

RICS, Disciplinary, Registration and Appeal Panel Rules 2019

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: Joshua Kitsul
Case Number: REG0000138082
Single Member Decision of: Gregory Hammond
Date of Decision: 6 June 2022

CHARGE

The formal charge against the Regulated Member is:

“On 19 February 2021, at Abbotsford, British Columbia Court in Canada, Joshua James Kitsul was convicted of a criminal offence which could result in a custodial sentence, namely:

Joshua James Kitsul, between March 19, 2017 and April 28, 2017, at or near Abbotsford BC, did commit an offence of possessing child pornography, contrary to section 163.1(4) Criminal Code.”

The Regulated Member is therefore liable to disciplinary action under Bye-law 5.2.2(d)

BACKGROUND

1. Mr Kitsul qualified as a Professional Member of RICS (MRICS) on 21 December 2011. He lives and works in Abbotsford, British Columbia, Canada. On 29 April 2017 Mr Kitsul was arrested on suspicion of possession of child pornography and making available child pornography. The arrest followed a police search of his home address the previous day. Following arrest, Mr Kitsul was charged with criminal offences relating to child pornography and was subsequently released on bail. On 15 May 2017 the Abbotsford Police Department issued a news release about the matter, and it was covered in the Canadian media and came to the attention to RICS.

2. On 19 February 2021, Mr Kitsul was convicted of one count of possessing child pornography between 19 March and 28 April 2017, contrary to section 163.1(4) of the Criminal Code of Canada. This offence could have resulted in a custodial sentence of up to two years. On 21 October 2021 Mr Kitsul was sentenced to a Conditional Sentence Order for a period of 12 months and placed on the national sex offender register for a period of 10 years. There were 12 conditions imposed as part of the Conditional Sentence Order including a 12-month Probation Order. A correction to the Conditional Sentence Order was made on 2 March 2022. The Conditional Sentence Order and Probation Order were provided to RICS by Mr Kitsul’s legal representative on 9 March 2022.

FINDINGS OF FACT

3. I have been provided with a hearing bundle of 49 pages which includes copies of the Conditional Sentence Order and Probation Order imposed by the Court on Mr Kitsul.

4. The bundle also includes a response from Mr Kitsul's legal representative which states that Mr Kitsul "admits the allegations" and acknowledges that "he pled guilty to one count of possessing child pornography, contrary to section 163.1(4) of the *Criminal Code of Canada*."

5. Accordingly, I find the factual allegation proved based both on the documentary evidence provided and on Mr Kitsul's admission.

DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION

6. RICS Bye-law 5.2.2 states:

"A member may be liable to disciplinary action under these Bye-laws, whether or not he was a member at the time of the occurrence giving rise to that liability, by reason of:

(a)...

(b)...

(c)...

(d) having been convicted of a criminal offence which could result in a custodial sentence."

7. Mr Kitsul's representative states that "Mr Kitsul apologies [sic] to the RICS for any action of his which may have necessitated the initiation of an investigation and disciplinary action under the RICS Bye-laws." The representative's letter goes on to say: "Although Mr Kitsul denies that any of the allegations ever placed the public at harm, he understands the allegations contain conduct which may bring RICS into disrepute. Accordingly, Mr Kitsul apologizes for any disreputation brought to the RICS."

8. I note that all members agree to adhere to the RICS Rules, Regulations and Bye-laws and accept that they may be subject to disciplinary action if they fail to do so. While I have also taken into account Mr Kitsul's apologies, his criminal conviction is for a very serious matter that could have resulted in a custodial sentence.

9. Accordingly, I find that Mr Kitsul is liable to disciplinary action.

SANCTION

10. I have borne in mind that the purpose of sanctions is not to be punitive, although they may have that effect. The purpose of sanctions is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of RICS as its regulator, and to protect the public. Sanctions must be proportionate, and my decision must take account of all the circumstances of the case including any aggravating and mitigating factors.

11. I have taken into account the RICS Sanctions Policy and Mr Kitsul's previously unblemished disciplinary history, and I have noted that Mr Kitsul has fulfilled his duty as a member to cooperate fully with the RICS investigation.

12. I find the following aggravating factors in this case:

- The criminal offence for which Mr Kitsul was convicted was serious and could have resulted in a custodial sentence.
- Media coverage of Mr Kitsul's arrest was liable to bring RICS into disrepute.

13. I find the following mitigating factors in this case:

- Mr Kitsul has apologised to RICS for causing the need for an investigation and disciplinary proceedings, and for the reputational damage caused to RICS by his arrest and conviction.
- Mr Kitsul has made admissions.

14. I first considered whether to impose no sanction. However, I determined that this would not reflect the seriousness of Mr Kitsul's criminal conviction or adequately mark the public interest in upholding the reputation of the profession and its regulatory process.

15. I went on to consider imposing a caution. However, the Sanctions Policy says that a "caution is likely to be given in circumstances where the breach is minor...." The circumstances of Mr Kitsul's conviction are not minor and therefore I determined that a caution order was not the appropriate sanction.

16. I also considered the imposition of a reprimand, but determined that this similarly would not reflect the seriousness of Mr Kitsul's criminal conviction, and that such a sanction would undermine public trust and confidence in the regulatory process.

17. The next available sanction, taking them in ascending order from the least serious, would be to impose undertakings on Mr Kitsul. However, the charge found proved does not relate to his professional practice and I was unable to identify relevant, workable or measurable undertakings that could be created in this case. I also determined that undertakings would not satisfy the public interest in marking the seriousness of Mr Kitsul's conviction.

18. I then considered whether to impose a fine. However, I decided that a fine would not adequately mark the seriousness of the case.

19. I went on to consider imposing conditions. However, as this case does not involve Mr Kitsul's professional practice, I was unable to formulate specific, measurable, achievable, realistic and time-bound conditions that would redress the serious nature of Mr Kitsul's criminal conviction. I decided that conditions would therefore not be proportionate in this case.

20. Having decided that conditions would not be the appropriate sanction, I considered the ultimate sanction of expulsion from RICS membership. I recognise that expulsion is the sanction of last resort and should be reserved for those cases where there is no other means of protecting the public or marking the wider public interest. I decided that Mr Kitsul's case falls into this category. In reaching this conclusion, I found that the following limb of the guidance on expulsion in paragraph 21.1 of the Sanctions Policy was engaged in this case:

- *"conviction of a serious criminal offence (an offence for which the penalty could be a custodial sentence)"*

21. In reaching this conclusion, I have carefully balanced the wider public interest against Mr Kitsul's interests and his professional standing. I have had regard to the impact expulsion may have on Mr Kitsul, but determined that his interests are outweighed by my duty to give priority to the significant public interest concerns raised by this case. I am satisfied that, in these circumstances, any lesser sanction than expulsion would undermine public trust and confidence in the profession and in RICS.

DECISION

22. Having read all the evidence and written submissions in this case, in accordance with Part VI of the Disciplinary, Registration and Appeal Panel Rules, I make the following order:

That Mr Joshua Kitsul shall be expelled from membership of RICS

COSTS

23. RICS has made an application for costs to the sum of £650.00, comprising £300.00 for the cost of the investigation and £350.00 for the costs of consideration by a Single Member of the Disciplinary Panel.

24. Mr Kitsul's representative has submitted on his behalf that, "in light of his cooperation with the RICS, and in light of his acknowledgment of the allegations, any disciplinary order of the RICS be made with the following conditions:

1) RICS not make any order in relation to its costs in connection the any investigation and/or hearing [sic]; and..."

25. I have considered the RICS' application and the representation on Mr Kitsul's behalf. I have found that the RICS has incurred legitimate costs as a result of investigation of Mr Kitsul's conduct and the convening of a Single Member of the Regulatory Tribunal to determine the case on the papers. I consider the costs requested to be reasonable and that it is appropriate for members to reimburse RICS for costs incurred in legitimately investigating them and convening the Regulatory Tribunal when RICS believes there is a case to answer. I consider that Mr Kitsul had a duty as a member to cooperate fully with RICS throughout the process, and find that his cooperation is therefore not a valid reason for me to waive the costs.

26. In accordance with Rule 119 of the Disciplinary, Registration and Appeal Panel Rules, I therefore make the following order in respect of costs:

That Mr Kitsul shall pay costs in the amount of £650.00

TAKING EFFECT OF THE ORDER

27. The following Rule of the Disciplinary, Registration and Appeal Panel Rules applies in this case:

"114. Following the expiry of 14 days from service of the Single Member's decision upon the Regulated Member, the Regulatory Sanction will be deemed to be accepted by the Regulated Member and the Regulatory Sanction imposed will take effect forthwith, unless notification has been received under Rule 116."

28. Mr Kitsul, as the Regulated Member, must notify the Head of Regulatory Governance and Tribunals within 14 days of receipt of this Single Member decision if he does not accept the decision, failing which the order will be deemed accepted by Mr Kitsul and will take effect.

PUBLICATION

29. Supplement 3 to the Sanctions Policy para 3.2 states that there is a “presumption in favour of publication of Single Member decisions and decisions of the Disciplinary and Appeals Panel”, and Rule 120 of the Disciplinary, Registration and Appeal Panel Rules states the following:

“120. In accordance with the Regulatory Sanctions Publication Policy:

- a. pending the expiry of 14 days following service of the record of decision upon the parties, the Regulated Member’s name, charge(s) and the Single Member’s decision as to whether the charge(s) were found proved or not proved, and Regulatory Sanction if applicable will be published in accordance with the Regulatory Sanctions Policy and*
- b. the Single Member’s Record of Decision will be published following the expiry of 14 days.”*

30. Mr Kitsul’s representative has submitted on his behalf that, “in light of his cooperation with the RICS, and in light of his acknowledgment of the allegations, any disciplinary order of the RICS be made with the following conditions:

- 1)....; and
- 2) the publication of any order findings of c disciplinary penalties be published on RICS’ website only [sic].”

31. I have noted the submission, but find that there are no exceptional circumstances in this case that would justify departing from RICS’ normal publication policy. I therefore order that publication takes place in accordance with Rule 120.

32. This concludes the determination.