or more years from the date of the alleged contravention. The Committee rejected Elder's argument stating that:

“Bylaw 810 indicates that if the complaint is not received within six years of the contravention, an investigation may not take place. It is the finding of the Committee that the knowledge of the issue did not come to the attention of the complainant until after the Surveyor's Certificate was prepared in or about March of 2009 and that an investigation was commenced pursuant to Section 810. It was the position of the Committee that *The Real Estate Act* limitation period of two years applies to prosecutions under Section 88 of the *Act*, not in investigations referred to in Bylaw 810 of the *Act* and therefore the proceeding has continued.”

By relying on the complainant's “knowledge of the issue” to determine whether or not the limitation period has expired, the Committee has applied the discoverability principle to its interpretation of Bylaw 810.

As set out in her Notice Of Appeal, Elder challenges the Committee's finding that Bylaw 810 does not bar the Commission from “conducting some or all of its investigation into the conduct of the Registrant.”

In order to determine if the Commission has properly interpreted Bylaw 810, I must first determine the standard of review to apply to the Commission's decision on this issue. I find that the standard of review with regard to the interpretation of this bylaw is one of correctness. As per *Dunsmuir*, in order to ascertain the standard of review to be given to the tribunal, the decision maker on appeal must first ask if the jurisprudence has already

determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question.

The question under appeal is whether or not the principle of discoverability can be inferred from the wording of Bylaw 810. The standard of review with regard to the interpretation of limitation periods and the application of the discoverability principle has been considered in the *PEI Music & Amusement*, and *Malanchuk* cases. In both of these cases, the courts determined that the interpretation of a limitation period goes to the jurisdiction of the tribunal. The courts further found that questions regarding the jurisdiction of the tribunal to make a decision, even if contained in the tribunal's home statute, are questions of law that are assessed on a standard of correctness. I find that these cases determine the degree of deference to be accorded to this question and that in this case the standard of review is correctness. As the jurisprudence provides guidance on this matter, I do not find it necessary to proceed with the second part of the *Dunsmuir* test, analyzing the question on appeal to determine the standard.

As the standard of review of interpretation of this bylaw by the Committee is one of correctness, the question thus becomes: was the Committee correct in inferring that the discoverability principle applies to the interpretation of the limitation period set out in Bylaw 810? Bylaw 810 states that the limitation period will run "from the date of the contravention." The bylaw does not mention "knowledge of" or "discovery of" the contravention, just the "date of" the contravention.

The Supreme Court of Canada, as cited in *PEI Music & Amusement*, has found that discoverability is an interpretative tool, to be used along with the other rules of statutory interpretation:

16 The first question is addressed by the Supreme Court's most recent decision on the subject. Its description of the discoverability rule and directions for determining whether or not it applies are stated in *Ryan v. Moore*, 2005 SCC 38 (S.C.C.). Bastarache J. writing for the Court succinctly summarized the previous caselaw and stated the current state of the law in the following terms:

(2) Discoverability: The Judge-Made Rule

[21] The debate concerning the use of the discoverability principle in tort actions has been settled by this Court in *Kumloops (City of) v. Nielsen*, [1984] 2 S.C.R. 2, *Central Trust and M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6.

[22] The discoverability principle provides that 'a cause of action arises for purposes of a limitation period when the material facts on which it is based have been discovered or ought to have been discovered by the plaintiff by the exercise of reasonable diligence': *Central Trust*, at p. 224. In some provinces, the discoverability rule has been codified by statute; in others, it has been deemed redundant because of other remedial provisions.

[23] While discoverability has been qualified in the past as a 'general rule' (*Central Trust*, at p. 224; *Peixeiro v. Haberman*, [1997] 3 S.C.R. 549, at para. 36), it must not be applied

systematically without a thorough balancing of competing interests (*Peixeiro*, at para. 34). The rule is an interpretative tool for construing limitation statutes. I agree with the Manitoba Court of Appeal when it writes:

In my opinion, the judge-made discoverability rule is nothing more than a rule of construction. Whenever a statute requires an action to be commenced within a specified time from the happening of a specific event, the statutory language must be construed. When time runs from 'the accrual of the cause of action' or from some other event which can be construed as occurring only when the injured party has knowledge of the injury sustained, the judge-made discoverability rule applies. But, when time runs from an event which clearly occurs without regard to the injured party's knowledge, the judge-made discoverability rule may not extend the period the legislature has prescribed.

[Emphasis added.]

(*Fehr v. Jacob* (1993), 14 C.C.L.T. (2d) 200, at p. 206). See also *Peixeiro*, at para. 37; *Snow v. Kashtyap* (1995), 125 Nfld. & P.E.I.R. 182 (N.L.C.A.).

[24] Thus, the Court of Appeal of Newfoundland and Labrador is correct in stating that the rule is 'generally' applicable where the commencement of the limitation period is related by the legislation to the arising or accrual of the cause of action. The law does not permit resort to the judge-made discoverability rule when the limitation period is explicitly linked by the governing legislation to a fixed event unrelated to the injured party's knowledge or the basis of the cause of action (see *Mew*, at p. 55).

As stated in the Commission's Appeal Brief to the Respondent, *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, sets out the tools for interpreting statutes include the ordinary reading of the words used in the legislation, the statutory context in which the words are found, and the overall objective of the statute. The discoverability principle is another tool of interpretation to add to this kit.

In *PEI Music & Entertainment*, the Court of Appeal found that discoverability did apply to a limitation period contained in that province's human rights legislation that ran from the date of the "contravention" of the legislation. In coming to this conclusion, the court looked not only at the wording of the limitation period, but at the nature and purpose of human rights legislation, as well as the context in which the limitation period is found. Human rights legislation protects the rights of individuals and allows them redress where they have suffered harm as a result of discrimination. Action is taken by an administrative body when an injured party makes a complaint. A cause of action under human rights legislation cannot arise until a discriminatory act occurs and causes a party harm.

I find that the purpose and nature of *The Real Estate Act* distinguishable from human rights legislation. The purpose of *The Real Estate Act* is to protect the public by ensuring that realtors adhere to professional standards, and are disciplined when they fail to meet those standards. Discipline is not based on injury or harm to an individual; it is based on the failure to meet the standards set out by the Commission in its role as regulator of the

profession. This does not mean that harm or injury is not a result of the member's professional misconduct, but a member can also be in contravention of the Act without causing harm or injury, and may be disciplined for such a contravention.

I note that there is an additional distinguishing factor between the limitation periods set out in the *PEI Music & Entertainment* case and in this appeal. The PEI legislation set a 2 year limitation period in which to bring a complaint, whereas the Commission Bylaw provides a limitation period of 6 years within which to start an investigation. By adding the element of discoverability to a 6 year limitation period, the limitation period could extend to a very long period of time which would cause issues with matters such as evidence, which is typically the type of issue that limitation periods are meant to curtail.

Bylaw 810 does not specifically reference the "date of the alleged contravention" as being based upon discoverability. Without this clarity, I have interpreted the "date of alleged contravention" to be the date of the 2007 contract between the parties. It is at this point that Elder was bound to act in her clients best interests, to protect and promote the interests of her client, and to deal fairly with all other parties to the transaction. The Committee has interpreted the "date of the alleged contravention" as being the date of discovery of the incorrect survey information. I find that the Committee was incorrect in applying the discoverability principle to Bylaw 810.

In the event that I am mistaken, and the proper standard of review is reasonableness, I find that the Committee's decision does not contain sufficient reasons for me to find that the discoverability principle applies to Bylaw 810. The committee made reference to the complainant's "knowledge of the issue," but did not state why they interpreted Bylaw 810 to require knowledge by a complainant to initiate an investigation. Without further information from the Commission, I cannot establish the reasonableness of their decision and therefore, relying on my reasons as set out above, and pursuant to the appeal power set out in sub-section 43(6)(b) and (e) of the Act, I will quash the Committee's finding regarding the application of the discoverability principle, and substitute it with my own finding that the discoverability principle does not apply.

The Committee's decision contains a recommendation to the Commission that the Bylaw be reviewed and revised for clarity. I support this recommendation and advise the Commission that if it wishes to ensure that the discoverability principle does apply to this bylaw, that the bylaw be revised to ensure that in future, it reflects that the knowledge of the Commission or complainant is an explicit element of the limitation period.

The facts of the Elder case are found in the *Statement of Facts and Admissions* that Elder agreed to on May 29, 2012, as outlined previously. The facts are admitted to, and not in question. Elder failed to verify the information set out in the 2007 listing, as she had listed and sold the property in 2002/2003 and relied on the information from the 2002 listing in preparing the 2007 listing. The property was described as rectangular in shape, having a water well that serviced the property, and having an access road to the property. A property survey in March 2009 proved the listing descriptions provided in the 2007 listing, derived from the 2002 listing, to be incorrect.

As a result of the foregoing, I find that the investigation relating to the 2007 listing commenced well within the six year time frame of Bylaw 810. Timing as it relates to the date of the alleged contravention in this case commences with the date of signing the MLS Exclusive Seller's Brokerage Contract between Cindy Blanchette and Remax of the Battlefords dated August 8, 2007.

I further find that the investigation of the 2002 listing and related 2003 sale of the property as contraventions separate from the events of 2007 to be time barred as these matters are well outside the six year limitation period outlined in Bylaw 810. I do, however, recognize that the events of 2007 are affected by the events of 2003, and accept the Committee's consideration of those events insofar as the earlier events are related to the latter.

Decision:

The Commission was within its rights to conduct an investigation into the 2007 contravention, in accordance with Bylaw 810.

The Commission was time barred from conducting an investigation into the 2002 listing and 2003 sale.

- c. **Was the Commission time barred from commencing disciplinary proceedings against the Registrant pursuant to section 89 of the Act?**

Section 89 of the Act reads as follows:

Limitation on prosecution

89 No prosecution for the contravention of this Act or the regulations is to be commenced after the expiration of 24 months from the date of the alleged contravention.

Elder has argued that the limitation period set out in section 89 of the Act is also intended to be applied to section 37 of the Act, and that as such no disciplinary action may be taken at the expiration of 24 months from the date of the alleged contravention.

The Commission's decision does not address the application of section 89 of the Act to disciplinary proceedings. This issue is addressed in the Commission's Appeal Brief to the Respondent at paragraph 16, where the Commission argues that the prosecution and discipline processes set out in the Act are different procedures with different purposes, and at paragraph 21 the Commission argues that the principle of discoverability should be imported into the reading of s. 89 of the Act.

As stated with regard to the interpretation of Bylaw 810, the standard of review of the Committee's decision regarding interpretation of section 89 is correctness. As the Committee has not addressed this issue, I will substitute my own decision for that of the Committee, pursuant to subsection 43(6)(e) of the Act.

As set out in my analysis of Bylaw 810, above, when interpreting legislation, one must look at the nature and purpose of the legislation. The Act is intended to provide protection to members of the public who contract with a realtor to represent them in a trade in real estate. It sets out a regime for the regulation of realtors in Saskatchewan. The Act gives the Superintendent of Real Estate (the "Superintendent") the authority to regulate realtors, and creates the Commission. The Act then delegates the Superintendent's authority to directly oversee realtors to the Commission, with the Superintendent maintaining a supervisory function, including the hearing of appeals of disciplinary decisions.

The Commission's role in overseeing realtors includes setting minimum standards of conduct, registration requirements, education standards, and disciplining registrants when they do not comply with those minimum standards and registration requirements.

Part IV of the Act, entitled "Discipline", sets out the investigation, hearing, and disciplinary procedures and powers that are granted to the Commission. The Act grants these to the Commission to ensure that registrants meet the minimum standards of conduct set out in the Act, regulations and Commission's bylaws. The Act also grants the Commission the power to set its own rules with respect to the procedures for investigation and disposition of complaints.

Section 34.1 of Part IV of the Act states that no proceeding under that Part shall be commenced against a registrant more than two years after the day that he or she became a former registrant. Of greater importance to this case, no time limit is set in the Act for bringing an action against a current registrant, but the Bylaws do include a 6 year limitation period for commencing an investigation of a current registrant (Bylaw 810).

Provisions that set out the procedure for prosecutions are set out under a separate heading in the Act, Part VII "Regulations and Miscellaneous" and the sub-heading "Offences and Penalties". The Offences and Penalties sub-heading includes sections 88 and 89; the offence provision, and the provision that addresses time limits on prosecutions. That these provisions are in a separate Part is of significance. The discipline provisions of Part IV are applicable only to registrants and former registrants. The "Offences and Penalties" sections of Part VII apply to everyone, including non-registrants. Proceedings against a non-registrant must be taken by way of the summary offence procedures, with a hearing in provincial court.

This distinction would suggest a legislative intent to create separate processes that would be governed by separate rules; registrants would be subject to either discipline under Part IV of the Act or prosecution, and non-registrants would only be subject to prosecution

under Sections 88; that the intent was to apply the section 89 time limit to only the offence procedures.

In interpreting and applying these provisions, the Commission could have applied section 88 and 89 to Ms. Elder and proceeded by way of prosecution. Instead the Commission proceeded under the discipline authority set out in Part IV of the Act.

I find that section 89 of the Act applies to prosecutions as set out in section 88 of the Act, but that it does not apply to the discipline proceedings set out in Part IV of the Act.

Decision:

The disciplinary action taken by the Commission is not subject to the time limits set out in section 89.

d. Did the Committee err in hearing and sentencing the registrant with respect to four counts of misconduct all relating to the very same cause or matter?

Elder has argued that the Committee erred in hearing and sentencing her with respect to four counts of misconduct all relating to the very same cause or matter and in fact should have only proceeded and/or sentenced her with respect to one count. Elder has not indicated which of the counts is the appropriate charge. Elder cites the *Shahzad Admed* (Commission File #2010-35) case as an example where a similar event, the failure to confirm the dimensions of a property, resulted in a registrant to be found in violation of Bylaw 726. In contrast, Elder has been charged with and fined for violations of Bylaws 701, 702, 714 and 726.

The standard of review for questions involving the interpretation of a tribunal's home statute that do not involve a question of general law is reasonableness, as per *Dunsmuir*. I have interpreted this to mean that I must review the reasonableness of the Committee's interpretation of each bylaw and the decision to convict Elder on each of the four separate counts. As part of my analysis of the reasonableness of this decision, I have considered the application of the *Kienapple* principle; that is the prohibition against the duplication of convictions, as it relates to this case.

The prohibition against duplication of convictions and penalties against an accused is referred to as the *Kienapple* principle. The *Kienapple* principle arises from the Supreme Court of Canada's decision in *R. v. Kienapple*, [1975] 1 S.C.R. 729, and *R v. Prince* (1986), 30 C.C.C. (3d) 35, where the court examined a number of similar legal principles such as *res judicata*, issue estoppels, *autrefois acquit*, double jeopardy and *chose jugée*, which all essentially boil down to the principle that an accused should not be found guilty twice for the same offence. The *Kienapple* and *Prince* cases set out the test for determining whether or not the charges against an accused are similar enough in fact to

be considered the same. These principles have been further considered in the administrative context, in particular with regard to professional discipline.

Two sub-issues arise in applying the *Kienapple* principle to this appeal:

- (i) Does the *Kienapple* principle apply to regulatory proceedings?
- (ii) If the *Kienapple* principle applies to regulatory proceedings, does it apply to this case?

(i) Does the *Kienapple* principle apply to regulatory proceedings?

In *Carruthers v. College of Nurses (Ontario)*, 1996 CarswellOnt 4620, (*Carruthers*) the Ontario Divisional Court, sitting as an appellate court to the decision of Discipline Committee of the College of Nurses of Ontario, examined the application of the *Kienapple* principle and confirmed its application to professional disciplinary proceedings (para 87).

87 In my respectful view, the rule against multiple convictions, the *Kienapple* principle, applies in disciplinary proceedings taken against members of a self-regulated profession. The rule erects no bar to a multiplicity of findings of guilt, each recorded in respect of a different factual event. What it seeks and does do, however, is to bar multiple findings of guilt where the same or substantially the same elements make up the offence. There would seem no reason in principle to permit the application of the doctrine in respect of "regulatory" offences under provincial law, yet deny it to members of self-regulated professions in the case of prosecutions for alleged misconduct. There is about such prosecutions, after all, a "public" aspect. The discipline and/or disqualification of members of a self-regulated profession affords protection to members of the public who, by choice or otherwise, engage their services. Prosecutions for professional misconduct ensure that those who undertake the regulated activity are fit to do so. The public is protected by disqualification of those who fail to achieve or maintain such standards. There can be no quarrel with the proposition that a registrant/member ought be held liable for each breach of the governing rules of the profession. No one, however, should be twice punished for the same delict or matter. It is as much the case for professional discipline as it is for a regulatory offence.

Carruthers has been followed by the courts of appeal in Alberta and British Columbia in the cases *C.(K.) v. College of Physical Therapists (Alberta)*, 1999 CarswellAlta 775, and *MacDonald v. Institute of Chartered Accountants*, 2010 BCCA 492.

I find that the *Kienapple* principle applies to regulatory proceedings, and as such, is applicable to my review of the Committee's decision.

(ii) If the *Kienapple* principle applies to regulatory proceedings, how should it be applied in this case?

In *Prince*, the Supreme Court revisits and sets out the factors to examine when determining whether or not the principle is applicable to the multiple charges of which an accused has been found guilty. If the principle applies, I must narrow the charges down to

eliminate the duplication. If the principle does not apply, all of the charges can stand unless otherwise inoperative.

Following *Prince*, the court in *Carruthers* sets out the test as follows: “The relevant enquiry is whether the same cause or matter, rather than the same offence, is comprehended by two or more offences.” (*Carruthers* para 75). First the court looks at whether there is a factual nexus, which is found where the same “cause”, “matter” or “delict” is the foundation of both charges (*Carruthers* para 76 to 78, *Slatnik v. Leon-Ram Enterprises*, 2001 CarswellSask 749 at para 3). Once a factual nexus is established, the court examines the charges to determine if there is a legal nexus. The legal nexus can be found by determining if the offences are the same, or if there are any additional or distinguishing elements of the offences (*Carruthers* at para 79, *Slatnik v. Leon-Ram Enterprises* at para 4). Where there are additional or distinguishing elements, no legal nexus is found.

Is there a factual nexus?

In *Prince*, the Supreme Court points out that the *Kienapple* principle does not prohibit multiple convictions that arise in respect to distinct factual incidents. In order for there to be a factual nexus, the offences must arise from the same transaction (*Prince* at para 21).

The facts of the Elder case are found in the *Statement of Facts and Admissions* that Elder agreed to on May 29, 2012, as outlined previously. Elder failed to verify the information set out in the 2007 listing, as she had listed and sold the property in 2002/2003 and relied on the information from the 2003 listing in preparing the 2007 listing. The property was described as rectangular in shape, having a water well that serviced the property, and having an access road to the property. A property survey in March 2009 proved the listing descriptions provided in the 2007 listing to be incorrect.

Elder’s failure to verify the property information (violation of Bylaw 714) carried over into preparation and filing of a listing agreement that did not properly describe the property (violation of Bylaw 701). Publishing the listing would have provided this incorrect property description to the real estate community and general public (violation of Bylaw 726). In failing to verify the property information, Elder was failing to protect and promote the interests of her client (violation of Bylaw 702),

I find that these facts do amount to one continuing transaction that underlie the four charges to which Elder was found guilty, and that a factual nexus exists.

Is there a legal nexus?

The legal nexus can be found by determining if the offences are similar, and then examining the offences further to determine if there are any additional or distinguishing elements (*Carruthers* at para 79, *Slatnik v. Leon-Ram Enterprises*, para 4). The offences are separate, and may each stand alone, where each can be distinguished from the other.

Where offences cannot be distinguished, the *Kienapple* principle is invoked and only one of the indistinguishable charges can stand.

Elder was charged with and plead guilty to four charges of professional misconduct contrary to section 39(1)(c) of *The Real Estate Act*. Each charge is based on a contravention of a different bylaw: Bylaw 701, Bylaw 702, Bylaw 714, and Bylaw 726. The question to be asked is whether or not the committee was reasonable in interpreting each bylaw as being distinct enough from the others to stand as a separate charge.

Elder was charged with and plead guilty to a charge of professional misconduct having breached Commission Bylaw 714, by failing to take reasonable steps to discover facts pertaining to every property for which she has accepted an agency agreement that a prudent registrant would take in order to fulfill the obligation to avoid error, misrepresentation or concealment of pertinent facts. The size and shape of the property was not accurately determined, including access to the property and water supply. The purpose of this bylaw is to ensure that registrants have accurate information regarding the property that is the subject of the agency agreement and requires registrants to seek out facts that otherwise may be incorrect. This bylaw targets the registrants knowledge and reflects the expectation that the registrant has the knowledge of the property required to properly represent it to others. I find that this bylaw is distinct from bylaws 701, 702 and 726 and that it stands on its own.

Elder was charged and plead guilty to having breached Commission Bylaw 701, by making or permitting to be made a statement, record, report, notice or other document required by this Act, the Regulations or the Bylaws that contained an untrue statement of a material fact and/or omitted to state a material fact. This bylaw shares some similarity with Bylaw 714 in that it requires the registrant to be certain in her knowledge of the property; however it is distinct from the breach of Bylaw 714 in that the focus of the bylaw is on the preparation of documents and records. The Act requires that certain statements, records, reports, notices and other documents be prepared in order to record the transaction and ensure that the legal requirements of the transfer of real property are met. The failure to record accurate information in those documents can lead to harm to the parties to the sale, as well as to the public. In this case, the errors have been incorporated into and now form part of a legal document, the MLS Exclusive Seller's Brokerage Contract, comprised of the contract between Cindy Blanchette, the seller, and Elaine Elder, the sales representative, plus the MLS Data Input Form. The property is noted as being rectangular in shape, having a gravel driveway, and own water source from own well. It is fundamental that documents prepared by registrants, as required by the Act, the regulations, or the bylaws be complete, accurate and reliable. I find that the purpose of Bylaw 701 to be distinct from Bylaws 714, 702 and 726 and that it stands on its own.

Elder was also charged and plead guilty to having breached Commission Bylaw 726, by making or permitting an advertisement to the public as an inducement to trade in real estate which was false, inaccurate, reasonably capable of misleading the recipient or intended recipient, and was harmful to the best interests of the public. The focus of this

bylaw is preventing harm to the public by way of transmitting inaccurate information upon which they may make a decision to purchase or sell real property. Unlike Bylaw 701 which focuses on the documents related to the legal transaction between the parties, this bylaw focuses on public communication and harm to consumers whether or not they are a party to the contract for sale. I find that this bylaw is sufficiently distinct from Bylaws 701, 714 and 702 and that it stands on its own.

Finally, Elder was charged and plead guilty to having breached Commission Bylaw 702, by failing to protect and promote the interests of her client and failing to deal fairly with all other parties to the transaction. This is distinct in that it focuses on the registrant's duty to serve her clients and the public. This duty may include the consequences to the client and all other parties of the breaches of Bylaws 701, 714, and 726, but also seeks to ensure that registrants act ethically and to the standard that the public expects. I find that this bylaw is also distinct from Bylaws 701, 714 and 726 and that it stands on its own.

I find that the charges in this case of having breached Commission Bylaws 701, 702, 714, and 726 do have a factual nexus. I do not find that a legal nexus exists. I further find that the charges of breaching Commission Bylaws 701, 702, 714, and 726 are distinct, and therefore each may stand.

Decision:

The charges of breaching Commission Bylaws 701, 702, 714, and 726 each stand.

e. Was the Committee's decision on quantum reasonable?

The Appellant's fourth ground of appeal is that the Commission erred in determining the appropriate amount of fines levied against her for each count. The Appellant refers to the *Shahzad Ahmed* case, Commission File #2010-35 to support her claim.

As I found earlier, the standard for reviewing the Committee's decision regarding the quantum of the fines levied for each contravention, is reasonableness. The Supreme Court explained the qualities to be considered in assessing the reasonableness of a decision as follows:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. (*Dunsmuir* at para 47)

I have interpreted the above passage as setting out a two part test that asks:

- (i) Was the decision reasonable in the sense that the decision making process conveyed sufficient justification, transparency and intelligibility?
- (ii) Was the decision reasonable in the sense that it falls with a range of possible acceptable outcomes which are defensible in respect of the facts and law?

(i) Was the decision reasonable in the sense that the decision making process conveyed sufficient justification, transparency and intelligibility?

The Committee's decision set out the elements of the charges and the considerations that went into assessing the fines with sufficient justification, transparency and intelligibility.

There are a number of considerations that go into determining the amount of a fine for a regulatory infraction. Those considerations include sanction history, the severity of the breach and the effort required to remedy it, the magnitude of the potential consequences, the need for specific deterrence and general deterrence and the remorse of the registrant. The Decision addressed each of these considerations.

The Committee gave consideration to Elaine Elder's lack of previous sanction history and the length of time she had been in the real estate industry.

The Committee also recognized the extreme severity of the consequences in this action and the significance of the breaches of the Bylaws.

I find that the Committee's decision, while reasonable in the sense that the decision demonstrates that the decision making process conveys sufficient justification, transparency and intelligibility in determining the quantum of each fine, is flawed. As pointed out previously, the Commission was time barred from conducting an examination of the 2002/2003 listing and sale. Accordingly, their decision must be based upon the results of the examination of the contraventions relating to the 2007 listing.

(ii) Was the decision reasonable in the sense that it falls within a range of possible acceptable outcomes which are defensible in respect of the facts and law?

Section 38(2) of the Act states that:

(2) In addition to any order made pursuant to subsection (1), the Commission may order:

- (a) that the registrant pay to the Commission within a fixed period:
 - (i) a fine in a specified amount not exceeding \$5,000 for each finding and \$15,000 in the aggregate for all findings; and
 - (ii) the costs of the investigation and hearing into the registrant's conduct and related costs, including the expenses of the

investigation committee and the Commission and the costs of legal services and witnesses; and

(b) where a registrant fails to make payment in accordance with an order pursuant to clause (a), that the registration be suspended.

The Committee fined the Appellant as a total aggregate fine of \$15,000.00, particularized as follows:

\$5,000.00 for violating Bylaw 701
\$3,000.00 for violating Bylaw 702
\$2,000.00 for violating Bylaw 714
\$5,000.00 for violating Bylaw 726

These fines comply with the limitations set out in s. 38(2)(a)(i) of the Act.

The Appellant has referenced the *Ahmed* case where a registrant was fined \$1,500.00 for a violation of Bylaw 726(b) and (c) on the basis that he advertised a property in Saskatoon, Saskatchewan as having lot dimensions of 47 feet by 146 feet when such was not the case. The Appellant argues that the fine she received for violating Bylaw 726 (\$5,000.00) far exceeds the fine levied in the *Ahmed* case for violation of the same Bylaw. The Appellant also argues that she should have been found in violation of one Bylaw, like in the *Ahmed* case, not of four separate contraventions. As previously stated, I find that each of the four charges are distinct enough to stand as independent charges, therefore I will consider the reasonableness of each fine as it relates to each charge.

With regard to the fine for violating Bylaw 726, the *Ahmed* case can be distinguished from the case at hand. In *Ahmed*, the dimensions of a residential lot in Saskatoon was incorrectly described as being 47 feet by 146 feet (6862 square feet) when in fact it had twice previously been advertised as an irregular lot with dimensions of 39.43 feet by 35 feet by 120 feet (5637 square feet). Ahmed was found in violation of Bylaw 726 for failing to verify the lot size. While the wrongful Act in the *Ahmed* case is similar to the wrongful act in this case, the failure to verify dimensions of a property and to then advertise the incorrect dimensions, the effect on the purchaser of the property in this case is much more drastic than in the *Ahmed* case. In *Ahmed*, the purchaser received a smaller parcel of land than the purchaser thought he was receiving, but a property which nonetheless the purchaser can still use for the purpose for which it was purchased (a residential home).

In this case the 2003 purchaser received a property which the purchaser cannot access and cannot use in any way for its intended purpose. Not only did the wrongful act of failing to confirm the dimensions of the property cause the purchaser to obtain a property much smaller than thought, it also meant that the property did not have a well or direct access from a public street or thoroughfare. The 2003 purchase is however, time barred from consideration.

In the case of the 2007 listing, the Appellant repeated her failure to determine the facts relating to the property, failures that carried over into the listing agreement and advertising. As a result, all potential purchasers of the property under this listing were exposed to the same serious issues that resulted from the 2002 listing.

Given the distinguishing characteristics between this case and the *Ahmed* case, I find it reasonable that the Committee imposed a larger fine for the violation of Bylaw 726.

I further find that the fines imposed by the Committee for violating Bylaws 701, 702, 714 and 726 are reasonable given the factors set out in the Committee's decision, in particular the seriousness of the failure to ensure the facts regarding the property are correct, Elder's reliance on previous statements without verifying those facts and the serious harm that could have resulted for future purchasers.

However, the Committee is time barred from considering the 2002 listing and 2003 sale in arriving at their decision and fines. I am accordingly amending the fines levied to take into consideration only the 2007 listing. I am also amending the weightings given to the fines for violation of the four bylaws. In my opinion, there are two key fundamental issues in this case. The first issue centres on the violation of Bylaw 714. Elder did not take reasonable steps to discover the facts relating to this property, a property that she had previously sold, and fully knew that the facts had not been established at that time. Instead, Elder simply carried the property facts from the 2002 listing over to the 2007 listing, without further verification. This action left her client and any other party to the 2007 transaction seriously exposed. This is a very serious violation of Bylaw 714, and in my opinion, warrants a maximum fine. This action places Elder as being seriously offside of Bylaw 702, the second fundamental issue. A registrant is to protect and promote the interests of her client, and further has the obligation of dealing fairly with all other parties to the transaction. This did not happen. This violation warrants a maximum fine. The violation of Bylaws 701 and 726 both follow from the violation of Bylaw 714. If you do not have reliable property information as a basis, you cannot produce factually correct documents, including a listing agreement, upon which others may rely; a violation of Bylaw 701. Nor can you produce accurate advertising materials that may be relied upon by other parties, a violation of Bylaw 726. I give these significant violations equal weighting in determining penalties.

Decision:

The Committee's decision falls within a range of possible acceptable outcomes that are defensible in respect of the facts, but are not supported by the law. The Committee's interpretation of Bylaw 810 and its application to the 2002 listing and 2003 sale are incorrect. As previously stated, the Committee is time barred from punishing Elder for bylaw violations related to the 2002 and 2003 actions. As a result, the decision of the Committee requires amendment to reflect that the fines relate only to the bylaw violations that occurred in 2007. I have thus amended the fines as follows:

Count 1

- a) Elaine Elder receive an order of reprimand for the violation of Bylaw 701;
- b) Elaine Elder, prior to December 31, 2013, pay to the Saskatchewan Real Estate Commission, a \$2,500.00 fine for the said violation of the Act, and
- c) Elaine Elder's registration shall be suspended if she fails to pay any portion of the fine within the said period of time.

Count 2

- d) Elaine Elder receive an order of reprimand for the violation of Bylaw 702;
- e) Elaine Elder, prior to December 31, 2013, pay to the Saskatchewan Real Estate Commission, a \$5,000.00 fine for the violation of the Act; and
- f) Elaine Elder's registration shall be suspended if she fails to pay any portion of the fine within the said period of time.

Count 3

- g) Elaine Elder receive an order of reprimand for the violation of Bylaw 714;
- h) Elaine Elder, prior to December 31, 2013, pay to the Saskatchewan Real Estate Commission, a \$5,000.00 fine for the said violation of the Act; and
- i) Elaine Elder's registration shall be suspended if she fails to pay any portion of the fine within the said period of time.

Count 4

- j) Elaine Elder receive an order of reprimand for the violation of Bylaw 726;
- k) Elaine Elder, prior to December 31, 2013, pay to the Saskatchewan Real Estate Commission, a \$2,500.00 fine for the said violation of the Act; and
- l) Elaine Elder's registration shall be suspended if she fails to pay any portion of the fine within the said period of time.

Costs

- m) Elaine Elder, prior to December 31, 2013 pay to the Saskatchewan Real Estate Commission costs in the amount of \$1,404.00. Elaine Elder's registration shall be suspended if she fails to pay any portion of the costs within the said period of time.

VI. Summary of the decision

This appeal has highlighted key issues applicable to all registrants. Registrants must act in accordance with the professional standards set by the Act for the protection of the public. The public has an expectation that real estate agents will act in a manner that is not harmful to the best interest of the public, registrants or the Commission (Act s. 39(1)(a)). It is fundamental that registrants verify facts before they are set out in listing agreements and disclosed in advertising. Other registrants and the public must be able to rely on the accuracy of these representations in making their recommendations and decisions. This is fundamental.

Having reviewed the records, the Committee's Decision, Elaine Elder's representations at appeal, and the Commission's representations at appeal, I find that the Committee's decision making process was reasonable in that it reflected sufficient justification, transparency and intelligibility. The Committee's interpretation of Bylaw 810 however, was incorrect. The Committee's decision was based partially upon information relating to the 2002 listing and 2003 purchase. As outlined previously, this information is time barred in that it is based upon transactions having occurred well beyond the six year time limitation of Bylaw 810. As a result, I am amending the Committee's Decision.

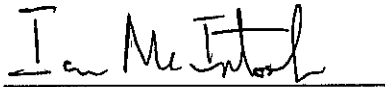
Protection of the public is fundamental. As previously stated, other registrants and the public must be able to rely on the accuracy of listing representations in making their recommendations and decisions. In preparing the 2007 MLS Exclusive Seller's Brokerage Contract between Cindy Blanchette and Remax of the Battlefords, Elaine Elder relied on information she had from the 2002 listing, that the property was a rectangular shape, including the house, the garage, the water well that serviced the Property and the access road to the property. In doing so, she relied on her own information and did not take steps to verify the property boundaries. The description of the listed property has been subsequently shown to be woefully inaccurate. Elaine Elder's actions resulted in a contract that did not provide an accurate description of the property being offered for sale. This failure was carried through to the MLS advertisement of the property. Had someone purchased the property based upon this information, they would potentially have suffered significant loss. This is totally unacceptable.

The amended decision on quantum of fines has been provided above in V(e)(ii).

The Commission has made a request to be awarded costs of this appeal against the appellant and in favour of the Commission in the event that the appellant's appeal is unsuccessful. The quantum of the fines and costs levied in my amended decision is substantial and adequately and appropriately reflects the seriousness of this matter. I am not willing to award additional costs.

In the event that Elaine Elder should fail to comply with payment of the fines and costs by December 31, 2013, I hereby order that Elaine Elder's registration be suspended until such time as she pays the full amount of the fines and costs to the Commission.

Dated in Regina, Saskatchewan this 21st day of November, 2013

A handwritten signature in black ink, reading "Ian McIntosh". The signature is written in a cursive style with a horizontal line underneath it.

Ian McIntosh
Deputy Superintendent of Real Estate