RECO
Real Estate Council of Ontario

IN THE MATTER OF AN APPEALS HEARING HELD PURSUANT TO THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

BETWEEN:

REAL ESTATE COUNCIL OF ONTARIO

- and -

RESPONDENT

APPEALS DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:	Hoi Fai Alvin Chan, paralegal
For the Real Estate Council of Ontario:	Chantel Marler, paralegal
Heard in Toronto:	March 13, 2026

FINDINGS: The Appeal is dismissed.

ORDER: The Discipline Committee decision, dated June 6, 2025, is upheld.

COSTS AND EXPENSES: The Registrant shall have fourteen (14) days from the date of the release of this decision to advise the Manager, Discipline & Appeals Hearings at RECO (the "**Manager**") and the Registrar, whether the Registrant is seeking costs as a result of this proceeding in accordance with RECO requirements as they relate to costs – specifically Rule 17 under RECO's Rules of Practice, which governs the circumstances under which costs can be awarded, as well as the limitations on the quantum of such costs.

If costs are sought, the parties shall have twenty-eight (28) days from the release of this decision to attempt to reach agreement on the issue of costs and, if an agreement is reached, the Registrar shall advise the Manager as to the terms of the agreement.

If the parties are unable to agree on costs, the Registrant shall, within sixty (60) days from the date of the release of this decision, serve on the Registrar and file with the Manager,

written submissions relating to its purported entitlement to costs for the appeal as well as the quantum of requested costs. Such submissions shall not be greater than three pages in length, and shall include, on one additional page, the quantum of costs sought and the breakdown of the work comprising the quantum so sought.

The Registrar shall, in turn, have fourteen (14) days from the date of service on the Registrar of the Registrant's submissions on costs to serve responding submissions on the Registrant and to file such submissions with the Manager. The Registrar's submissions shall not be greater than three pages in length but may include, if the Registrar so wishes, one additional page setting out the different (i.e. reduced) quantum, if any, that the Registrar submits should be awarded to the Registrant for the costs of this appeal.

WRITTEN REASONS: *attached*

Reasons for Decision

Background

1. This is an appeal to a Panel of the Appeals Committee (the "**Appeal Panel**" or this/the "**Panel**") from a decision of the Discipline Committee (the "**Discipline Panel**") pursuant to the *Real Estate and Business Brokers Act, 2002* ("***REBBA***").

2. The decision of the Discipline Panel was released on June 6, 2025 (the "**Merits Decision**"). The Discipline Panel found that the Respondent (the "**Registrant**" or "**Respondent**") had not breached Sections 3 and 39 of the Code of Ethics under *REBBA* (the "**Code**"). The Appellant seeks to have the Merits Decision set aside and have this Panel either substitute a decision of its own making or order a new hearing on the merits before a new panel of the Discipline Committee.[1]

3. The original hearing was held before the Discipline Panel on November 6, 2024 (the "**Discipline Hearing**").

4. The Discipline Hearing was initiated by an Allegation Statement, dated April 18, 2024, issued to the Respondent by the Registrar pursuant to *REBBA* (the "**Registrar**" or "**Appellant**"), which was marked as an Exhibit at the Discipline Hearing. The Registrar filed a book of documents at the Discipline Hearing and called two witnesses to give testimony. The (then) self-represented Respondent also testified on his own behalf.

5. The particulars in the Allegation Statement can be summarized as follows:

    a. the Respondent is a member of the Real Estate Counsel of Ontario ("**RECO**") and was registered as a broker under *REBBA* at all material times;

    b. on September 22, 2023, the buyer-clients of the Respondent (collectively, the "**Client**") gained unauthorized access to a home located at 1 A street (the "**Property**");

[1] There was a legal question as to whether this Panel had the power to order a new hearing, but as this appeal was dismissed, we need not engage on this issue.

c. the lockbox attached to the Property was seen open while the Client was in the Property at the unauthorized time;

d. the Respondent was not with the Client when they gained unauthorized access to the Property, but the Respondent had inspected the Property with the Client the previous day (with the permission of the vendor); and

e. there were differing theories or narratives on how the lockbox came to be accessed by the Client, including that the Respondent may have intentionally communicated the lockbox code to the Client or the Respondent may have failed to appropriately guard against the Client seeing the lockbox code at previous showings.

6. In short, the Discipline Panel found that the Appellant had not proven that the Registrant had breached the Code.

7. The Registrar filed a Notice of Appeal on July 4, 2025 and a Factum in support of its Appeal was delivered on August 22, 2025. The Respondent (now represented) delivered a Factum on February 9, 2026.

Preliminary Matters

8. The Panel had to address two preliminary matters before considering and determining the merits of the Appeal. The first issue related to the Notice of Appeal and the issues to be determined on the Appeal. The second issue related to the standard of review to be applied by this Panel in reviewing the decisions of the Discipline Panel.

A. Issues on the Appeal

9. The Notice of Appeal set out four grounds of appeal from the Merits Decision.

10. In its Factum, the Appellant altered its submissions for the appeal (by seemingly abandoning one of the issues in the Notice of Appeal), stating as follows:[2]

[2] See the Factum of the Appellant at paragraph 2.

a. the [Merits Decision] was unreasonable considering the evidence before [the Discipline Panel] as all witnesses at the [Discipline Hearing] testified that [the Registrant] was responsible for the release of the lockbox code;

b. in taking an adverse inference against [the Registrar] for not having called [the Client] to testify [the Discipline Panel erred because] jurisprudence supports that a reverse onus is [to be] placed on the Respondent in regulatory offences; and,

c. [the Discipline Panel erred in] accepting the evidence of the Respondent and/or finding the Respondent to be credible in light of the conflicting evidence and statements, and further erred in failing to provide adequate written reasons to support or justify its credibility determinations.

11. The Appellant slightly altered (and reordered) these issues later in its Factum.[3]

12. The Registrant, in turn, responded to these issues in its submissions during the Appeal Hearing.

13. Accordingly, this Panel has proceeded on the basis that any other issues raised in the Notice of Appeal that were not addressed in subsequent written or oral submissions have been abandoned by the Appellant and, as such, they need not be considered by this Panel for the purposes of its decision. Thus, nothing further will be said concerning the appeal grounds apart from the grounds that were the focus of the Appeal Hearing.

B. Standard of Review on this Appeal

14. As the Registrar correctly pointed out in its factum[4], the standard of review on an appeal to the Appeal Panel is generally that of reasonableness. This standard has long been applied by the Appeals Committee[5] and it was not materially altered by the Supreme Court of Canada decision in *Minister of Citizenship and Immigration* v. *Vavilov*, 2019 SCC 65.[6]

[3] Ibid at Paragraph 18.
[4] Ibid at paragraph 19 and 24.
[5] See *Van Dyk v. RECO*, March 26, 2014 at pages 18-19.
[6] See *Gogek v. RECO*, July 28, 2021 at pages 8-16.

15. Concerning the standard of reasonableness, the Supreme Court of Canada has stated:

> "A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable, and a reviewing court must not interfere. This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling. This does not mean that every element of the reasoning given must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, are tenable as support for the decision. At all times, a court applying a standard of reasonableness must assess the basic adequacy of a reasoned decision remembering that the issue under review does not compel one specific result. Moreover, a reviewing court should not seize on one or more mistakes or elements of the decision which do not affect the decision as a whole."[7]

16. The Appellant further suggests, however, that the standard of correctness should be applied to its adverse inference/reverse onus grounds of appeal[8] instead of reasonableness.[9] As this potential issue is a purely legal matter, the Appeal Panel will decide this particular issue, if necessary, using the correctness standard.[10]

17. The Appeal Panel has considered all other issues on this appeal by applying the review standard of reasonableness. That standard, by its very nature, affords the decision of the Discipline Panel considerable deference.

Submissions on Appeal

18. As noted above, the Appellant advanced several arguments as to why the Discipline Panel's findings were unreasonable.

[7] See *Law Society (New Brunswick) v. Ryan*, [2003] S.C.J. No. 17, at paras 55-56.
[8] See paragraph 10(b) above.
[9] See the Factum of the Appellant at paragraph 20.
[10] Supra at note 6.

19. The Appellant also submitted that the Discipline Panel had erred in ignoring witness inconsistencies, in making credibility determinations, and in failing to include adequate support for same in the Merits Decision.

20. However, based on the record below, and the reasons in the Merits Decision, this Panel does not agree. The record does not indicate that the Discipline Panel failed to consider the full testimony of the witnesses, nor did the Discipline Panel fail to give sufficient weight to conflicting evidence in making its determinations, nor did it fail at determining credibility, nor did it fail to adequately support its findings in the Merits Decision.

21. The Registrar's entire case revolved around proving, on a balance of probabilities, that: (a) the Client was in the Property when they were not supposed to be; and (b) it was the fault of the Respondent that the Client was there. A review of the transcript and all other evidence arising from the Discipline Hearing shows that no one disputed (a), the parties only disputed whether (b) was the case.

22. Given its own Allegation Statement, the Appellant then had to prove, on a balance of probabilities, that the Respondent either: (1) intentionally communicated the lockbox code to the Client; or (2) failed to properly safeguard the lockbox code such that the Client was able to learn the code and misuse it to gain unauthorized access to the Property. The transcript and all evidence filed in the Discipline Hearing shows that no one challenged the Respondent's testimony[11] that (1) did not occur, and only (2) was at all in controversy. The Appellant confirmed same during oral submissions before this Panel.

23. Thus, the outcome of the Discipline Hearing was dependent on whether the Appellant could prove one major fact -- that the Client was able to enter the Property due to the failure of the Respondent to properly safeguard the lockbox code. Indeed, the Appellant expressly stated this in its opening statement at the Discipline Hearing stating "[w]hat needs to be determined today by this panel is…how [the Client was] able to access the lockbox".[12]

[11] See the Transcript of the Discipline Hearing at pages 49, 57, 58, and 77 (for instance).
[12] Ibid at pages 12-13.

24. The Registrar called two witnesses at the Discipline Hearing, the vendor of the Property and the vendor's realtor. But the vendor did not know anything germane about the lockbox code issue in question, or anything else relevant to the other issues in the Allegation Statement. The vendor was not present at the Property during the events in question. In fact, the vendor was relying almost exclusively on what the listing realtor had told him. As such, the vendor confirmed that his realtor had told him that: the Client was wrongfully in the Property;[13] the lockbox was open;[14] and, the Respondent was not at the Property at that time.[15]

25. By contrast, the vendor's realtor had some first-hand information about the events in question and confirmed in testimony that: the Client was wrongfully in the Property and the lockbox was open;[16] the Client told the vendor's realtor that they guessed the lockbox code[17] but also that they saw the code when the Respondent had used it previously;[18] and, the Respondent, when contacted by the vendor's realtor by telephone, did not seem to know the Client was in the Property and he was, in fact, shocked to hear that the Client was in there.[19]

26. The final witness in the Discipline Hearing was the Respondent, on his own behalf. The Respondent's testimony was that: he did not purposefully release the lockbox code to anyone, including the Client;[20] he undertakes certain standard practices in handling a lockbox;[21] and, the Client subsequently provided him three different stories as to how they had obtained the lockbox code and wrongfully accessed the lockbox – they guessed the code, they previously (and surreptitiously) viewed the Respondent using the code, and they had used an internet hack to open the lockbox[22] (two of those explanations are the same as those that the vendor's realtor had also provided during her testimony).

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[13] Ibid at page 17.
[14] Ibid at page 19.
[15] Ibid at page 27.
[16] Ibid at page 34.
[17] Ibid at page 35.
[18] Ibid at page 36.
[19] Ibid at page 39, which also corroborates the idea that the Registrant was unlikely to have knowingly handed out the lockbox code.
[20] Ibid at page 49.
[21] Ibid.
[22] Ibid at page 53.

27. The Respondent further testified that: he did not know with any certainty how the lockbox code was accessed or how the lockbox was accessed;[23] the Respondent did not believe the Client was in enough physical proximity to him to view him using the lockbox code at the Property inspection on September 21, 2023;[24] since the Respondent did not believe that the Client was in close enough proximity to view the lockbox code at the Property inspection on September 21, 2023, the Respondent did not expressly ask the Client to stand back as he handled the lockbox that day;[25] and, the Client's lawyer also knew the lockbox code.[26]

28. The Panel has concluded that the Discipline Panel clearly understood the evidence described above, including the various means by which the Client could have learned the lockbox code, all of which is reflected in the Merits Decision.[27]

29. The Discipline Panel had to determine from the evidence if the Respondent had been derelict in protecting the lockbox code, and whether this enabled the Client unauthorized access to the Property. Since there was no evidence indicating that the Respondent intentionally disclosed the lockbox code to the Client (and some evidence to the contrary was presented by two opposing witnesses), and since the evidence for how the Client came to be able to open the lockbox was inconclusive, the Discipline Panel was correct to dismiss the allegations in this matter.[28] Without sufficient evidence proving how the Client had obtained the lockbox code (or otherwise accessed the lockbox), the allegation that the Respondent was at fault and had breached the Code simply collapsed.

30. Each witness that testified about the lockbox was anything but determinative as to how the Client came to be in the Property without permission. Each testified, relying principally on hearsay evidence, by providing multiple different narratives emanating from the Client.

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[23] Ibid at 60.
[24] Ibid at 51 and 53.
[25] Ibid at 55 and 56.
[26] Ibid at 77.
[27] See the Merits Decision at pages 5-9.
[28] The Registrant was only alleged to have breached two sections of the Code. In its closing submissions at the Discipline Hearing, the Registrar stated that only a lack of fairness (section 3) and unprofessional conduct (section 39) – both only in relation to a failure to protect the lockbox code - were at issue (see page 8 of the "Day 2" (which was simply after a lunch break in the Discipline Hearing, not on a separate day) transcript of the Discipline Hearing for these submissions). The Registrar reiterated this position in oral submissions before this Panel.

Two such narratives – that the client guessed the lockbox code and the use of an internet hack – were entirely exculpatory to the Respondent. Opposing witnesses were even consistent with each other about some of these different (and exculpatory) narratives.

31. Further, all of the testimony in relation to whether the Client had (surreptitiously) learned the lockbox code while the Respondent handled it was in relation to the Property inspection on September 21, 2023. Curiously, there was no questioning or evidence about the "several visits"[29] to the Property by the Client and the Respondent prior to that date, other than the Respondent's testimony about his standard lockbox practices (which was not challenged by the Appellant). The Client wrote a letter (unsworn) to the Respondent simply repeating one of the lockbox narratives that had already been described by two witnesses at the Discipline Hearing. However, both witnesses had made it clear that the Client had been inconsistent on how, precisely, the lockbox code had been ascertained.

32. When the Appellant submitted that "all witnesses testified that the Registrant was responsible for the release of the lockbox code",[30] that was not correct. At best, the witnesses testified that one of at least two narratives provided by the Client about how they gained unauthorized access to the Property was based on the Client previously observing the Respondent's use of the lockbox code on a prior (and unspecified) occasion.

33. If that was indeed the manner in which the Client learned the lockbox code, it did not necessarily follow that the Registrant had been unprofessional or at fault (such that it would have constituted a breach of the Code). It would still have been up to the Appellant to produce sufficient evidence showing that the Registrant's conduct had breached the Code, or at least (in light of the Appellant's reverse onus argument) for the Appellant to provide evidence rebutting the Registrant's evidence that he routinely took measures to ensure the confidentiality of lockbox codes. But the Appellant did not lead such a case.

34. As a result, the Discipline Panel was left with nothing but hearsay and conflicting evidence as to how the Client came to learn the lockbox code. That reality did not assist in providing the clarity needed to prove the remaining allegations against the Respondent.

[29] See the transcript of the Discipline Hearing at page 55.
[30] See above at paragraph 10(a).

35. The Discipline Panel indicated in the Merits Decision that being able to hear from (and, on cross-examination, challenge) the Client would have been the best route to establish factual clarity on the principal issue at the hearing. The Appeal Panel agrees. However, the Appellant chose not to call the most important witness relating to the events in question – the Client – whose direct testimony would have been central to proving the allegations against the Respondent.

36. In short, the Discipline Panel arrived at its conclusions in a reasonable manner because it simply did not have enough evidence before it to find, on a balance of probabilities, that the Respondent had been professionally at fault for the Client being wrongfully in the Property on September 22, 2023 and that, in the circumstances, the Code had been breached. This line of appeal is therefore dismissed.

37. Next, the Appellant took issue with the Discipline Panel's finding that the Respondent's evidence was credible "in light of the conflicting evidence and statements" and claimed that the Discipline Panel had failed to provide appropriate reasons to justify its credibility determinations.[31]

38. The task of the Discipline Panel was to hear the evidence of the parties and decide which, in its reasoned opinion, was the most credible. With respect to the concept of credibility, a useful explanation can be found in *Peterson v. Wahl*:[32]

> Credibility refers to what I believe or do not believe of the testimony that I have heard. I am entitled to believe the whole or a part, or to disbelieve the whole or a part, of the testimony of any witness, and to weigh the evidential value of the evidence that I have found to be acceptable, and therefore, believable. I must decide what evidence is believable and acceptable and what evidence is not, how much weight or importance I will give to it, and what facts have been established on that evidence. Testimony that is not plausible or reasonable in itself may be rejected on that basis alone, that is, that it is unreasonable and unworthy of belief even if the testimony is otherwise uncontradicted. I am entitled to consider whether a witness was consistent in [their] testimony, and where there were inconsistencies, prior inconsistent statements or in [their] testimony at trial, whether the inconsistencies were of a minor nature or were serious enough to affect [their] credibility on the

[31] See above at paragraph 10(c).
[32] [1994] A.J. No. 282 (Q.B.) at paragraphs 9 and 10.

> matter. It is simply common sense that I am not bound to accept and believe every word that every witness has said in the witness stand, or to reject everything that was said because of inconsistent statements made by the witness. In considering the testimony of a witness, regard must be had to the integrity of the witness, to the witness's appearance of sincerity and truthfulness in the witness stand, to the witness's demeanor, to the witness's candor and fairness, and to the witness's personal interest or lack of personal interest in the outcome of the trial.
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> Conflicting testimony requires an assessment of the credibility of the witnesses in the light of those principles applicable to the assessment of credibility generally, and in the light of the burden of proof in adducing evidence. There is no single rule or test which a judge can apply to tell [them] when a witness is speaking the truth or an untruth. The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his or her 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 a 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. The judge should consider what facts are beyond dispute and examine which of the conflicting accounts best accords with those facts according to the ordinary course of human affairs and the usual habits of life or business; the consistency with the testimony; the way the testimony dovetailed in with the admitted or proven facts. [emphasis added]

39. The reasons of the Discipline Panel indicate that it embraced the above-mentioned approach to credibility issues.

40. Equally important, as already alluded to, much of this case did not involve the Discipline Panel having to make credibility determinations to reach its conclusions. There was simply no evidence to refute the evidence that: (a) the Respondent did not (intentionally) give the Client the lockbox code; (b) he was generally careful with lockboxes; or, (c) the Client was not near the Respondent when he used the lockbox on September 21, 2023.[33]

[33] The Appellant states at paragraph 44 of their factum that there was conflicting testimony from the Respondent and quotes page 59 of the transcript of the Disciplinary Hearing. A review of the quoted lines in the transcript shows that the Appellant did not quote faithfully. The key words left out of the quote in the factum "not" (in fact in the

41. Either the Respondent was to be believed on these points (and his evidence accepted as fact with no competing evidence), or the Respondent was not to be believed on these points (but nevertheless in the absence of competing evidence from the Registrar) – either way, the same outcome would be obtained, the Registrar would have failed to prove its case. All witnesses agreed that the Client had given multiple explanations concerning their method of accessing the lockbox - they even agreed on what two of those narratives were. As a result, no question of credibility arose. The numerous lockbox narratives resulted in the Registrar not having proof on a balance of probabilities as to the major fact in this case.

42. The Discipline Panel stated[34] that it found the Respondent credible, that he was consistent in his testimony, and that the evidence of the Appellant's second witness (the vendor's realtor) lent credence to the Panel's findings – all factors that are supported by the decision in *Peterson v. Wahl* (cited above).

43. No credibility assessment between the parties needed to be performed by the Discipline Panel to make such findings. It was an absence of evidence, not competing evidence, that caused the outcome against the Appellant.

44. In making its factual findings, a discipline panel, like any trier of fact, must scrutinize the documents before it, and often assess the credibility of witnesses. In this case, the Discipline Panel did precisely that and its reasons reflect that exercise having been completed in a fair, logical, and impartial manner. This line of appeal is also dismissed.

45. The final ground of appeal put forward is a pair of purely legal arguments about adverse inferences and the potential for a reverse onus (or evidentiary obligation) on registrants in disciplinary hearings.[35]

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transcript twice in a row), completely changed the meaning of the quote and sinks the Appellants argument in this line of attack. Though we hope this was an innocent error, as the Appellant stated when challenged during oral submissions before us, this Panel encourages the Appellant to be much more careful in future.

[34] See the Merits Decision at page 11.

[35] See above at paragraph 10(b).

46. The Appellant submitted[36] that the Discipline Panel had drawn an adverse inference against it for not having called the Client to testify about how they came to be wrongfully in the Property. Although the Appellant does not define the term "adverse inference" in its factum,[37] it is generally understood to be a trier-of-fact assuming that if a party fails to present evidence under their control (such as by calling a witness to testify or producing relevant documents), it is because that evidence will have a negative impact on their case (i.e. the witness or the documents would refute what the party is trying to establish).[38] But that is expressly not what happened here.

47. There is nothing in the Merits Decision to suggest that the Discipline Panel was assuming that the Client had not been called to testify because the Client had exculpatory evidence in favour of the Respondent. The Discipline Panel expressly stated[39] that it was the absence of clear evidence, not anything about an assumption of what the evidence not presented might have been, that led the Discipline Panel to its conclusions. The Discipline Panel indicated that the Client was likely the best source of evidence for clarity (amidst the otherwise undetermined and competing narratives) as to what actually happened. The Discipline Panel was not in any way suggesting that it had assumed the Client would testify so as to tip the scale toward the Respondent. In that respect, the Discipline Panel did not draw an adverse inference against the Registrar and thus, the Discipline Panel's conduct was proper and correct. This line of argument is dismissed.

48. Lastly, the Appellant put forward a novel argument in respect of the burden of proof or "onus" being on a registrant at disciplinary hearings. It is novel for two reasons: (a) this assertion was not put before the Discipline Panel at the Discipline Hearing (where, arguably, it should have been so put if the Appellant had wanted to rely on it at appeal); and, (b) this line of thought had not been expressly adopted by the Discipline and Appeals Committee of RECO before.[40]

49. The Appellant submitted that, like in strict liability offences under certain regulatory statues (both provincial or federal), in a professional disciplinary case like the one before this

[36] See the Factum of the Appellant at paragraph 54.
[37] Nor was the Appellant able, when prompted during the Appeal hearing, to accurately define it.
[38] See, for example, R. v. Jolivet, [2000] 1 SCR 751 at paragraph 28.
[39] See the Merits Decision at pages 10-11.
[40] As the Appellant confirmed in oral submissions before this Panel.

Panel, the burden of proof (at some point) lies with the registrant needing to prove that they were not at fault (opposed to the Registrar always needing to prove that the registrant was at fault). For instance, the Appellant suggests that because it was established that the Client was found in the Property without authorization, the Registrant now needed to prove that it was not due to his professional fault that the Client was wrongfully there (opposed to the Registrar needing to prove that it was the Registrant's professional fault).[41] Applied further to the facts of this case, the Appellant asserted that it should have been the Registrant, opposed to the Registrar, that called the Client to testify at the Discipline Hearing if the Registrant wanted to rely on their testimony to exonerate themselves.

50. In articulating its "reverse onus" arguments, however, the Appellant conceded that the Registrar still needed to prove that the Client was wrongfully in the Property before the onus would shift to the Registrant because "the Crown must still prove the *actus reus*".[42] *Actus reus* is Latin for the "guilty act". In strict or absolute liability offences under public regulatory statutes, the *actus reus* can be various things, such as speeding while driving a vehicle, having an advertisement published that failed to meet specified legal requirements,[43] or having control over a facility where waste was found to be leaching into a creek.[44]

51. But if the "reverse onus" evidentiary requirement is to be embraced, as suggested by the Appellant, it is important to note that the *actus reus* must be something that the Registrant has done (or failed to do where specified actions are otherwise mandated by statute).

52. In this case, the Registrar's focus during its prosecution against the Respondent was actually based on the Client doing something wrong (being in the Property without permission). But that, in and of itself, cannot alone be an *actus reus* relating to the Respondent's conduct.

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[41] See the Factum of the Appellant at paragraph 27 and 29.
[42] See the Factum of the Appellant at paragraph 29 which quotes from *R. v. Wholesale Travel Group Inc.* [1991] 3 SCR 154 "*Wholesale Travel*".
[43] Like in *Wholesale Travel*.
[44] Like in *R. v. Sault Ste. Marie* [1978] 2 R.C.S. 1299, the only other case on this concept cited by the Appellant.

53. Indeed, as described at length above, there were several ways that the Client might have come to be in the Property without authorization. Some of those ways would not constitute an act (or omission) that could be characterized as being an *actus reus* attributable to the Respondent.

54. On the facts of this case, if the Respondent had been found to have intentionally communicated the lockbox code to the Client, or if it had been established that the Client saw the code while the Respondent was handling the lockbox, or if it had been established that there were certain legally-mandated procedures for handling a lockbox that the Respondent did not follow, that would have been more appropriately the *actus reus* – it would have been the wrongful conduct of the Respondent. Only (perhaps) then could it be appropriate for the onus to shift to the Respondent to prove that, despite those "guilty actions", their conduct did not fall below the requirements of the Code.[45]

55. However, as we know from above, there was no evidence presented at the Discipline Hearing that the Respondent had intentionally communicated the lockbox code to the Client; there was not enough evidence presented at the Discipline Hearing for the Discipline Panel to conclude how the Client came to be in the Property without authorization; and, there was no evidence presented at the Discipline Hearing to show that the Registrant failed to follow any legally-mandated procedures for handling a lockbox. As such, it was not possible for the Discipline Panel to conclude that the *actus reus* behind the Client gaining unauthorized access to the Property was that of the Respondent.

56. Because of this critical misunderstanding about *actus reus* in the Appellant's argument, and since (as we have seen above) the Discipline Panel was unable to determine that the Appellant was at fault owing to a lack of evidence before it, the Discipline Panel did not err by failing to impose a "reverse onus" on the Respondent to show that his conduct in the circumstance had been acceptable or excusable. This line of appeal is dismissed.

57. Note that because of the findings of this Panel in respect of *actus reus*, it is unnecessary for it to consider whether or not regulatory proceedings under the Code involve a "reverse

[45] Perhaps the Respondent was very careful with the code; perhaps the Respondent had heard from the lawyer that "the transaction closed, please give the code to the Client", who knows?

onus" of any kind in any situations. It is well known that appellant panels should not decide legal matters that are unnecessary to dispensing with the case before them.[46] This is especially true of a potentially major departure from established practice in RECO hearings, and even more so where the issue is so modestly briefed and argued. Suffice it to say that the Appellant did not produce any legal authority to support the assertion that a "reverse onus" on registrants has been generally applied in previous RECO proceedings. This lack of authority did not prevent the Appellant from submitting that the Discipline Panel erred by not compelling the Respondent to provide the missing evidence which the Appellant had themselves failed to produce by not calling the Client to testify.

58. Further, the Panel declines to opine generally on the "reverse onus" claim advanced by the Appellant because it was not first made to the Discipline Panel. As such, this Panel is unable to review the Discipline Panel's reasoning, logic, and decision-making in respect of this novel issue. As well, we note (like other panels before us) that an appeal hearing is not an opportunity for an appellant – whether it be a registrant or the Registrar – to relitigate a disciplinary hearing on its merits or request the Appeal Panel to take a fresh look at the merits (or at new merits, like this) and substitute different conclusions for those of the Discipline Panel.

59. Having reviewed the record from the Discipline Hearing, and the written reasons in the Merits Decision, the Appeal Panel finds that the Discipline Panel acted reasonably in its factual findings. Also, the same record shows that the Discipline Panel did not make the legal errors that the Appellant claims it made. In short, the Discipline Panel provided a reasonable and convincing analysis in the Merits Decision to justify its findings through the proper application of legal principles.

60. In light of the foregoing, the Appeal Panel hereby dismisses all grounds of appeal presented by the Appellant from the Merits Decision and, accordingly, that Merits Decision is hereby upheld.

[46] On judicial restraint, see, for instance, *Phillips v. Nova Scotia* [1995] 2 SCR 97 at paragraphs 6-8.

Disposition

61. Given that the Appeal Panel has determined that the appeal in its entirety should be dismissed, this leaves the issue of the costs of the appeal.

62. Accordingly, the Registrant shall have fourteen (14) days from the date of the release of this decision to advise the Manager, Discipline & Appeals Hearings at RECO ("**Manager**"), and the Registrar, whether the Registrant is seeking costs for this proceeding in accordance with RECO requirements as they relate to costs – and specifically Rule 17 under RECO's Rules of Practice, which governs the circumstances under which costs can be awarded, as well as the limitations on the quantum of such costs.

63. If costs are sought, the parties shall have twenty-eight (28) days from the date of the release of this decision to try to reach an agreement on the issue of costs and, if an agreement is reached, the Registrar shall advise the Manager as to the terms of the agreement.

64. If the parties are unable to agree on costs, the Registrant shall, within sixty (60) days from the date of the release of the Appeal Panel's decision, serve on the Registrar and file with the Manager written submissions on its purported entitlement to costs for the appeal, including the quantum of requested costs. Such submissions shall not be greater than three pages in length, and shall include, on one additional page, the quantum of costs sought and the breakdown of the work comprising the quantum so sought.

65. The Registrar shall, in turn, have fourteen (14) days from the date of service on the Registrar of the Registrant's submissions on costs to serve responding submissions on the Registrant and to file a copy of the submissions with the Manager. The Registrar's submissions shall not be greater than three pages in length but may include, if the Registrar so wishes, one additional page setting out the different (i.e. reduced) quantum, if any, that the Registrar submits should be awarded for the Registrant's costs of this appeal.

Decision Released: March 24, 2026