IN THE MATTER OF

THE MORTGAGE BROKERAGES AND MORTGAGE ADMINISTRATORS ACT

AND

IN THE MATTER 1414695 ALBERTA LTD.

DECISION OF THE DEPUTY SUPERINTENDENT

A. INTRODUCTION

1. The activities and operations of mortgage administrators in Saskatchewan are regulated under *The Mortgage Brokerages and Mortgage Administrators Act* (the "**Act**") and *The Mortgage Brokerages and Mortgage Administrators Regulations* (the "**Regulations**"). As Deputy Superintendent of Financial Institutions (the "**Deputy Superintendent**") appointed pursuant to the Act, I have the responsibility of administering the Act and the Regulations. As set out in section 2(1)(s) of the Act, any reference to the Superintendent includes the Deputy Superintendent.

2. On May 12, 2023, a notice of opportunity to be heard of the same date (the "**Notice**") was issued with respect to 1414695 Alberta Ltd. ("**141 Ltd**.") and served on [redacted] was the sole director and sole shareholder of 141 Ltd. In the Notice, I stated my preliminary inclination to impose an administrative penalty of $6,000 for the Business Activities carried on by 141 Ltd. in Saskatchewan without the requisite licence under the Act. The phrase "*Business Activities*" is defined in the Notice; see also the "Background Facts" section of this decision. The phrase "*Disclosure Documents*" is also defined in the Notice. In the Notice, I further stated the grounds that justify the imposition of the said administrative penalty, and advised of the opportunity for 141 Ltd to request an oral hearing or make written representations as to why I should not take the proposed action.

3. On May 15, 2023, Ms. Debbi McCaig-Paisig, a member of my Staff, received an email from [redacted], a lawyer with [redacted] Law Firm in Calgary, advising that he was acting for [redacted] and 141 Ltd. with respect to this matter, and that he had received the Notice and the Disclosure Documents. While [redacted] raised a couple of legal arguments in the said email, he subsequently confirmed that we should regard these as being offered on a "without prejudice" basis.

4. On May 30, 2023, [redacted] sent an email to Ms. McCaig-Paisig confirming that [redacted] would be sending written submissions in response to the Notice. The deadline to receive the written submissions was June 14, 2023. On June 14, 2023 [redacted] contacted my office requesting for an extension till June 16, 2023 to provide his written submissions because he had had a busy week that had put him "a bit behind". I granted [redacted] request for an extension, and gave him till 2pm on June 16, 2023 to provide his written submissions. By an email of June 16, 2023, [redacted] provided his written submissions in response to the Notice

(the "**Written Submissions**"). Accompanying the Written Submissions were the following documents (collectively, "**Accompanying Documents**"):

a) Excerpts (pages 108 to 112, and page 1, the cover page) of a Transcript of Oral Questioning of [redacted] held *via* videoconferencing on February 16, 2023. This is indicated to be with respect [redacted] filed at the Court of King's Bench (Alberta) involving [redacted] as Plaintiff. The Defendants are shown as a couple of individuals and corporations;

b) Email of April 14, 2021 (subject: [redacted]) from [redacted]; recipients are unknown (though it shows cc: to [redacted]);

c) A partly redacted email of December 30, 2020 (subject: *Re:* [redacted]) from [redacted] multiple recipients;

d) Email of February 7, 2020 (subject: [redacted] from [redacted] to [redacted] and two others [redacted]

e) A heavily redacted letter dated January 24, 2018 ([redacted] and signed by [redacted];

f) Email chain involving [redacted] and a number of others. Last email in the chain was sent on June 10, 2017 from [redacted] to the email address: [redacted] (this would appear to be [redacted] email address);

5. Upon careful review and consideration of the Written Submissions and the Accompanying Documents, I have decided to impose the administrative penalty of $6000 that I indicated I was inclined to impose in the Notice for the Business Activities carried on by 141 Ltd. in Saskatchewan without the required licence under the Act. Section 5(4) of the Act provides that "*no person shall carry on the business of administering mortgages unless that person has a mortgage administrator's licence*". As such, only licensed mortgage administrators under the Act are authorized to engage in activities such as the Business Activities in Saskatchewan. As noted in the Notice, our records indicate that no such licence was ever issued to 141 Ltd.

6. In the Written Submissions, [redacted] did not dispute any of the following that was discussed in the Notice:

a) 141 Ltd. carried on the Business Activities in Saskatchewan;
b) the Business Activities constituted administration of mortgages in Saskatchewan under the Act;
c) carrying on activities such as the Business Activities required a licence under the Act; and,
d) 141 Ltd. did not have the required licence under the Act to carry on the Business Activities.

7. In view of the above, I find that 141 Ltd. contravened the Act by carrying on the Business Activities in Saskatchewan without a licence. As such, I hereby impose an administrative penalty of $6,000 for the contravention. In accordance with section 75(5) of the Act, this administrative penalty shall be paid in full by May 30, 2025.

8. While [redacted] raised a number of arguments in the Written Submissions (which are discussed below), none of them addressed or refuted any of the items noted in paras. 6(a) to (d) above, and these items are the necessary elements that constitute the contravention of the Act by 141 Ltd. I will now proceed to highlight the relevant "Background Facts", discuss the arguments raised in the Written Submissions and provide my analysis showing why I have rejected these arguments.

B. BACKGROUND FACTS

9. The following background facts were set out in the Notice and, for ease of reference, are reproduced here.

10. In the Notice, I noted that my office received information and documents from some consumers about 141 Ltd.'s alleged mortgage administration activities in Saskatchewan. Also, staff from my office ("**Staff**") met with [redacted], *via* Microsoft Teams, on March 26, 2021 and on August 16, 2021 to discuss the file and get more background information. The following are from the documents and information received, some publicly available information, as well as the discussions with [redacted]:

    a) 141 Ltd. was registered in Alberta with [redacted], as the sole director and sole shareholder. 141 Ltd. was also registered extra-provincially in Saskatchewan, with the above address indicated as its mailing address – see the Disclosure Documents for the relevant corporate profile reports. [redacted] ("**KB Decision**")

    b) The activities of 141 Ltd. were in connection with [redacted], which was a land syndication corporation whose activities involved acquiring undeveloped land, raising funds to use to prepare the land for development, then ultimately selling the land to a developer. [redacted] would typically sell undivided interests in the undeveloped lands ("**UDIs**"). The land development relates to land in Olds, Alberta – see KB Decision.

    c) As not all purchasers of UDIs always had funds readily available to purchase one or more of the UDIs, [redacted] provided a service whereby persons were sought to lend money ("**Investor**") to a purchaser of the UDIs ("**Borrower**") through a mortgage arrangement involving the Investor and the Borrower. The Borrower would grant a mortgage to [redacted], and this mortgage would be assigned to the Investor who advanced the funds, thereby becoming the mortgagee. Under the mortgage, the Borrower made interest only payments to the Investor. This is consistent with the findings of the Court in the KB Decision where it was noted (para. 5):

> To assist investors with financing the purchase of their undivided interests, [redacted] organized a scheme wherein those investors could borrow the purchase monies from other investors, and provide a mortgage to the financing investor to secure the loan. The applicants, among others, took advantage of this scheme and lent monies to certain other investors. The terms of the mortgage included payment of interest only. [redacted] and/or 141 administered the Phase I joint venture and the collection of interest payable under the mortgages

d) 141 Ltd. carried out the function of receiving the payments from Borrowers (typically through pre-authorized debit arrangements), on behalf of the Investors, and remitting these payments, less the fee retained by 141 Ltd., to the Investors. As noted in the Notice, the foregoing encapsulates the "**Business Activities**". 141 Ltd. maintained records to track Borrowers' payments and the remittances to Investors. While the majority of the Borrowers and Investors were indicated to be Alberta residents, some Investors were Saskatchewan residents. Based on information in a number of documents included in the Disclosure Documents, I note as follows:

   (a) 141 Ltd. deposited money on a periodic basis into the bank accounts of the following residents of Saskatchewan: [redacted] (collectively, "**Saskatchewan Investors**"). The periodic amounts deposited into each bank account were different for each of the Saskatchewan Investors. [redacted]

   (b) As seen in the Disclosure Documents, 141 Ltd. issued T5 – Statement of Investment Income Slips ("**T5 Slips**") to a number of the Saskatchewan Investors declaring the interest they earned in the relevant calendar years. The T5 Slips covered several years from around 2011 up till 2018 as applicable. Canada Revenue Agency requires the issuance of T5 Slips when certain types of payments, such as interests, are made to a resident of Canada.

e) 141 Ltd. operated out of its office in Saskatoon, Saskatchewan, at the address noted in para. 2 above. I should note that all but one of the T5 Slips in the Disclosure Documents indicate this address as the address for 141 Ltd.

f) [redacted] advised Staff that the Business Activities ceased around November 2019, and Borrowers and Investors were advised of this *via* an email dated March 9, 2020. [redacted] noted that the Business Activities was stopped after 141 Ltd. was contacted by the Real Estate Council of Alberta ("**RECA**") regarding potential unlicensed mortgage administration activity in Alberta. RECA's responsibilities include regulating mortgage brokerages in Alberta, which includes administering mortgages.

11. I should note that none of the above background facts were disputed or refuted in the Written Submissions. As such, I find and accept that the above accurately describes the facts outlined. I will, accordingly, proceed on that basis.

C. ISSUE FOR DETERMINATION

12. The main issue for determination is: *Whether 141 Ltd., by engaging in the Business Activities, was administering mortgages in Saskatchewan without a licence, thereby violating the Act*?

D. DISCUSSION AND ANALYSIS

13. In the Notice, I advised of my inclination to impose an administrative penalty for the Business Activities carried on by 141 Ltd. in Saskatchewan without the required licence under the Act, and provided the grounds justifying the penalty. I will substantially reproduce the relevant sections of the Notice that contain the necessary background analysis, as it provides the foundational arguments to address the stated issue for determination. I will thereafter discuss the arguments proposed in the Written Submissions.

14. The Act, among other things, sets up a regulatory scheme whereby persons or corporations intending to offer certain types of services in Saskatchewan must hold the appropriate licences under the Act to enable them (to) carry on the business activities authorized by such licences within the framework of the Act and the Regulations. The Act prohibits persons from carrying on those activities without a licence.

15. Section 5(4) of the Act provides that "*No person shall carry on the business of administering mortgages unless that person has a mortgage administrator's licence.*" The central question here, therefore, is whether the Business Activities of 141 Ltd. fall within "administering mortgages" under the Act, for which a licence is required under the noted section 5(4). On this, I will direct attention to a number of provisions of the Act. Section 2(5) of the Act provides that:

> *For the purposes of this Act, a person administers mortgages if the person, on behalf of an investor, engages in one or more of the following activities:*
>
> *(a) receiving payments made by a borrower and remitting those payments to the investor;*

(b) monitoring the performance of a borrower with respect to his or her obligations under the mortgage;
(c) undertaking any other prescribed activity.

16. The Act defines a number of terms used in the above provision, and these will be discussed below. In discussions with Staff about the Business Activities, [redacted] explained that 141 Ltd. was established to facilitate the receiving of payments from borrowers and remitting those payments to investors. Among the Disclosure Documents is a notice addressed to "valued investors" and issued in the names of [redacted] and one [redacted] stating that 141 Ltd. was being set up to "*...handle all the borrowing and lending transactions for our projects*." The notice further states that "*...your electronic funds transfer will continue from the existing account you have set up with us*". This information is consistent with the averments of [redacted] in the affidavit he swore to on June 19, 2017 in connection with the KB Decision (the "**Affidavit**"). This Affidavit more broadly describes the Business Activities: see paras. 5, 13-15 and 51 in particular.

17. In para. 51 of the Affidavit, [redacted] stated that the "*interest on mortgages continues to be paid by the mortgagors to* [redacted]*, and* [redacted]*, or more accurately 141, continues to pay interest to the mortgagees*". As noted in para. 10(c) above, these "mortgagees" are the "Investors", and in discussions with Staff, [redacted] confirmed that these Investors included Saskatchewan consumers. This is consistent with information in the Disclosure Documents respecting the Saskatchewan Investors – see: para 10(d) above.

18. The starting point here, and further to para. 16 above, is to consider whether, based on the definitions of some key terms used in section 2(5) of the Act to describe what constitutes administering mortgages, the Business Activities come within what is contemplated by the aforementioned provision. Section 2(1)(k) of the Act defines "mortgage" as "*any charge on real property or on an interest in real property for the purpose of securing the repayment of money or other consideration, and includes a mortgage of a mortgage*". Based on information already provided in the Background Facts, including the quoted portion of the KB Decision and the Affidavit, I am of the view that the Business Activities involved a "mortgage" within the definition of the Act. As noted above, UDIs were sold with respect to real property (i.e. the undeveloped lands): see paras. 10(b) and (c).

19. Also, an "*investor*" is defined under section 2(1)(g) of the Act as "*a person that makes an investment in a mortgage*", and section 2(1)(f) of the Act defines an "*investment in a mortgage*" as "*the acquisition of an interest in a mortgage by an investor and includes the lending of money on the security of a mortgage*". While this is obvious and hardly needs stating, given the background information in para. 10 including statements from [redacted], it is important to, nonetheless, note here that both "Investor" and "Saskatchewan Investors", as used in this Notice, come within the definition of "investor" under the Act. A "*borrower*" is also defined in the Act to include a "*prospective borrower*". To restate, section 2(5) of the Act provides as follows:

> *For the purposes of this Act, a person administers mortgages if the person, on behalf of an investor, engages in one or more of the following activities:*

(a) receiving payments made by a borrower and remitting those payments to the investor;
(b) monitoring the performance of a borrower with respect to his or her obligations under the mortgage;
(c) undertaking any other prescribed activity.

20. From the above, both "a" and "b" are of particular relevance. Based on the background facts already outlined above, and not refuted in the Written Submissions, I find that the Business Activities involved 141 Ltd. receiving payments from applicable Borrowers on behalf of the Saskatchewan Investors and remitting those payments to them (i.e. the Saskatchewan Investors). As such, this comes within the ambit of administering mortgages under "a". Also, [redacted] indicated that 141 Ltd. kept records relating to the payments made by Borrowers. In my view, it is reasonable to infer that in keeping these records, as [redacted] advised, 141 Ltd. is, invariably, monitoring the performance of Borrowers with respect to their payment obligations under their mortgage. In the Notice, I stated that this "act presumably comes under "b" above". [redacted], in the Written Submissions, did not controvert this. As such, I find that 141 Ltd., in keeping the records alluded to, was monitoring the performance of borrowers with respect to their obligations under the applicable mortgages.

21. In the Notice, I indicated that 141 Ltd., in carrying on the Business Activities, would appear to have operated within the territorial jurisdiction of Saskatchewan. Support for this proposition is found in section 2(3) of the Act which outlines situations when a person is considered to be carrying on business in Saskatchewan. It provides that:

> *For the purposes of this Act, a person is considered as carrying on business in Saskatchewan if:*
>
> *(a) the person solicits, provides, promotes, advertises, markets, sells or distributes any products or services by any means that cause communication from the person or the person's agents or representatives to reach a person in Saskatchewan;*
> *(b) the person has a resident agent or representative or maintains an office or place of business in Saskatchewan;*
> *(c) the person holds himself or herself out as carrying on business in Saskatchewan; or*
> *(d) the person otherwise carries on business in Saskatchewan.*

22. In *Teresa McCrea Investments Inc. v. Conley Management Ltd*, [2012] SKQB 374 (affirmed on appeal, 2013 SKCA 13), the Court considered section 2(2)(a) of *The Trust and Loan Corporations Act, 1997*, which is similar to section 2(3)(a) of the Act noted above. The Court, while considering if an entity was carrying on business as a financing corporation in Saskatchewan, noted that providing a product or service of the type normally offered by a financing corporation in a manner that caused communication by its representative or agent with a Saskatchewan consumer will constitute carrying on business in Saskatchewan.

23. As already highlighted above in discussions with [redacted], as well as from documents in the Disclosure Documents, there is evidence that in furtherance of the Business Activities of

141 Ltd., there was communication with the Saskatchewan Investors. This would meet the requirements of section 2(3)(a) of the Act that a person is carrying on business in Saskatchewan where "*the person solicits, provides, promotes, advertises, markets, sells or distributes any products or services by any means that cause communication from the person or the person's agents or representatives to reach a person in Saskatchewan*". Based on information in the T5 Slips issued by 141 Ltd., all the Saskatchewan Investors are resident in Saskatchewan. In light of this, I find that the requirement of section 2(3)(a) of the Act has been met.

24. In further discussions with Staff, as noted in the Notice, [redacted] explained that the Business Activities of 141 Ltd. were carried on [redacted] in Saskatoon [redacted] The facts, therefore, indicate that 141 Ltd. meets another requirement to be considered as carrying on business in Saskatchewan. This would be the provision of section 2(3)(b) which provides that a person is considered as carrying on business in Saskatchewan if the person "*has a resident agent or representative or maintains an office or place of business in Saskatchewan*". I should note here again that [redacted], in the Written Submissions, did not refute any of the information relating to 141 Ltd. carrying on business in Saskatchewan as described above.

25. In light of the foregoing, I find that 141 Ltd., in engaging in the Business Activities, was administering mortgages within the meaning of section 2(5)(a) of the Act. Additionally, I find that 141 Ltd., in keeping records relating to payments made by Borrowers, was monitoring the performance of their payment obligations under the mortgage. As such, I also find that 141 Ltd. was administering mortgages within the meaning of section 2(5)(b) of the Act (see paras. 19 and 20 above). As 141 Ltd. did not have the requisite licence to do this, as required under the Act, I find that it has contravened section 5(4) of the Act which states that "*no person shall carry on the business of administering mortgages unless that person has a mortgage administrator's licence.*

ARGUMENTS IN WRITTEN SUBMISSIONS

26. As already noted, none of the arguments advanced in the Written Submissions controverted my assessment that 141 Ltd. was engaged in mortgage administration activities in Saskatchewan without a license. I will, nonetheless, proceed to consider the arguments in the Written Submissions to ensure that the points raised therein are adequately addressed.

27. [redacted] advances four broad heads of argument in the Written Submissions, *viz*: (a) Inadequate Legal Representation, (b) Motives of the Complainants, (c) Monetary Penalty Imposed by the Real Estate Commission of Alberta, and (d) Matter is Statute-Barred Under section 74 of the Act.

Inadequate Legal Representation

28. [redacted] notes in the Written Submissions that "*I want to thank you for allowing me to present my side of this unfortunate situation. The root of the issue involves receiving inadequate legal advice, which subsequently led to a contravention, of which I did not have knowledge*". [redacted] further notes how he had relied on legal advice regarding setting up 141 Ltd to "facilitate the payments from Mortgagee to Mortgagor". He also stated that "*We trusted and followed their legal opinion on the matter. Unfortunately, I do not have access to emails from 2007-2009 and the lawyer we used became a Queen's Court Judge and the firm did not keep or maintain any of those records*"

29. While I understand [redacted] disappointment and frustration with the quality of legal advice he indicated he received in the matter, and his inability to access emails from 2007-2009, there is nothing in the Written Submissions that explains how the information in those emails would have made any difference with respect to the finding that 141 Ltd., in carrying on the Business Activities, was engaged in administering mortgages under the Act, and was doing so without the requisite licence. As previously noted, [redacted] did not raise any arguments to refute the information in the Notice regarding the carrying on of the Business Activities by 141 Ltd. without a licence.

Motives of the Complainants

30. In the Written Submissions, [redacted] contends that the complainants were vexatious, and suggested that their motives for filing the complaints were questionable. He references the Accompanying Documents to buttress his argument in this regard, and further highlights how the complainants have filed numerous lawsuits and complaints against him over the years.

31. While, based on information in some of the Accompanying Documents, there may have been some disagreements or tension between [redacted] and some other people involved in the transactions that may be connected to the Business Activities, I do not see how the motives of the complainants who reached out to my office are relevant for purposes of enforcing compliance with the Act and Regulations. Regulators always encourage members of the public to come forward to advise of possible infractions of laws. Whether or not their motives are genuine is irrelevant to the decision to investigate. My responsibility is to ensure a thorough and dispassionate investigation of these complaints to determine whether regulatory action is warranted based on the available cogent evidence.

32. I should note here that [redacted], in the Written Submissions, did not question the veracity of any information or records in the Disclosure Documents that may have been provided by the complainants.

Monetary Penalty Imposed by the Real Estate Commission of Alberta

33. On this, [redacted] noted in the Written Submission as follows:

RECA felt like the $10,000 fine was quite high and did so as consideration that it was a blanket fine across the provinces. I know that you are a separate body, but that you do work together and am merely stating what I was told.

34. As rightly noted, RECA is a separate regulatory body, with its own separate mandate. As such, decisions made by it (including imposition of fines) do not preclude me from making my decisions on related or connected facts. In light of this, the $10,000 imposed by RECA is not relevant for determining whether or not 141 Ltd. has contravened the Act.

Matter is Statute-Barred Under section 74 of the Act

35. In the Notice, I noted as follows: *Between July 13, 2020 and October 14, 2020, my office received expressions of concern that 1414695 Alberta Ltd. ("**141 Ltd**.") had allegedly engaged in mortgage administration activities in Saskatchewan without a licence to do so. These activities were described as occurring between September, 2008 and November, 2019. As the Act was implemented on October 1, 2010, the relevant activities of 141 Ltd. that will be considered in this Notice of Opportunity to be Heard (the "**Notice**") will be those occurring from October 1, 2010, and for which my office has relevant information. I will look at transactions up to November 2019 – the documents available to me show transactions up to that time.*

36. In the Written Submissions, [redacted] argues as follows:

> *I also want to bring attention of the potential that this matter appears to be time barred by operation of Section 74 of the Mortgage Brokerages and Mortgage Administrators Act. I note that Mr. Cory Peters, as Deputy Superintendent of Financial Institutions claims that this matter falls within the 3-year limitation date provided by that section, but no evidence is disclosed which can prove that to be true. The balance of evidence disclosed shows that the FCAA knew or ought to have know of the allegations against my company much earlier than 3 years prior, and no later than 2017 when matters were before the Court of King's Bench for Saskatchewan. It is trite law that the government cannot hide behind public knowledge in the hands of a separate branch of the same government.*
>
> *The RECA complaints were almost a full year earlier and based on the rest of the actions taken against me, I am surprised that the first contact with FCAA was initiated in July of 2020. Members of the group that have initiated this action based on personal gains or retribution were in contact with FCAA in February of 2020. It does not coincide directly with the mortgage issue that this matter contemplates, but due to the association of the individuals involved there is a plausible connection*.

37. The following are the key points in the above, and they will be addressed seriatim: (i) Limitation Period – Section 74 of the Act and the KB Decision of 2017 and (ii) First Contact with the FCAA.

Limitation Period – Section 74 of the Act and the KB Decision of 2017

38. Section 74 of the Act provides that: "*No prosecution for a contravention of this Act is to be commenced more than three years after the facts on which the alleged contravention is based first came to the knowledge of the superintendent*"

39. With respect, the above section, in my view, contemplates "prosecution" for a contravention of the Act, and envisions where the enforcement proceedings will be conducted by way of criminal prosecution in Court proceedings, as opposed to regulatory proceedings conducted by the Deputy Superintendent. As such, I do not see how the provisions of section 74 are relevant here. In light of this, I consider the provision inapplicable.

40. Having said that, I will direct attention to section 75(3) of the Act which provides that "*No penalty is to be assessed by the superintendent more than three years after the date the facts on which the alleged contravention is based first came to the knowledge of the superintendent*". In my view, this provision is more apt for the purposes here given that the penalty I proposed to impose in the Notice was an administrative penalty.

41. I should note though that I do not consider I have an obligation to address an issue or section of the Act that was not raised in the Written Submissions. I will, however, proceed to address section 75(3) of the Act to ensure that the main thrust of [redacted] argument is addressed, *albeit* using a different, and more appropriate provision of the Act, other than the one cited in the Written Submissions. I will, therefore, proceed on the basis that section 75(3) of the Act is the provision that [redacted] had in mind. I should note that whether one considers section 74 or 75(3) of the Act, the crux of [redacted] argument is not affected here – which is, the matter is outside the 3 year-limitation period. Both provisions are largely identical.

42. In the Written Submissions, [redacted] submits that the "*balance of evidence disclosed shows that the FCAA knew or ought to have know (sic) of the allegations against my company much earlier than 3 years prior, and no later than 2017 when matters were before the Court of King's Bench for Saskatchewan*". I should clarify something here at the outset. [redacted] references the FCAA, which is "*The Financial and Consumer Affairs Authority of Saskatchewan*". The FCAA, however, is not the decision-maker under the Act. That would be the Superintendent or me, as the Deputy Superintendent. The FCAA is set up pursuant to a separate legislation, *The Financial and Consumer Affairs Authority of Saskatchewan Act*, and with its own mandate. As such, it has no role in this matter. The applicable legislation for purposes of this matter is the Act.

43. As noted above, section 75(3) of the Act provides that: "*No penalty is to be assessed by the superintendent more than three years after the date the facts on which the alleged contravention is based first came to the knowledge of the superintendent*". [redacted], in his Written Submissions, contends that the "FCAA" knew or ought to have known of the allegations against 141 Ltd. earlier than 3 years, and no later than 2017 – the year of the KB Decision. [redacted] goes on to state that "*It is trite law that the government cannot hide behind public knowledge in the hands of a separate branch of the same government*".

44. Neither [redacted] in his Written Submissions, nor his lawyer [redacted] – who first made the assertion in his email acknowledging receipt of the Notice – provided any authority in support of what I will describe as a very far-reaching proposition. Given the context, my understanding of the argument is that where a lawsuit has been commenced or concluded in the Courts (judicial arm of government), then the other branches of government (both the Executive and the Legislature) should automatically be imputed with notice of such lawsuit – including the subject matter, the various parties as well as the issues. This is regardless of whether or not these branches of government are parties to such lawsuit.

45. I have no hesitation in rejecting the above submission, and I am unaware of any judicial authority applicable in Saskatchewan that supports such a proposition. It is totally unworkable and unreasonable. If one accepts the argument, it would then also mean that the Courts would be deemed to have notice of information in the other branches of government. How can the Courts then impartially adjudicate matters involving, for example, the Executive branch of government, if they (the Courts) are already deemed to have knowledge of information that may (or may not) be presented in evidence by the Executive branch? Given what I would describe as the novelty of the proposition, it would have been helpful for [redacted] to provide some judicial authorities in support of his position. In light of the foregoing, I do not agree that I should be deemed to have knowledge of information in the Courts by the mere fact that my office is in another branch of government.

46. As [redacted] has raised the issue of the 3 year limitation period, I will speak further to the provisions of section 75(3) of the Act, which provides that no administrative penalty shall be assessed "more than three years after the date the facts on which the alleged contravention is based first came to the knowledge of the superintendent". In particular, when does time begin to run? While a literal interpretation of the provision may suggest that time begins to immediately run from the moment I get any inkling of a potential violation of the Act in a matter, this interpretation, in my view, is very narrow and ignores the realities of regulatory investigations which, among other things, involves several steps/phases: screening complaints, interviewing multiple people, gathering and analyzing information, determining evidentiary requirements etc. As noted by Sara Blake, in determining when facts first came to the knowledge of a regulator as provided in a number of regulatory statutes, one should recognize that "facts are rarely learned and analyzed all at once. To turn suspicion into "knowledge", sufficient credible and persuasive information must be gathered about the events and those involved": see Sara Blake, *Administrative Law in Canada*, (5th ed.) at p. 34-35; see also generally, chapter 2 of the same book (7th ed).

47. While there is no reported decision in Saskatchewan that has interpreted section 75(3) of the Act that I am aware of, there are a couple of important cases in other jurisdictions that have interpreted identical provisions. In *Romashenko v. Real Estate Council (British Columbia)* [2000] BCCA 400 ("*Romashenko*"), the Court was interpreting a limitation period under section 40(2) of the *Real Estate Act* which provided that "*No proceeding under this Act shall be instituted more than 2 years after the facts on which the proceeding is based first came to the knowledge of the superintendent*." As can be seen, this provision, in nearly all respects, is identical to section 75(3) of the Act. In that case, the Court (per Huddart J.A) held at para. 17

that the limitation period commenced when there was "evidence of the material averments of the charge" According to the Court,

> Counsel agree the test to be applied to determine when the Council knew "the facts on which the proceeding is based" is that set down in *Ontario (Securities Commission) v. International Containers Inc*. (June 19, 1989), Doc. Toronto RE 401/89 (Ont. H.C.) and approved in *R. v. Fingold* (1996), 19 O.S.C.B. 5301 (Ont. Prov. Div.), aff'd (1999), 22 O.S.C.B. 2811 (Ont. Gen. Div.). When did the Council have evidence of the material averments of the charge? The answer is to be determined on an objective view of that which was known to the Council.

48. In *Romashenko,* the proceedings began with a notice of hearing issued on January 4 1995. The appellants argued that the facts on which the proceedings were based were already within the knowledge of the Superintendent before January 4, 1993. Literally interpreting the language of section 40(2) of the *Real Estate Act*, it would have meant that the action was statute-barred, by being outside the 2 year limitation period. While the Court acknowledged that some facts relating to the matter may have been known prior to January 4, 1993, those facts, viewed objectively, were however insufficient to support the allegations. It was not until much later (April 1993) that there was concrete evidence to support the charges.

49. Also, in *Thériault c. Gendarmerie royale du Canada* [2006] FCA 61, a RCMP officer who was subject to disciplinary proceedings objected to those proceedings on the basis that they were barred by a limitation period. The Court held that "mere rumours, suspicions or insinuations as to the existence of a contravention or the identity of its perpetrator will not suffice to make them facts": see para. 30. Also, in *R v. Fingold* [1999] O.J. No. 369 the Court had to interpret a 12-month limitation period for "knowledge of facts" by the Ontario Securities Commission. The Court held that "*facts must mean more than mere rumour or gossip on the street or even an 'overpowering' suspicion. It must be information obtained from an identifiable source which might reasonably be expected to have such information and obtained in circumstances which would tend to support the accuracy and reliability of the information given*"

50. I find the principles enunciated in the above cases particularly instructive. They recognize that just because a decision maker gets wind of a potential contravention of a legislation does not necessarily amount to "knowledge of the facts" of a contravention and thereby start the limitation clock running under provisions identical to section 75(3) of the Act. In my view, this accords with my understanding of how section 75(3) of the Act is meant to operate. There are many parts to investigating possible infractions under the Act – evidence gathering, verification, analysis, interviews, among others.

51. I adopt the approach of the Court in *Romashenko* that the limitation period should commence when there was "evidence of the material averments of the charge". While one of my Staff was copied in an email of June 23, 2020 sent by one of the complainants to a number of other persons, that information was of a general nature (citation of provisions of the Act, some general transactional details, etc.) In that email, the writer indicated that my Staff wanted to learn more to be in a position to determine if mortgage brokering rules had been violated in

Saskatchewan. In light of this, I am of the view that the said email does not contain cogent "evidence of material averments" to support a case of possible contravention. As such, time cannot be said to have begun to run as of June 23, 2020.

52. As noted above, I indicated in the Notice that between July 13, 2020 and October 14, 2020, I received expressions of concerns regarding the activities of 141 Ltd. in Saskatchewan. It was during this period that I got what I would describe as cogent "evidence of material averments" in support of a possible case of contravention of the Act. Further, it was during this period that the complainants were able to complete the necessary complaints form to provide specific details of their transactions involving 141 Ltd. Also, this was when consent for the collection, use and disclosure of their personal information for purposes of the investigation was provided.

53. As already noted, my Staff had some discussions with [redacted] in the course of the investigations, and it was as a result of the information received from the complainants that my Staff was able to look into the matter to assess if there was a violation of the legislation.

First Contact with the FCAA

54. The [redacted] is one of the Accompanying Documents, and in the penultimate paragraph, it reads that: *"Information from Harvey White, Deputy Director, Enforcement, Securities Division, Financial and Consumer Affairs Authority of Saskatchewan, indicates that he is of the belief that Paradigm ceased to be a Corporation in Saskatchewan a number of years ago and that he has no information that supports the existence of the Corporation at this date."*

55. [redacted], in his Written Submissions, states that:

> *Members of the group that have initiated this action based on personal gains or retribution were in contact with FCAA in February of 2020. It does not coincide directly with the mortgage issue that this matter contemplates, but due to the association of the individuals involved there is a plausible connection.*

56. As noted in the [redacted], Harvey White is in the Securities Division of the FCAA. The Securities Division of the FCAA ("SD"), among other things, investigates matters connected with possible breaches of *The Securities Act, 1988,* ("*The Securities Act*"). *The Securities Act* sets up a framework for carrying out those types of investigations and enforcement activities, and has specific confidentiality provisions governing access and disclosure of information gathered in the course of such investigations. On this, I will direct your attention to section 152.1 of *The Securities Act* – see Appendix A herein for the provision.

57. The current matter, however, is being conducted pursuant to the Act – a separate legislative scheme. As a matter of practice, investigation materials and information obtained through investigations under *The Securities Act* are not shared with the Deputy Superintendent. Further, SD cannot share any such information and materials outside the framework contemplated by *The Securities Act* (or other applicable legislation). Therefore, attributing knowledge of the information that SD may have obtained as of February 2020 to the Deputy Superintendent

merely because SD has it ignores the separate legislative schemes that govern the different activities. At any rate, I agree with your statement that the matter Harvey White of SD may have been apprised of as of February 2020, "does not directly coincide with the mortgage issue that this matter contemplates".

58. I should further note that, based on discussions and analysis above (see generally paras. 42 to 57), I am unable to see how information that "does not directly coincide with the mortgage issue that this matter contemplates" will start the limitation clock running pursuant to section 75(3) of the Act.

59. On a final note, I should comment that on seeing the [redacted] for the first time (as forwarded by [redacted] alongside the Written Submissions), I reached out to SD to see what information they are able to share under *The Securities Act* relating to issues connected to the [redacted]. I was provided with some documents relating to the investigations under *The Securities Act.* As already argued above, however, the time SD received information for the securities' related investigation under *The Securities Act*, cannot be attributable to "knowledge of the facts" on my part so as to start the limitation period running for purposes of section 75(3) of the Act.

E. PENALTY

60. Section 75(1)(a) of the Act contemplates an administrative penalty of up to $100,000 for a contravention of the Act. In this instance, I am imposing an administrative penalty of $6,000 for the Business Activities carried on by 141 Ltd. in Saskatchewan without a licence. I consider this amount as the appropriate penalty for a number of reasons.

61. Firstly, section 2-10 of *The Legislation Act* provides that: "*The words of an Act and regulations authorized pursuant to an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature."* This is largely a codification of the principles enunciated by the Supreme Court in the seminal case of *Rizzo & Rizzo Shoes Ltd. (Re), [1998]* 1 S.C.R. 27. I should further note that the Court has held that consumer protection legislation should be interpreted generously in favour of consumers: see *Seidel v Telus Communications Inc.,* 2011 SCC 15 at para 37; see also the Saskatchewan case of *Watch v. Live Nation Entertainment Inc.* [2022] SKKB 259 at para. 120.

62. In reviewing the Act, bearing in mind the points noted in the above para. 61, I note that a principal object of the Act is to protect consumers There are a number of provisions of the Act that clearly show the intention of the legislature in this regard. For instance, section 5(4), as noted above, requires that persons intending to carry on the business of administering mortgages obtain the necessary licence in order to engage in that business. This requirement for a licence provides important protection to/for consumers, as it assures them that participants in the industry that they deal with have gone through the vetting process required under the Act to ensure that they are suitable to operate in the industry. This provides a level of comfort for them when engaging the services of these participants.

63. Further, in addition to the requirements that apply to all mortgage administrator activities such as requirements to hold trust money separate from other money (section 44 of the Act) and duty to maintain records (section 35 of the Act), the Act creates further requirements where the investor is a private investor as defined in the Act (private investor is defined in section 2(g) of the Regulations and includes every natural person). These further requirements include having a written agreement with each private investor (section 31 of the Act), a duty for a mortgage administrator to act in the best interest of the private investor (section 32 of the Act), and disclosure requirements, among others. All the Saskatchewan Investors in this case qualify as "private investors" under the Act.

64. Furthermore, my office has a record of all persons and entities registered under the Act. As such, I am in a position to provide the necessary oversight of their activities as contemplated under the Act, and ensure they are complying with the provisions of the Act and Regulations. By not obtaining a licence, 141 Ltd. has deprived the Saskatchewan Investors of not only their rights as "private investors" under the Act, but also the benefit of regulatory oversight from the Deputy Superintendent.

65. Also, by not obtaining a licence to operate as a mortgage administrator in Saskatchewan, 141 Ltd. avoided paying the annual licence fees that would not have been less than $1,000 per year for each of 2011 to 2018, inclusive, thereby placing itself at an advantage relative to other duly licensed mortgage administrators. This, of course, is unfair to them.

66. The length of time that 141 Ltd. operated without a licence under the Act is another consideration I took into account in determining that the $6,000 administrative penalty I am imposing in this matter is appropriate. Based on the background information already discussed above, 141 Ltd. operated in Saskatchewan since the implementation of the Act on October 1, 2010 and up till approximately November, 2019, making it a total of nine years.

67. I should further note here that in imposing the amount of $6,000 as the appropriate administrative penalty in this instance, I took into account some mitigating factors such as: [redacted] statement that 141 Ltd. has ceased carrying on the Business Activities, and that there is no intention to go into that type of business again. Further, [redacted] has informed me that consumers have been advised that 141 Ltd. will not be facilitating any further transactions. I also note that [redacted] received a $10,000 penalty from the Real Estate Council of Alberta regarding the activities of 141 Ltd . [redacted] was also cooperative with my office throughout this process.

F. CONCLUSION

68. In light of the foregoing, I find that the Business Activities amount to administering mortgages under the Act. This is an activity that requires licensure under the Act and 141 Ltd. did not hold such a licence. In consequence, I hereby impose an administrative penalty of $6,000 for the Business Activities carried on by 141 Ltd. in Saskatchewan without the requisite licence under the Act. In accordance with section 75(5) of the Act, this

administrative penalty shall be paid in full by May 30, 2025. Arrangements can be made with my office for instalment payments, or payment of the full amount at once. Either way, the full amount must be paid by the indicated date of May 30, 2025.

69. By virtue of section 79 of the Act, any person who is directly affected by an order or decision of the Deputy Superintendent may appeal the order or decision to the Court of King's Bench on a question of law only. This provision sets out that such appeal must be made within 30 days after my decision, and that an appellant shall serve me with a notice of appeal.

Dated at the City of Regina in the Province of Saskatchewan, this 22nd day of June, 2023.

Cory Peters

Deputy Superintendent of Financial Institutions

APPENDIX A

Confidentiality

152.1(1) In this section, **"confidential information"** means any information submitted or provided to the Commission or obtained by the Commission with respect to:

(a) an investigation pursuant to section 12 or 14;

(b) an order by the Director pursuant to section 14.1;

(c) an examination pursuant to section 20;

(d) a review pursuant to section 20.1;

(e) an application for registration pursuant to section 27;

(f) the issuance of a receipt for a preliminary prospectus and a prospectus pursuant to Part XI;

(g) an application for an order pursuant to section 21.3, 26.1, 83, 92, 101, 133, 134, 135.4, 135.5, 135.6 or 160;

(h) an investigation into a possible contravention of Saskatchewan securities law carried out by the Commission or a person appointed by the Commission; or

(i) any other review, examination, application, investigation or filing prescribed in the regulations.

(2) Confidential information is not open to inspection or available for access except by:

(a) employees of the Commission whose responsibilities require them to inspect or allow them to have access to the confidential information; and

(b) those persons who or companies that are authorized in writing by the Commission to inspect or have access to the confidential information.

(3) No person who or company that has inspected the confidential information pursuant to clause (2)(b) is compellable to give evidence with respect to that confidential information unless:

(a) the person to whom or company to which the confidential information relates consents; or

(b) a court orders the person or company to give the evidence.

(4) Notwithstanding subsection (2) and *The Freedom of Information and Protection of Privacy Act* but subject to the regulations, if the Commission considers it necessary for the purposes of section 3.1, the Commission may provide personal information within the meaning of *The Freedom of Information and Protection of Privacy Act* to:

(a) a securities or financial services regulatory authority, law enforcement agency or other governmental or regulatory authority outside of or within Canada;

(b) a self-regulatory organization, an exchange, a derivatives trading facility, a quotation and trade reporting system, a clearing agency, a trade repository or an auditor oversight organization; or

(c) a person or company acting on behalf of or providing services to any of the persons, companies or bodies mentioned in clauses (a) and (b).

2013, c.33, s.44.