IN THE MATTER OF
THE REAL ESTATE ACT

AND

IN THE MATTER OF REGAL PROPERTY DEVELOPMENTS LTD. and REGAL PROPERTIES DE MEXICO S. DE RL DE CV (ALSO KNOWN OR OPERATING AS CABAN CONDOS) and MICHAEL DELAIRE

DECISION OF THE SUPERINTENDENT OF REAL ESTATE

I. DECISION

1. Pursuant to subclause 82(2)(c)(i) of *The Real Estate Act* (Saskatchewan), I direct Regal Property Developments Ltd., Regal Properties de Mexico S. de RL de CV, and Michael Delaire to cease trading in Saskatchewan in real estate, except to the extent to which an express exemption in the Act or Regulations is applicable, or as required to fulfill any obligations imposed on them pursuant to a contract that was fully executed prior to the date of this Decision that relates to the sale of real property in Mexico owned by Regal Properties de Mexico S. de RL de CV (**Order**).

2. I make this direction based on my findings as follows:

   (a) Regal Property Developments Ltd. (**Regal Sask**), Regal Properties de Mexico S. de RL de CV (**Regal Mexico**), and Michael Delaire (**Mr. Delaire**) (altogether, the **Respondents**) traded in Saskatchewan in real estate as defined in *The Real Estate Act* (Saskatchewan) (**Act**).

   (b) The exemption from the Act in clause 3(1)(a) applied to the trading, but that exemption was subject to section 74 of the Act.

   (c) The real estate the Respondents traded in was located outside of Saskatchewan, and section 74 of the Act applied to the Respondents' trading.

   (d) The Respondents contravened subsection 74(2) of the Act by trading, in Saskatchewan, in real estate located outside of Saskatchewan while not registered as a brokerage with the Saskatchewan Real Estate Commission (**Commission**).

(e) The Respondents contravened subsection 74(3) of the Act by trading, in Saskatchewan, in real estate located outside Saskatchewan without filing with the Commission and having received a certificate of acceptance from the Commission in respect of a prospectus that meets the requirements of that subsection.

(f) The Act applies to these trading activities as there is a sufficient connection between the Respondents, their trading activities, and Saskatchewan; and

(g) It is in the public interest to make this Order.

II. AUTHORITY TO MAKE THIS DECISION

3. I am authorized to make this decision pursuant to an appointment made under subsection 85.2(1) of the Act. Roger Sobotkiewicz K.C., the Superintendent of Real Estate (**Superintendent**) appointed pursuant to subsection 79(1) of the Act, has appointed me, Janette Seibel, as Executive Director of the Insurance and Real Estate Division of the Financial and Consumer Affairs Authority of Saskatchewan (**FCAA**) to perform the responsibilities imposed on and exercise the powers conferred on the Superintendent by the Act.

4. As set out in subsection 85.2(2), the performance or exercise by a person appointed pursuant to subsection 85.2(1) of the responsibilities imposed or powers conferred on the Superintendent by the Act is deemed to be an act performed or exercised by the Superintendent.

III. BACKGROUND

5. In early 2024, the FCAA began to receive a number of complaints suggesting that the Respondents may be trading, in Saskatchewan, in real estate without being properly registered by the Commission to do so. A search of the Commission's registry revealed that none of the Respondents identified in the complaints were or had been registered pursuant to the Act.

6. The complainants asserted that the Respondents had been marketing and offering for sale condominium units located in Mexico (**Condo Units**). The complainants claimed they entered into contracts with Regal Mexico for the purchase of the Condo Units purportedly owned by Regal Mexico. My review of the contracts confirmed that the payment of deposits and in some cases additional payments were to be made payable to a Regal Sask bank account at a

Royal Bank of Canada branch located in Saskatoon, Saskatchewan (**RBC Account**). Regal Sask is a corporation incorporated in the province of Saskatchewan and Mr. Delaire, a Saskatchewan resident, is the sole director and shareholder of the corporation.

7. The contracts identified “Michael Paul Delaire” as an authorized signatory for Regal Mexico and he had signed some of the contracts on behalf of Regal Mexico.

8. Online marketing materials and information concerning “Caban Condos”, the project name used by the Respondents for the Condo Units, were found on various social media sites and the Caban Condos’ website. The materials and information included references to being run by “two guys from Saskatchewan” and “Mike Delaire”, a Saskatchewan resident. One marketing brochure identified Mike Delaire as a contact person and listed his contact information, including a Saskatchewan telephone number. A Saskatchewan telephone number also appeared elsewhere in the online information.

9. Following an investigation, I issued a Consumer Alert on October 8, 2024, advising the public that the Respondents are not registered in Saskatchewan to trade in real estate. On December 17, 2024, I issued a Notice of Opportunity to be Heard (**Notice of Hearing**) with respect to each of the Respondents.

10. In the Notice of Hearing, I stated my preliminary inclination was to find that the Respondents were trading in real estate in Saskatchewan without being registered to do so and to issue a direction pursuant to subclause 82(2)(c)(i) that each of the Respondents cease trading in real estate in Saskatchewan. In the Notice of Hearing, I further stated the grounds that supported the issuance of the said direction and advised of the opportunity for the Respondents to request an oral hearing or make written representations as to why I should not issue the proposed direction.

11. On January 10, 2025, I received a phone call from Mr. Delaire in which he confirmed receipt of the Notice of Hearing and requested additional time within which to respond. On January 31, 2025, I received an email with an attached letter from Benedict E. Nussbaum, legal counsel from Nussbaum Company Law Office, requesting an oral hearing respecting the Notice of Hearing. By email dated February 14, 2025, Mr. Nussbaum sent written submissions on behalf of the Respondents (**Written Submissions**) in response to the Notice of Hearing.

On April 8th, 2025, an oral hearing was held virtually, by request of Mr. Nussbaum and Mr. Delaire, to hear the Respondents' submissions.

12. This decision provides my reasons for issuing the direction to the Respondents to cease trading in Saskatchewan in real estate.

IV. FACTS and EVIDENCE

13. Advertising and marketing materials relating to the Condo Units are a key part of the evidence in this matter. A copy of a brochure titled "Caban Condos, San Crisanto, Oceanfront Condos" (**Brochure**) was downloaded on June 11, 2024, from the website "cabancondosmexico.com" (**Caban Condo Website**) by staff in my office. There is no date on the Brochure to indicate when it was prepared. The Brochure goes on to note that the project involves 20 oceanfront condo units, with "Beautiful Beach Front Units starting at $149,900 USD". The Brochure also goes on to describe key terms of the sale, including that 50% of the purchase price was payable at contract signing, a further 25% was due upon completion of the walls and roof and the balance came due upon completion of construction of the unit. On the last page of the Brochure there are two logos, one for Caban Condos and one for Regal Sask. The last page also listed the contact information for Mike Delaire which included a Saskatchewan telephone number, and a photograph of Mr. Delaire above the following statement "Two guys from Saskatchewan, Canada building beautiful properties for you to enjoy in tropical paradise".

14. A screenshot captured by staff in my office from a video posted on the Caban Condos' Facebook page on June 12, 2016, suggests that Regal Sask was either the developer or the promoter behind the Caban Condos' project. The video was titled "**Regal Property Developments Presents** Caban Condos San Crisanto, Pre-sale now from $139K". The video screenshot also references the website "**www.regalproperty.net**".

    [emphasis added]

15. A screenshot captured by staff in my office of a post on Mr. Delaire's Facebook page dated October 31, 2022 (**Delaire FB Post**) says:

> "We have a few units that came available in our phase 4 Caban SC Villas development! They won't last long."

16. Linked to the Delaire FB Post below this statement was a post on the Caban Condos Facebook page of the same date (**Caban Condos FB Post**), which said:

> **"Caban Condos Mexico** is in **Yucatan.** •
>
> **Follow**
>
> Oct 31, 2022 • **0**
>
> Do you want to own a beach property in Mexico where there are no high rises or resorts near with prices from $169k & up? ... **See more"**

17. A screenshot taken by staff in my office on June 12, 2024, of a page on Appollo.io, an online marketing platform, provides information about Caban Condos (**Appollo.io Page**). In addition to listing a Saskatchewan telephone number, it includes the following:

> "Caban Condos Mexico is a privately owned & operated company that began in Saskatoon, Saskatchewan in 2010 **under the parent company Regal Property Developments**. **We operate in both Canada & Mexico specializing in custom home builds in Saskatchewan** & **Ocean Front Condo developments in Yucatan, Mexico**. **We are your trusted Canadian developer in south Mexico**, with affordable ocean front prices. With our first project completed and sold out on the Caribbean sea in Mahahual, Mexico we are now beginning construction on a beautiful, luxurious 20 unit condomunium [*sic*] project in San Crisanto, Yucatan Mexico. Located just 45 minutes from the historic city of Merida, a population of 1 million people. In Merida you will find many amenities and services you are used to back home. Including Costco, Sam's Club, Starbucks, many high-end shopping malls etc. Many airlines offer direct service to Merida, **for Canadians WestJet now has seasonal direct flights** from Toronto to Merida **and should be opening direct out of Calgary soon**. Prices starting at only $159,900 USO for 3 bedroom, 2 bath 1640 sq ft ocean front condos & $139,900 for ocean view beach villas. Penthouses feature private rooftop with own palapa bar, tv, and soaker pool. Beautiful white sand beaches and our infiniti pool will dazzle amaze you. Come find your paradise and escape here! **We are two guys from Saskatchewan, Canada building beautiful & affordable ocean front properties for you in paradise**. Yours in paradise, **Mike Delaire** & Parrish Kondra"
>
> [emphasis added]

18. Screenshots taken by staff in my office of Caban Condos Mexico LinkedIn page on June 12, 2024, contain the same information shown in the screenshot taken of the Apollo.io Page, and also includes a picture of Mike Delaire and references the Caban Condos Website.

19. Copies of sale contracts (**Sale Contracts**) evidencing the purchase of Condo Units were provided to my office by complainants NS and JS, LB, KF and JF, JDS, and JAM. The complainant JAM purchased two Condo Units, and provided a copy of two Sale Contracts, one in respect of each property purchased. The complainants that provided Sale Contracts were either residents of other Canadian provinces or of the United States. There appears to be at least two different forms of Sale Contracts used by the Respondents. The Sale Contracts provided by NS and JS, KF and JF, and JAM were titled “Promise to Contract”; the Sale Contract provided by JDS was titled “Promise Contract”.

20. The first two or three payments due under the Sale Contracts, depending on the specific Sale Contract, are described as deposits and the Sale Contracts directed the payments to be wired to the Regal Sask RBC Account. The Sale Contracts seem to imply that Regal Sask is acting as a custodian, holding the deposits and disbursing them to Regal Mexico as they become due under the Sale Contracts. However, the Sale Contracts also refer to Regal Sask as the Promising Seller interchangeably with Regal Mexico, which is expressly defined in the Sale Contracts to be the Promising Seller.

21. The complainants EGR and BH, and LB provided my office with copies of deposit reservation agreements (**Reservation Agreements**) which appear to reserve a specific Condo Unit for purchase. The Reservation Agreements expressly contemplate that a purchase and sale agreement will be subsequently executed. LB is a Saskatchewan resident. The complainants EGR and BH are residents of the United States.

22. Of note, the Reservation Agreements both reference Regal Property Developments, which I find to be a reference to Regal Sask, prominently in the title. The EGR and BH agreement is titled “Regal Property Developments, Caban San Crisanto II, Phase II Reservation Deposit Agreement”. The LB agreement is titled “Regal Property Developments, Caban San Crisanto Villas, Phase IV Reservation Deposit Agreement”. While the Reservation Agreements provide that the agreement is between the intended buyer(s) and Regal Mexico as developer, the signatory to the LB Reservation Agreement is Regal Sask, not Regal Mexico.

The EGR and BH Reservation Agreement only has Mr. Delaire's signature, it doesn't identify above the signature line who he is signing on behalf of. It's clear from the LB Reservation Agreement that Regal Sask was authorized by Regal Mexico to enter into the Reservation Agreement with LB and to receive deposit payments from LB on behalf of Regal Mexico. In the EGR and BH Reservation Agreement, Regal Sask is authorized to receive one of the deposit payments on behalf of Regal Mexico.

23. While there are notable differences in form and content between the Sale Contracts and Reservation Agreements (together, the **Contracts**), all contained certain key provisions. All Contracts provided that Regal Mexico was the seller of the property, that Mr. Delaire was the authorized signatory of Regal Mexico, and that at least some of the payments due from the purchasers were to be wired to the RBC Account.

24. My office was also provided copies of wire payment records (**Wire Records**) by complainants LB, and TW and GW, all of which are residents of Saskatchewan. When LB provided a copy of the wire record to my office, LB indicated it corresponded to a deposit payment payable to Regal Sask pursuant to the LB Reservation Agreement. No Sale Contract or Reservation Agreement was provided to my office by complainants TW and GW, but they did provide wire records which indicate that two payments totaling approximately CAD$204,500 were related to the purchase of a "condo unit 403". All of the Wire Records evidence payments wired from purchasers' deposit accounts in Saskatchewan to the RBC Account.

25. Mr. Delaire also engaged in marketing and promotion of the Condo Units in more traditional media platforms. Staff in my office saved a copy of a news article published on October 27, 2020, in the Saskatoon section of the CTV news website, titled "**Saskatoon company that builds snowbird vacation homes seeing uptick during pandemic.**" The following was included in the article:

> **"SASKATOON** - As the weather turns to colder conditions. there's one Saskatoon man who has his sights set on warmer temperatures. even during the lockdown of a pandemic.
>
> **Mike Delaire is from Saskatoon and started a company six years ago, building vacation properties in Mexico.** When the pandemic hit. he was concerned about the future of his business. which he built

from scratch after travelling to Mexico and falling in love with the country.

When everything was getting shut down I was worried about the business with the travel restrictions. It all changed though, it went from a negative to a positive situation," Delaire owner of Caban Condos said.

Delaire found that people who were in lockdown had more time to research and look into pursuing dreams that they've been putting off.

"I think that is what this whole COVID situation has done for people is change their whole mindset about so many things in life and put a reset on for people about hey I'm going to retire early or I'm going to work remotely."

This reset has resulted in Delaire selling condos to Canadians and Americans, site unseen. A development that surprised him initially. **He's sold to many buyers from Saskatchewan who like the idea of having a Canadian to work with.**

Terri Peterson is a counsellor who works at the University of Saskatchewan. She says people in Saskatchewan have relied on getting away to warmer climates and breaking up the long winter which helps many with their mental health.

It's a new way of looking at things and it's inspiring and some of it is light and sun and warm breezes and that new life that comes with spring or with warmer temperatures," Peterson said.

She says this winter will be different with restrictions on activities we're used to like hockey games. indoor gatherings and travel so people need to consider their mental wellness and find what makes them happy.

People are starting to think about that and wanting to get ahead of it almost."

That's what Michael Koenig is doing. He bought a property from Delaire near the fishing village of San Crisanto on the Yucatan

coast of Mexico. Having a local Saskatoon business owner to deal with made all the difference he says. Koenig farms near Luseland and says once his farming duties wrap up, he's heading to his Mexican home for the winter, pandemic or not…."

[emphasis added]

26. The Respondents acknowledged in their written and oral submissions that:

- As indicated in the Contracts, Regal Mexico is a legal entity, established as a Mexican company, in the City of Merida, in the State of Yucatan, Mexico.
- Regal Mexico purchases real property in Mexico and constructs new condominium complexes, or renovates existing buildings into condominium complexes, for sale to individual purchasers.
- Purchasers of the condo units in Mexico sold by Regal Mexico include residents of Saskatchewan, as well as residents of other parts of Canada and the United States.
- Mr. Delaire is the President, sole director, shareholder and operator of Regal Sask. Regal Sask operates out of an office in Saskatoon.
- Mr. Delaire is the President and a shareholder and operator of Regal Mexico.
- Mr. Delaire is resident in Saskatchewan.
- Mr. Delaire represents "his corporation", Regal Mexico, as an owner and sells units to prospective purchasers.
- The Contracts identify Mr. Delaire as an authorized signatory for Regal Mexico and he has signed some of the Contracts on behalf of Regal Mexico as "Promising Seller".
- Where the buyer is in Mexico, they can deal with Mr. Delaire, "other agents" for Regal Mexico or hire their own agents to pay Regal Mexico directly.
- Where the buyer is in the United States or Canada, they can deal directly with Mr. Delaire, Regal Mexico or hire their own agents to deal with Regal Mexico.
- Where the buyers are in Canada, they may request to make their payments through Regal Sask.
- Regal Sask was established so that it could open the RBC bank account, to provide comfort to Canadian and American purchasers who felt uncomfortable sending their money for the deposit on the condo units they purchased to Regal Mexico.

- Mr. Delaire and Regal Sask receive no commissions from sales, they simply provide an arrangement to ensure that purchase monies for condo units go to Regal Mexico. Mr. Delaire noted in his oral submissions, that "…it does protect the clients if the money is more traceable for them. And they have a better comfort level."
- None of the Respondents are registered with the Commission to trade in real estate.
- Mr. Delaire operated under the belief that the Act did not apply to the Respondents or their activities developing and selling condo units located in Mexico.
- Some of the marketing materials for Caban Condos mentioned that they're run by two guys from Saskatchewan. Mr. Delaire states that he didn't start out with the intent to market the condos using the fact that they are run by two guys from Saskatchewan, it just "morphed into that". At the hearing, Mr. Delaire explained "People liked the fact that they were local and two normal guys, you get to talk to us. It's not some big corporation. So that's, I guess, where that came from, two guys from Saskatchewan…. People liked the fact that we were local and just normal - normal guys."
- The Facebook page and ads, and the idea to use the two guys from Saskatchewan marketing tactic, were created by a Mr. Kondra, who was not an owner or shareholder of either corporation. Mr. Delaire did not develop the Facebook page or ads and did not come up with the idea for the "two guys from Saskatchewan" marketing, but he acknowledged he could have decided not to use the Facebook page content, ads or slogan. The marketing strategy worked well, they had 20,000 followers at one point on the Facebook page.
- One Contract (with JS) was executed by Mr. Delaire in Saskatoon. Mr. Delaire acknowledged that "Some contracts were initiated here…" in Saskatchewan.
- Mr. Delaire shared advertising posts about Caban Condos to his personal Facebook account but had discontinued that prior to the hearing. The last post on Caban Condos' social media prior to the hearing was as late as October 6, 2024.

27. In his submissions, Mr. Delaire claimed that he and Regal Sask have never held themselves out as registrants. He submitted he was acting in the capacity of officer and owner on behalf of Regal Mexico. He further claimed he was not aware of section 74 of the Act until he received the Notice of Hearing.

28. Mr. Delaire also claimed in his submissions that after receiving the Notice of Hearing, he took steps to discontinue or limit the Respondents' activities in Saskatchewan relating to the sale of the Regal Mexico Condo Units. These steps included removing all references to him or Regal Sask in social media and advertising relating to the sale of the Condo Units. He further indicated that Regal Mexico would be appropriately restricting its activities in Saskatchewan to only advertising going forward as allowed under clause 29(1)(b) of the Regulations.

V. ISSUES

29. The issues to be addressed are:

a. Did the Respondents trade in Saskatchewan in real estate as a brokerage?

b. Did the exemption in clause (3)(1)(a) of the Act apply to the Respondents' trading in real estate?

c. Did the Respondents contravene subsection 74(2) of the Act by trading in Saskatchewan in real estate located outside Saskatchewan without being registered with the Commission?

d. Did the Respondents contravene subsection 78(1) of the Act by trading, in Saskatchewan, in real estate located outside Saskatchewan without providing prospective purchasers a prospectus accepted by the Commission?

e. Was there a sufficient connection between Saskatchewan and the trading activities carried out by the Respondents such that the Act applied to those activities of the Respondents?

f. Is it in the public interest to direct the Respondents to cease trading in Saskatchewan in real estate pursuant to subclause 82(2)(c)(i) of the Act?

VI. LEGISLATION

30. In the Act, the following provisions are pertinent to this matter:

Interpretation

2 In this Act:

…

(a.1) **"associate broker"** means an individual employed, appointed or authorized by a brokerage to trade in real estate and named as an associate broker in a certificate of registration;

(b) **"branch manager"** means an individual employed, appointed or authorized by a brokerage to manage a branch office of the brokerage and named as a branch manager in the certificate of registration of the brokerage;

…

(c) **"broker"** means an individual employed, appointed or authorized by a brokerage to manage its main office and named as the broker in the certificate of registration of the brokerage;

(d) "**brokerage**" means a person named in a certificate of registration as a brokerage that, for compensation, gain or hope of reward for the brokerage or any other person, either alone or through its broker, branch manager, associate broker or salesperson:

(i) trades in real estate located in Saskatchewan;

(ii) trades in Saskatchewan in real estate located outside Saskatchewan;

…

(t) "**real estate**" includes:

(i) real or leasehold property;

(ii) any business with premises, and with or without fixtures, stock-in trade, goods or chattels in connection with the operation of the business;

(iii) a time-share plan; and

(iv) any other property prescribed in the regulations;

…

(y) **"salesperson"** means an individual employed, appointed or authorized by a brokerage to trade in real estate, but does not include a broker, a branch manager, an associate broker or an individual who is not required to be registered;

…

(bb) "**trade**" means one or more of the following:

(i) a disposition of, an acquisition of or a transaction in real estate by sale, purchase, exchange, option, lease, or otherwise;
(ii) an offering, advertisement, listing or showing of real estate for sale, purchase, exchange, option, lease or otherwise;
(iii) an offer to purchase;
(iv) property management;
(v) the solicitation, negotiation or obtaining of a contract, agreement or any other arrangements to advertise real estate for sale, exchange, option, lease or other disposition of the real estate, either directly or indirectly, through any medium of advertising;
(vi) holding oneself out as trading in real estate; and
(vii) any conduct, act or negotiation, in the furtherance or attempted furtherance of any one or more of the things mentioned in this clause;

Exemptions

3(1) Subject to subsection (2) and section 74, this Act does not apply to:

(a) a trade in real estate by an owner of the real estate or a person who has a material interest in the real estate;
(b) a trade in real estate on behalf of another person and for that person's account where:
(i) no commission or remuneration is paid with respect to the trade; and,
(ii) the transaction is not made in the course of continued and successive transactions of a like character;
(c) an assignee, custodian, liquidator, receiver, trustee or other person acting:
(i) as directed by an Act or an Act of the Parliament of Canada; or
(ii) under the order of any court;
(d) an executor or personal representative of an estate trading in real estate belonging to the estate or an executor or trustee trading in real estate under the terms of a will or trust;
(e) a person engaged in the business of home construction trading in real estate owned by the person in connection with that business;
(f) subject to subsection (3), a lawyer trading in real estate in the course of and as part of his or her practice;
(g) subject to subsection (3), an auction sales company or an auctioneer licensed pursuant to *The Auctioneers Act* trading in real estate by auction;
(h) a person trading in mineral rights and not otherwise required to be registered;
(i) a person showing real estate for residential leasing or rental purposes;
(j) a person trading in surface rights within the meaning of *The Surface Rights Acquisition and Compensation Act*;

(k) a gas or oil pipeline company trading in real estate where the trade is made in the course of the construction or operation of a pipeline within the meaning of *The Pipelines Act, 1998*;

(l) any persons or category of persons or trades or category of trades that are exempted in the regulations.

Prohibitions

18(1) No person shall trade in real estate:

(a) as a brokerage, unless the person is registered as a brokerage;

(b) as a broker, unless the person is registered as a broker;

(c) as a branch manager, unless the person is registered as a branch manager;

(c.1) as an associate broker, unless the person is registered as an associate broker; or

(d) as a salesperson, unless the person is registered as a salesperson.

(2) No person shall trade in real estate for or on behalf of a brokerage unless the person is registered as a salesperson, an associate broker, a branch manager or the broker of that brokerage.

Exemption, prospectus and certificate

74(1) This section does not apply to a brokerage that engages in an isolated trade in real estate located outside Saskatchewan.

(2) No person other than a brokerage shall trade in real estate with respect to which a prospectus is required to be filed pursuant to this section.

(3) No brokerage shall trade in Saskatchewan in real estate that is located outside Saskatchewan until the brokerage:

(a) files with the Commission a prospectus, in the form and manner prescribed in the regulations, and containing any other information that the Commission may require; and

(b) obtains a certificate of acceptance from the Commission with respect to that prospectus.

(4) The Commission shall not issue a certificate of acceptance where:

(a) the prospectus contains any statement, promise or forecast that is misleading, false or deceptive or has the effect of concealing material facts; or,

(b) there is not adequate provision for:

(i) the protection of deposits or other funds of buyers; or

(ii) the assurance of title or any other interest contracted for.

(5) Before issuing a certificate of acceptance, the Commission may make any inquiries that it considers necessary, which may include obtaining reports from qualified persons in the jurisdiction in which the real estate is located.
(6) The brokerage that filed the prospectus shall bear the cost of any inquiries made or reports obtained pursuant to subsection (5).
(7) The Commission shall not issue a certificate of acceptance unless securities in the amount and kind and subject to the terms that may be prescribed in the regulations are deposited with it.
(8) Where real estate to which a prospectus refers is located outside Canada, the Commission may refer the prospectus to the superintendent, who may direct that a certificate of acceptance is not to be issued, and in that case, the Commission shall not issue a certificate of acceptance with respect to that prospectus.
(9) Every certificate of acceptance issued by the Commission expires 12 months after the date of its issuance

Change in prospectus

75(1) The brokerage that filed the prospectus pursuant to section 74 shall immediately notify the Commission and every buyer who has entered into a contract to which subsection 78(1) applies, in writing, when a change occurs with regard to any of the matters set out in the prospectus with respect to which a certificate of acceptance is issued:
(a) that would have the effect of rendering a statement in the prospectus false or misleading; or
(b) that brings into being a fact or proposal that should have been disclosed in the prospectus if the fact or proposal had existed at the time the prospectus was filed.

(2) The Commission may, with or without notice:
(a) revoke a certificate of acceptance; or
(b) require that a new prospectus be filed within a specified time.

(3) Trading in the real estate shall immediately cease where:
(a) a certificate of acceptance is revoked pursuant to clause (2)(a); or
(b) no prospectus is filed pursuant to clause (2)(b) within the time specified.

Representations

76 No person shall make any representation, written or oral, that the Commission has reviewed the financial standing, fitness or conduct of any person in connection with any prospectus or the merits of any prospectus.

Additional material

77 Each prospectus filed with the Commission is to be accompanied by the following:

(a) an affidavit of the owner of the real estate, or, where the owner is a corporation, a majority of the directors of it, as to the correctness of every statement in the prospectus;

(b) a copy of every plan referred to in the prospectus;

(c) a copy of every form of contract referred to in the prospectus;

(d) any document that the Commission may require to support any statement, proposal or estimate set out in the prospectus;

(e) any financial particulars of the owner that the Commission may require; and

(f) any fees that may be prescribed in the regulations.

Buyer to receive prospectus

78(1) No person shall enter into or negotiate in Saskatchewan any contract to trade in real estate located outside Saskatchewan unless:

(a) a copy of the prospectus mentioned in section 74 and any information required to be filed pursuant to subsection 75(1) has been delivered to the prospective buyer; and

(b) the prospective buyer has acknowledged in writing that he or she has received a copy of the material mentioned in clause (a) and has been given an opportunity to read it.

(2) The seller or brokerage shall:

(a) retain each acknowledgement mentioned in subsection (1) for at least six years; and

(b) make any acknowledgement available for inspection by the Commission.

(3) A buyer who has entered into a contract to which subsection (1) applies is entitled to rescission of the contract if:

(a) subsection (1) has not been complied with; and

(b) written notice of exercising the right of rescission is served on the seller or brokerage within 90 days of the date the contract is signed.

(4) The onus of proving compliance with subsection (1) rests on the seller or brokerage, as the case may be.

(5) The right of rescission mentioned in subsection (3) is in addition to any other right that the buyer may have at law or by contract or that may be prescribed in the regulations with respect to the contract.

Application to freeze funds

82 (1) The superintendent may do any of the things described in subsection (2) where:

(a) he or she is about to investigate or is investigating a person pursuant to section 81;

(b) the registration of a brokerage is suspended or cancelled;

(c) criminal proceedings or proceedings with respect to a contravention of this Act or the regulations that, in the opinion of the superintendent, are related to or arise out of a trade in real estate are about to be or have been instituted against any person;

(d) he or she has reason to believe that the trust funds in the trust account of a brokerage are less than the amount for which the brokerage is accountable; or

(e) it is the opinion of the superintendent that it is in the public interest.

(2) Where any of the circumstances described in subsection (1) exist, the superintendent may:

(a) apply to the court for the appointment of a receiver, receiver manager or trustee to hold or manage, as the case may be, all or part of the property of the person or brokerage mentioned in subsection (1);

(b) in writing:

(i) direct any person having on deposit or under his or her control or for safekeeping any funds or securities of any person mentioned in clauses (1)(a) to (d) to hold those funds or securities;

(ii) direct any person mentioned in clauses (1)(a) to (d) to refrain from withdrawing funds or securities mentioned in subclause (i) from any person who has them on deposit, under control or for safekeeping; or

(iii) direct any person mentioned in clauses (1)(a) to (d) to hold any funds or securities of clients or others that he or she has in his or her possession or control in trust for a receiver appointed pursuant to clause (a) or for an interim receiver, custodian, trustee, receiver, receiver and manager or liquidator appointed pursuant to the Bankruptcy and Insolvency Act (Canada), The Business Corporations Act, 2021 or the Winding-up Act (Canada), as the case may be, or otherwise lawfully appointed;

(c) direct any person to:

(i) cease trading in real estate; or

(ii) cease contravening this Act or the regulations.

(3) A direction made pursuant to clause (2)(b) or (c) remains in effect until the superintendent, in writing, revokes the direction, consents to release

any particular funds or securities from the direction or directs that the funds be released to the Commission.

(4) An order made pursuant to this section may be enforced in the same manner as an order of the court and may be varied or discharged on application to the court made on notice to the superintendent.

31. Section 29 of *The Real Estate Regulations* (Saskatchewan) (**Regulations**) was raised by counsel for Mr. Delaire in his written submission and during the Hearing. The relevant portion of that section provides as follows:

Exclusions
29(1) The Act does not apply to:

(a) …

(b) an advertisement, **made or placed from outside Saskatchewan**, respecting trades in real estate located outside Saskatchewan **if the advertising is the only activity in Saskatchewan pertaining to that real estate**;

VII. ANALYSIS

Issue #1: Did the Respondents trade in Saskatchewan in real estate as a brokerage?

32. The first issue that must be addressed is whether the Respondents' activities are of a nature that attracts the application of the Act. The Act regulates trading in real estate. This is established in section 18, which states that no person shall trade in real estate unless that person is registered in accordance with the Act.

33. Section 18 is the first and main gateway that dictates who is subject to the Act's regulatory framework, and who is not. When read in conjunction with the definitions as set out in section 2 of the Act, section 18 provides, in essence, that only persons who are a brokerage, or who work for a brokerage, registered under the Act may trade in real estate.

34. It is important to note that to meet the definition of brokerage and be subject to the prohibition in section 18, a person has to be trading in real estate for compensation, gain or hope of reward for the brokerage or any other person. The Act further contemplates that individuals trading in real estate on behalf of a brokerage must also be registered in the appropriate registration category. These individual categories include broker, associate broker, branch manager and salesperson.

35. The question that must be answered then is whether any of the Respondents' activities amount to trading in real estate as a brokerage. If none of the Respondents' activities constitute trading in real estate as a brokerage, the Act does not apply to them and that would be the end of the matter.

36. I will note here that the Act employs a somewhat uncommon drafting approach in that the definition of "brokerage" in clause 2(d) goes beyond the activities commonly associated with a real estate brokerage and expressly incorporates the criteria that the person be named in a certificate of registration as a brokerage. When this is considered in the context of the prohibition in clause 18(1)(a) of the Act, which prohibits a person from trading in real estate as a brokerage unless the person is registered as a brokerage, it appears to contemplate a literal impossibility. If one interprets the definition in clause 2(d) literally, a person who is not shown in a certificate of registration as a brokerage cannot be trading in real estate as a brokerage, because that would mean they have to be named in a certificate of registration as a brokerage. This word trap is easily defeated when the modern approach to statutory interpretation is applied. As noted by Mr. Delaire in his Written Submissions, which quoted from the headnote to the Supreme Court of Canada case, *Bell Express Vu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559,:

> "It is necessary in every case for the court charged with interpreting a provision to undertake the preferred contextual and purposive interpretative approach before determining that the words are ambiguous. This requires reading the words of the Act 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 Parliament."

In the *Bell* decision, the Supreme Court of Canada applied the modern approach to statutory interpretation, stating at para. 26:

> "Today there is only one principle or approach, namely, the words of 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 Parliament."

In Saskatchewan, the modern approach has been codified in section 2-10(1) of *The Legislation Act* which directs that "[t]he 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."

37. I agree with Mr. Delaire that this is the approach that must be used to guide the interpretation of the Act. Applying this approach to clause 18(1)(a) and clause 2(d) of the Act, it is clear that clause 18(1)(a) was intended to prohibit persons not registered as brokerages from engaging in the activities included in the definition of brokerage in clause 2(d). The criteria in clause 2(d), that the person be named in a certificate of registration as a brokerage, is not to be applied to the term "brokerage" when it appears in clause 18(1)(a). It appears the drafters intended for the defined term in clause 2(d) to mean registered brokerages, but also to sometimes include unregistered persons engaging in brokerage activities, and the reader is to determine which meaning applies based on the context.

38. The property in question, the Condo Units, are real estate. Condominium units are real property and fall under the definition of "real estate" as described in subclause 2(t)(i) of the Act. The fact that the real estate is located outside of Saskatchewan is not relevant to this specific decision point, as the Act makes it expressly clear in multiple sections that it can apply to trading in real estate located outside of Saskatchewan. Examples include the definition of brokerage in clause 2(d) and section 74.

39. The definition of brokerage in clause 2(d) of the Act is key to understanding the geographical limits of the Act's intended jurisdiction. That definition includes two important parameters that narrow the scope of the Act's jurisdiction in a fundamental way. The Act is not concerned with all trading in real estate, but only trading in real estate located in Saskatchewan, and trading <u>in Saskatchewan</u> in real estate located outside of Saskatchewan. If the real estate is not located in Saskatchewan and the trading activities were not performed in Saskatchewan, then the Act is not intended to apply to those trading activities.

40. The real estate in question here is not located in Saskatchewan. Therefore, for the Act to apply to the Respondents, the trading activities carried on by the Respondents' regarding the real estate in Mexico must be occurring in Saskatchewan. The transactions the Respondents' activities pertained to were dispositions or sales of real estate by Regal Mexico to purchasers located in multiple jurisdictions, including Saskatchewan, other Canadian provinces, and the United States. Before reviewing whether the evidence demonstrates that the activities of the Respondents' amounted to trading in Saskatchewan in the Condo

Units, it is important to determine which of the Respondents performed the activities and on whose behalf.

41. The uncontradicted evidence shows that Regal Mexico was the developer and initial owner of the Condo Units, and therefore the seller of the real estate. The Respondents suggested in their submissions that it was Mr. Delaire and to an extent, Regal Sask, who performed the activities identified in the Notice of Hearing. They further assert that Regal Mexico performed none of those activities, as it is a separate legal entity from Mr. Delaire and Regal Sask, and it operated only in Mexico.

42. That submission ignores the fact that Regal Mexico, being the owner of the Condo Units, was the selling party in the Contracts. Neither Mr. Delaire nor Regal Sask were the sellers in the Contracts, because the Condo Units were not theirs to sell. The activities performed by Mr. Delaire and Regal Sask to facilitate the sale of the Condo Units were performed for and on behalf of Regal Mexico.

43. Mr. Delaire was the President of Regal Mexico, and in his capacity as an officer of Regal Mexico he had the authority to perform these activities to facilitate the sale of the Condo Units on behalf of Regal Mexico, unless his authority was restricted by Regal Mexico. There is no evidence before me that his authority was so restricted. In fact, in his submissions, Mr. Delaire made it clear he was performing these activities because he was the President of Regal Mexico. The Sale Contracts and Reservation Agreements all further confirm that Mr. Delaire was the authorized signatory executing those Contracts on behalf of Regal Mexico. Accordingly, I find that Mr. Delaire performed these activities pursuant to his authority as President of Regal Mexico, and as such, his activities were the activities of Regal Mexico. A corporation can only act through its officers and employees.

44. I also find that Regal Mexico authorized Regal Sask to perform all of the activities undertaken by Regal Sask related to the sale of the Condo Units. Documentation provided by Mr. Delaire as part of the Written Submissions confirmed Regal Sask is a shareholder in Regal Mexico. Staff in my office obtained an ISC Saskatchewan Corporate Registry profile report for Regal Sask on September 18, 2024, which confirmed that Mr. Delaire was the sole shareholder, director and officer of Regal Sask; this is in addition to him being a shareholder, director and the President of Regal Mexico. Together, Mr. Delaire and Regal Sask, a company wholly owned by Mr. Delaire, own a controlling interest in Regal Mexico. Clearly, Regal Sask’s activities were done with the authorization and on behalf of Regal

Mexico, as Mr. Delaire was the controlling mind behind both companies and caused Regal Sask to undertake the activities.

45. Further, the Sale Contracts and Reservation Agreements, entered into by Regal Mexico and signed by Mr. Delaire, specifically require purchasers to make deposit payments to the RBC Account. If Regal Mexico did not authorize Regal Sask to act as an agent or custodian to receive deposit payments in the course of the sale of the Condo Units, that would not have been provided for in the Contracts. Indeed, Mr. Delaire stated in his submissions that Regal Sask was created specifically for this purpose, as Canadian and American purchasers were more comfortable making deposit payments to an agent or custodian with a bank account located in Canada. Accordingly, I find the activities Regal Sask performed to facilitate the sale of the Condo Units were done as an authorized agent or custodian of Regal Mexico.

46. Now that it has been established that Mr. Delaire and Regal Sask engaged in activities related to the sale of the Condo Units on Regal Mexico's behalf, I must look at whether these activities constitute trading as a brokerage in Saskatchewan in real estate located outside Saskatchewan, in accordance with the Act. As noted above, "trade" is defined in subsection 2(bb) of the Act, and includes the following activities:

> "(ii) an offering, advertisement, listing or showing of real estate for sale, purchase, exchange, option, lease or otherwise;…
> (vi) holding oneself out as trading in real estate;
> (vii) any conduct, act or negotiation, in the furtherance or attempted furtherance of any one or more of the things mentioned in this clause;"

47. I find that Mr. Delaire traded in Saskatchewan by advertising the Condo Units for sale. The terms "advertisement" and "advertising" are not defined in the Act, although there is a narrow exception in the Regulations that applies to certain kinds of advertisements placed from outside of the province. The interpretation of "advertisement" as otherwise used the Act must be based on the principles of statutory interpretation, as noted in paragraph 36, above. As the Act is intended to protect the public from harm by regulating the practice of registrants and to assure the public of the knowledge, skill, proficiency, competency and trustworthiness of registrants in the trading in real estate and other services provided by registrants. The evidence establishes that Mr. Delaire advertised the Condo Units through posts on his personal Facebook page. Mr. Delaire admitted in his submissions that he linked Caban Condos' posts advertising the Condo

Units to his personal Facebook page. Further, I find that the CTV News article wherein Mr. Delaire made statements and shared information promoting his business and the Condo Units is, in the context of the Act, an ”advertisement” by Mr. Delaire while located in Saskatchewan. Mr. Delaire participated in an interview with a Saskatchewan news site from Saskatoon, Saskatchewan, and in my view, his statements were directed in large part at potential Saskatchewan purchasers of the Condo Units. Regal Sask also engaged in extensive advertising to promote the sale of the Condo Units, including publishing or producing the Brochure for Caban Condos with Regal Sask's logo, the Appollo.io Page, and the Caban Condos' Facebook Page. Based on the evidence above, I consider these communications and promotional activities informing the public of the Condo Units for sale to be advertising as contemplated in clause (ii) of the definition of trade.

48. At the Hearing, Mr. Delaire's counsel argued that the marketing and advertising carried out by the Respondents is authorized by the exemption in the Regulations. Clause 29(1)(b) of the Regulations does provide that the Act does not apply to certain advertisements. Specifically, advertisements that are made or placed from outside Saskatchewan in respect of real estate located outside of Saskatchewan are exempt from the Act, provided that the advertising is the only activity in Saskatchewan pertaining to that real estate. I find the exemption does not apply in this case. While the real estate is located outside of Saskatchewan, and some of the advertising in question may have been made or placed outside of Saskatchewan, as will be noted below there were other trading activities that occurred in Saskatchewan pertaining to the Condo Units. Further, the CTV News article was an advertisement that was made in Saskatchewan, and therefore the exemption in clause 29(1)(b) of the Regulations is not applicable to it based on that fact alone.

49. I find that Mr. Delaire traded in Saskatchewan with respect to the Condo Units when he met in person in Saskatoon with purchasers SD and RD, residents of Lloydminster, Saskatchewan. This was a fact alleged in clause 19(q) in the Notice of Hearing. Mr. Delaire admitted in his testimony at the Hearing that he did meet with SD and RD in person in relation to their purchase of a Condo Unit from Regal Mexico, although he could not recall whether the meeting was to sign the purchase agreement or for some other purpose relating to the sale of a Condo Unit. Regardless of whether a purchase agreement was signed during the meeting, when he met in person in Saskatchewan with SD and RD, Mr. Delaire traded in Saskatchewan in the Condo Units. His meeting and discussion with the prospective purchasers was conduct, or an act, in furtherance of the sale or

disposition of a Condo Unit to SD and RD. This falls within subclause 2(bb)(vii) of the trading definition in the Act.

50. I find that Regal Sask traded in Saskatchewan with respect to the Condo Units when it used its RBC Account in Saskatoon to act as an authorized agent or custodian to receive deposit payments pursuant to the Contracts. Not only was the RBC Account located at a bank branch in Saskatoon, the Saskatchewan location of the account was prominently highlighted in discussions with potential purchasers in order to provide comfort to purchasers paying significant deposits for property located in Mexico. In fact, Mr. Delaire testified at the Hearing that this was the primary purpose behind Regal Sask opening the RBC Account. He said, at page 36 of the Hearing transcript:

> "MR. DELAIRE: Yeah, it's done at the purchasers' request, basically. Like, we Have -- many -- many of our buyers are from the US, right? But there is very few buyers from Saskatchewan. You know, we had over a hundred buyers, right? So most of them are from the US. The local or the Canadian clients request to send it to Canada. It does say in the contract, I believe, that you can send to Regal de Mexico or Regal -- the RBC account. **But the bank account was really started for the comfort level of our clients because the Saskatchewan clients and the – and the Canadian clients did not feel real comfortable sending deposits to Mexico. So the corporation -- or the RBC bank account was really started for the comfort level of our clients. They -- they didn't feel comfortable sending to Mexico. So for their comfort level, that's – we ended up opening -- or I ended up opening the RBC account."**
>
> [emphasis added]

51. By utilizing its Saskatchewan bank account to receive and hold deposit payments made as part of sale transactions relating to the Condo Units, Regal Sask engaged in conduct in Saskatchewan in furtherance of the sale or disposition of the Condo Units. The purchasers TW and GW, and LB, were Saskatchewan residents. The Wire Records confirm that their deposit payments were wired from their respective accounts in Saskatchewan to Regal Sask's RBC Account. This constitutes trading in Saskatchewan in the Condo Units by Regal Sask pursuant to subclause 2(bb)(vii) of the Act.

52. I further find that some of the advertising referred to above establishes that Mr. Delaire held himself out in Saskatchewan as trading in the Condo Units. A person holds themselves out as trading in real estate when, through their conduct, whether by express communications or other actions, they indicate they are trading in real estate. By including the activity of "holding oneself out" in the definition of trade, the Act intends for the regulatory framework it establishes to apply to persons from the moment they first lead consumers to believe they trade in real estate, regardless of whether they have actually done any of the other trading activities contemplated in the Act. This is to minimize the risk of potentially harmful trading activity occurring outside of the regulatory framework as the regulatory framework applies at the very first opportunity, when a consumer becomes aware that the person holding out might be willing to facilitate a trade in real estate involving the consumer. This in turn also allows the regulator administering the Act to identify persons who the regulatory framework should apply to at the earliest opportunity, prior to them showing a property or presenting the consumer with a contract to acquire or dispose of a property.

53. In the CTV News article, Mr. Delaire is identified as the owner of Caban Condos and he talks about how he "started a company to build vacation properties in Mexico". The title of the CTV News article refers to Mr. Delaire's company, Caban Condos, as a "Saskatoon company that builds snowbird vacation homes…". The article also highlights that Mr. Delaire has sold these condos to "many buyers from Saskatchewan who like the idea of having a Canadian to work with." The article closes with an endorsement or testimonial by a Saskatchewan farmer who "bought a property from" Mr. Delaire in Mexico and says "Having a local Saskatoon business owner to deal with made all the difference". The article was located on the CTV News Saskatoon page. I find that Saskatchewan readers of this article would most likely interpret the article as describing a Saskatchewan-based company that focuses, at least in part, on building and selling vacation homes in Mexico to Saskatchewan purchasers. To put it another way, Saskatchewan purchasers were at least one target audience for Mr. Delaire. I find that this amounts to Mr. Delaire holding out in Saskatchewan that he and his company are trading in the Condo Units.

54. The last question on this issue is whether the Respondents' trading activities in Saskatchewan were done for compensation, gain or hope of reward for the brokerage or any other person. Mr. Delaire suggested at the Hearing that neither he nor Regal Sask received any commission or payment for the sale of the Condo Units. This is not a full answer to the question posed. I find that the trading activities in Saskatchewan carried out by the Respondents were all done

for compensation, gain or hope of reward for Regal Mexico, Regal Sask and Mr. Delaire. The sale of the Condo Units was done to generate profit or reward for Regal Mexico, which also financially benefited Regal Sask and Mr. Delaire as shareholders of Regal Mexico.

55. It is important to note that in my findings above, I intentionally restricted the specific examples cited of the Respondents' trading activity in Saskatchewan to only those that were in my view abundantly clear examples of trading in Saskatchewan based on the evidence in front of me. The Respondents engaged in many other transactions and activities involving the sale of real estate, including with Saskatchewan residents, that may have constituted trading in Saskatchewan in real estate. However, for the purposes of this decision and the proposed order, I chose to limit the number of transactions and activities that my decision herein is based on.

Issue #2: Did exemption in clause 3(1)(a) of the Act apply to the Respondents' trading in real estate?

56. In their submissions, the Respondents' asserted on a number of occasions that they had always believed they were not subject to the Act or registration was not required because the Condo Units were being sold by the owner.

57. The Respondents are correct in that there is a general exemption from the Act in clause 3(1)(a) which provides that the Act does not apply to a trade in real estate by an owner of the real estate or a person who has a material interest in the real estate. Similarly, clause 3(1)(e) exempts a person engaged in the business of home construction from the Act for trading in real estate owned by that person in connection with that home construction business. Both of these exemptions apply in this case to the trading by Regal Mexico, however, these exemptions are subject to section 74 of the Act.

58. Section 74 of the Act, among other things, prohibits unregistered persons from trading in real estate with respect to which a prospectus is required to be filed. A prospectus is required to be filed pursuant to that section for trades in real estate located outside of Saskatchewan. As the Condo Units are located in Mexico, section 74 applies and the Respondents were required to comply with that provision.

59. I will note here that while it is clear that the exemptions apply to Regal Mexico, it is not as readily apparent that they apply to Mr. Delaire and Regal Sask.

Arguably, both Mr. Delaire and Regal Sask have a material interest in the Condo Units, being shareholders of Regal Mexico and standing to profit indirectly from the trading activity. In any event, as the exemptions are subject to section 74, I have decided to proceed to consider the application of that section to this matter and will leave the determination of the application of clauses 3(1)(a) and (e) to persons in the position of Mr. Delaire and Regal Sask to another time.

60. I will also note, before leaving this issue of exemptions under section 3, that I considered the application of clause 3(1)(b) in this case. In their submissions, the Respondents asserted that neither Mr. Delaire nor Regal Sask received any commission or other payments for their activities in connection with the sale of the Condo Units. I find that the exemption in clause 3(1)(b) does not apply in this case, as the transactions were made in the course of continued and successive transactions of like character.

Issue #3: Did the Respondents contravene subsection 74(2) of the Act by trading in Saskatchewan in real estate located outside Saskatchewan without being registered with the Commission?

61. Sections 74 to 78 of the Act establish additional requirements specifically for the sale of property located outside of Saskatchewan. The requirements in those sections include that:

- only registered brokerages can trade in real estate located outside Saskatchewan [s.74(2)];
- brokerages must file a prospectus and certain other relevant materials with, and receive a certificate of acceptance in respect of the prospectus from, the Commission prior to trading in Saskatchewan in real estate located outside Saskatchewan [ss.74(3) and 77];
- brokerages must immediately notify, in writing, the Commission and all buyers who entered into contracts for which a prospectus was required of any subsequent changes in certain information relating to the trades [s.75(1)];
- no person can enter into or negotiate in Saskatchewan any contract to trade in real estate located outside Saskatchewan unless a copy of a prospectus accepted by the Commission in respect of the proposed trade in real estate has been provided to the prospective buyer and the prospective buyer has acknowledged in writing that he or she has received a copy of the prospectus and had an opportunity to read it [s.78(1)]; and

- the seller or brokerage must retain the written acknowledgement of the prospective buyer for a period of six years [s.78(2)].

62. These additional requirements evidence an intention to protect Saskatchewan purchasers of real estate located outside Saskatchewan through the provision of robust disclosure of material information, in the form of a prospectus approved by the Commission, and the obtaining of a written acknowledgement from the purchaser. Disclosure through a prospectus ensures potential purchasers understand the risks of the particular trade in real estate being offered to them. The written acknowledgement serves to prove that the prospective purchaser received the robust risk disclosure, but also to ensure the purchaser understands they are accepting the risk.

63. It should be noted that section 74 incorporates the same jurisdictional dividing line used for the purposes of section 18 of the Act, where the trading in the real estate located outside of Saskatchewan must occur in Saskatchewan, for these provisions to apply.

64. It is not hard to understand why the Act includes registration and additional prospectus requirements for trades in real estate located outside Saskatchewan. Real estate located in other jurisdictions can be subject to vastly different laws, ownership rights and restrictions, and market dynamics. There could be potential risks to the prospective purchaser that are unlike any risks present in trades in real estate located in Saskatchewan. The heavy focus on registration and upfront disclosure to purchasers of real estate located outside Saskatchewan is driven in large part because the purchaser may have no legal right or remedies in the legal system of the jurisdiction where the real estate is located to address any issues or harm suffered. Compliance with these provisions is important to prevent Saskatchewan purchasers of real estate located outside Saskatchewan from getting trapped in potentially financially devastating real estate transactions for which they did not understand the risks and have no recourse.

65. As I have found that all of the Respondent's engaged in trading activity in Saskatchewan with respect to the Condo Units, and none of them were registered with the Commission as a brokerage, all of the Respondents have contravened section 74(2) of the Act.

66. Even if one or more of the Respondents had been registered as a brokerage with the Commission, they would still have contravened section 74(3) of the Act by trading, in Saskatchewan, in the Condo Units before filing and receiving a

certificate of acceptance from the Commission for a prospectus with respect to the trades in the Condo Units.

Issue #4: Did the Respondents contravene subsection 78(1) of the Act by trading, in Saskatchewan, in real estate located outside Saskatchewan without providing prospective purchasers a prospectus accepted by the Commission?

67. The Act states in subsection 78(1) that no person shall enter into or negotiate in Saskatchewan any contract to trade in real estate located outside Saskatchewan unless a copy of the prospectus referred to in section 74 and any information required to be filed pursuant to subsection 75(1) has been delivered to the prospective buyer, and the prospective buyer has acknowledged in writing that he or she has received those materials and has been given an opportunity to read them.

68. As there is no evidence before me that the Respondents delivered a copy of the prospectus referred to in section 74 or any information required to be filed pursuant to subsection 75(1) to prospective buyers, or obtained written acknowledgements from prospective buyers confirming that they had received those materials and been given an opportunity to read them, I find that the Respondents contravened subsection 78(1) of the Act.

Issue #5: **Was there a sufficient connection between Saskatchewan and the trading activities carried out by the Respondents such that the Act applied to those activities of the Respondents?**

69. As noted above, the Act purports to apply to trading in Saskatchewan relating to real property located outside Saskatchewan. That may be the intention of the legislators, but there are limits to a province's jurisdiction in terms of application to persons or property in other jurisdictions, regardless of the Act's intention.

70. The courts have recognized that there is a constitutional limit to the territorial reach of a province's jurisdiction to apply to persons and activities outside of the province. The Supreme Court of Canada first set out the current parameters of this constitutional restriction in *Unifund v. ICBC* (2003) SCC 40 (***Unifund***). The Court revisited those principles in the more recent case of *Sharp v. Autorite des marches financiers*, 2023 SCC 29 (***Sharp***). In *Sharp*, Wagner C.J. and Jamal J., speaking for the majority of the Court, reaffirmed the test set out in *Unifund* as follows:

> [110] As a result, **the "real and substantial connection" test in *Unifund* is now the "accepted test for discerning** the presumptively intended reach of federal legislation as well as **the constitutionally permissible application of provincial legislation**" (R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at p. 806).
>
> [emphasis added]

71. As the factual backdrop in the *Sharp* decision shares significant parallels with our matter, I will focus on that ruling for the purposes of my decision here. In *Sharp*, the Quebec regulator responsible for administering Quebec's securities legislation (the **Quebec Act**) had sought to impose penalties and sanctions against individuals resident outside Quebec for breaches of the Quebec Act. The respondents in *Sharp* were residents of British Columbia and based on the uncontested facts before the Court, some of the impugned activities occurred in Quebec. The Quebec regulator was successful in the lower courts and the respondents appealed that matter to the Supreme Court. Wagner C.J. and Jamal J. noted the Quebec regulator, the AMF, summarized the ties between the appellants' activities and Quebec as follows:

> [21] According to the AMF, the appellants' pump-and-dump scheme proceeded in five steps. The appellants acted in concert to (1) acquire the shares of Solo, (2) give Solo a legitimate "face", (3) promote Solo's business, (4) sell their shares for a profit, and (5) distribute this profit among themselves. **The AMF alleged that each appellant was involved in one or more of these steps and that the scheme had several ties to Quebec sufficient to apply Quebec's securities regulatory scheme to them: Solo was a reporting issuer in Quebec with a Montréal business address; Plante, who directed Solo, was a Quebec resident when the scheme was implemented; Solo's promotional activities were accessible to Quebec residents; and, ultimately, 15 Quebec investors lost a total of $5,000**.
>
> [emphasis added]

72. Wagner C.J. and Jamal J. note in paragraph 114 of the decision that the real and substantial connection test, which they also refer to as the "sufficient connection test", functions as a principle of statutory interpretation. They go on to describe

the four principles that comprise the sufficient connection test:

> "[126] Finally, it must be determined whether the FMAT's exercise of jurisdiction over the out-of-province appellants would be contrary to the constitutional limitations set out in *Unifund*, which asks whether there is a sufficient connection between Quebec and the facts alleged against the appellants based on the following four principles:
>
> 1. The territorial limits on the scope of provincial legislative authority prevent the application of the law of a province to matters not sufficiently connected to it;
> 2. What constitutes a "sufficient" connection depends on the relationship among the enacting jurisdiction, the subject matter of the legislation and the individual or entity sought to be regulated by it;
> 3. The applicability of an otherwise competent provincial legislation to out-of-province defendants is conditioned by the requirements of order and fairness that underlie our federal arrangements;
> 4. The principles of order and fairness, being purposive, are applied flexibly according to the subject matter of the legislation. [para. 56]"

73. In paragraphs 127 and 128 of the decision, Wagner C.J. and Jamal J. speak to the contextual approach required in applying the first two principles of the test and highlight the transnational nature of modern securities legislation as a relevant consideration in the matter before them:

> "[127] The first two principles in *Unifund* are related. The first principle requires a sufficient connection, while the second principle identifies factors that might furnish that connection (Sullivan, at p. 822). **This involves a contextual inquiry.** As Binnie J. noted in *Unifund*, **"different degrees of connection to the enacting province may be required according to the subject matter of the dispute"** (para. 65). **In each case, a court or tribunal must examine the relationship among the enacting jurisdiction, the subject matter of the law, and the person sought to be regulated by it, to decide whether that relationship is sufficient to support the applicability of the legislation to the out-of-province person** (para. 65).
>
> [128] **The "sufficient connection" analysis must recognize the transnational nature of modern securities regulation and the public interest in addressing international market manipulation.**

> **Securities regulation raises unique considerations that highlight the need for transnational enforcement.** As this Court noted in *Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21, [2000] 1 S.C.R. 494, **the "securities market has been an international one for years" and the "Internet has greatly increased the ability of securities traders to extend across borders"** (para. 28). **To effectively regulate the securities market, "regulators must equally be able to respond, and surmount borders where legally possible"** (para. 28)."
>
> [emphasis added]

74. In concluding that the facts before the Court satisfied the first two principles of the sufficient connection test, Wagner C.J. and Jamal J. state:

> "[129] Applying the first two *Unifund* principles, there is a sufficient connection between Quebec and the out-of-province appellants, all of whom allegedly participated in a fraudulent securities manipulation scheme with important ties to Quebec. **The appellants allegedly used Quebec as the "face" of their alleged pump-and dump scheme by promoting Solo's mining activities in Quebec. They participated in marketing or financing efforts and partly targeted Quebec residents. Solo, the company through which the appellants operated their scheme, was a reporting issuer in Quebec, and Solo's director was a Quebec resident.** There was thus a clear connection between Solo and the appellants, on the one hand, and the province of Quebec on the other. **In the circumstances, it would defeat the purpose of the cross-border nature of modern securities regulation to allow the appellants to escape the reach of Quebec's regulatory oversight."**
>
> [emphasis added]

75. Wagner C.J. and Jamal J. went on to find that the remaining two principles of the sufficient connection test were also met:

> "[133] Applying the Quebec regulatory regime is fair to the appellants. **The appellants chose to enter Quebec's securities marketplace** (see *Unifund*, at para. 77), **and they promoted the Quebec mining prospects of Solo, a reporting issuer in Quebec. Because the**

> **appellants made Quebec the face of their securities manipulation operation, their entrance into Quebec's market was not accidental or irrelevant but rather was an integral part of the scheme.**
>
> [134] In addition, **applying Quebec's securities regulatory scheme to the appellants does not offend the principle of order or the related concept of interprovincial comity. Given the cross-border nature of securities**
> **manipulation and securities fraud, regulators from multiple jurisdictions may exercise jurisdiction over the same scheme.** As noted by the intervener the Ontario Securities Commission, this is "a feature, not a flaw" of modern securities regulation (I.F., at para. 15). "It promotes the seamless coverage of regulatory protection and the imposition of public interest remedies across the territories affected by a single, unlawful scheme" (para. 15). We also agree with the AMF: [translation] ". . . nothing precludes such a multiplicity of proceedings because each of the proceedings constitutes a legitimate exercise of the jurisdiction of the state concerned. . . . [T]he application of the sufficient connection test is not a zero-sum game" (R.F., at paras. 81 and 87)."
>
> [emphasis added]

76. In our situation, I also find real estate markets are transnational in nature just as the securities market was found to be in *Sharpe*. While it might not be as pronounced as in the case of the securities industry, it is not uncommon for people to purchase properties located in other jurisdictions for vacation use or investment purposes. This trend has been growing, no doubt due in part to the ease with which contracts may be executed by electronic signatures and funds sent electronically for cross-border transactions, plus the increasing ability to access and share information including pictures and videos of properties for sale located anywhere in the world. The legislators took note of this growing trend when they included the prospectus provisions in sections 74-78 in the Act when it was passed in 1995, which focus exclusively on persons trading in real property located outside Saskatchewan.

77. Indeed, the CTV news article references Mr. Delaire stating that the mental "reset" brought about by the pandemic has resulted in him selling the condos in Mexico to "Canadians and Americans, site unseen". That entire article was

focused on “snowbirds”, including Saskatchewan residents, purchasing “vacation properties” in warmer climates.

78. After applying the first two *Unifund* principles, I find the Respondents and their trading activities were sufficiently connected to Saskatchewan. In some ways, the connection is even stronger than in *Sharp*. Mr. Delaire, the President and controlling mind of Regal Mexico, was a resident of Saskatchewan and engaged in trading activities on behalf of Regal Mexico while in Saskatchewan. Regal Sask was incorporated in Saskatchewan, had a registered business office in Saskatchewan and maintained a bank account in Saskatchewan in which deposit payments for the purchase of Condo Units were held on behalf of Regal Mexico. Regal Mexico, while a Mexican company, knowingly and intentionally operated in Saskatchewan through its President, Mr. Delaire and through its authorized agent or custodian, Regal Sask. Further, Saskatchewan was prominently featured in the marketing of the Condo Units by the Respondents when they used the tag line “two guys from Saskatchewan”. As the Respondents explained in their testimony at the hearing, purchasers “…liked that we were local and two normal guys, you get to talk to us. It’s not some big corporation.” Mr. Delaire noted in his testimony at the Hearing that this marketing strategy worked well, noting that they had 20,000 followers at one point on the Facebook page. Saskatchewan residents were also a target of the Respondents’ marketing of the Condo Units, as demonstrated by the CTV news article.

79. I also find the last two *Unifund* principles are met in this case. Similar to the situation in *Sharp*, the Respondents here intentionally used their connection to Saskatchewan as a veneer to make the investments more attractive to Canadian and American purchasers. In addition to the use of the tag line “two guys from Saskatchewan”, the RBC Account in Saskatchewan was established solely to provide comfort to purchasers from Canada and the United States who felt uncomfortable sending their money for the deposit on Condo Units to Regal Mexico. In these circumstances, it is fair to apply the Act’s regulatory framework to the Respondents’ activities. The Respondents intentionally chose to use their presence in Saskatchewan as a tactic to increase sales, it was not accidental or irrelevant.

80. Applying sections 74-78 of the Act to the Respondents in this case would not offend the principle of order contemplated in the last two *Unifund* principles. Those Act provisions primarily focus on the requirement to provide an approved prospectus regarding the property to purchasers before negotiating or entering into a contract to sell real estate located outside Saskatchewan to the

purchasers. The intention is to protect Saskatchewan purchasers by arming them with appropriate disclosure to ensure they understand the relevant risks of the transaction and make an informed purchase decision. It is difficult to envision how applying these requirements to persons selling real estate located outside Saskatchewan, like the Respondents in this case, will interfere or conflict with any requirements imposed on them in any other jurisdictions, including the jurisdiction in which the property is located. Sections 74-78 of the Act appear to be specifically designed to avoid, as much as possible, the creation of conflicts between the Act and the law in the jurisdiction in which the property is located.

81. In conclusion on this issue, I find the *Unifund* principles have been met and sections 74-78 of the Act apply to the Respondents' trading activities in Saskatchewan.

Issue #6: Is it in the public interest to direct the Respondents to cease trading in Saskatchewan in real estate pursuant to subclause 82(2)(c)(i) of the Act?

82. My authority to make an order pursuant to subclause 82(2)(c)(i) of the Act requires that one of the circumstances set out in subsection 82(1) exists. In particular, I find that it is in the public interest to make the Order in accordance with clause 82(1)(e) of the Act. Determining whether issuing the Order is in the public interest requires a contextual analysis that takes into account the need to protect the public, the need to preserve confidence in the regulated industry and fairness to the Respondents.

83. The Respondents submitted they sincerely believed they were exempt from the Act being property owners, or persons materially interested in the property, selling their own property. The Respondents also submitted they never portrayed or held themselves out in Saskatchewan as real estate agents or brokers, or as registered to trade real estate. They further submitted that, by the time of the Hearing, they had changed how they were carrying on business to avoid trading in real estate in Saskatchewan. In this regard, they claimed in the Written Submissions that:

> "Mr. Delaire has nonetheless taken steps to discontinue his personal involvement in Saskatchewan and the involvement of Regal Property Developments Ltd. and has modified social media accounts, with only the Facebook page and Instagram remaining, from which he has removed his name and the name of Regal Property Developments Ltd. There is no longer any reference to Mr. Delaire or Regal Property

> Developments Ltd. in any of this advertising. Regal Properties de Mexico S. de RL de CV will be appropriately restricting its activities in Saskatchewan to advertising only and, in this respect, we would again be pleased to receive input from the Superintendent to ensure compliance with this restriction."

84. The Respondents concluded their Written Submissions by suggesting that in light of the steps they have recently taken which include Mr. Delaire and Regal Sask discontinuing their "involvement in Saskatchewan" and Regal Mexico restricting its activities in Saskatchewan to advertising only, there should be no order issued requiring the Respondents to "discontinue "trading" in real estate" as it would be unnecessary.

85. I find that it is in the public interest to order the Respondents to cease trading in Saskatchewan in real estate, except to the extent to which an express exemption in the Act or Regulations is applicable, or as required to fulfill any obligations to a contract that was fully executed prior to the date of this Decision that relates to the sale of real property in Mexico owned by Regal Mexico.

86. I arrive at this finding because I am of the view that there is a need to issue the Order to provide both specific deterrence to Regal Mexico, and general deterrence to other property developers intending to offer their properties located outside Saskatchewan to Saskatchewan residents without complying with the Act.

87. Regarding Regal Mexico, the Respondents maintained throughout these proceedings that the Act and Superintendent have no jurisdiction or authority in respect of Regal Mexico. They submitted in the Written Submissions that Regal Mexico is a Mexican company operating legitimately in Mexico, and the Act has no application to a contract involving real estate with a Mexican company selling land in Mexico. The Respondents further testified at the Hearing that Regal Mexico conducts no activities whatsoever in Saskatchewan. I accept that the Respondents believed the Act did not apply to Regal Mexico, but they were mistaken. Regal Mexico's steadfast denial that the Act applies to it, despite its President conducting trading activities on its behalf while in Saskatchewan, supports the issuance of the Order.

88. I further find that the Order is also in the public interest to generally deter future non-compliance and to emphasize the importance of adherence to Saskatchewan's regulatory regime. In terms of the need for general deterrence,

there are compelling reasons in my view to issue the Order. The fact that the Respondents were not aware that the exemption for property owners selling their own property was not available to them due to the real estate being located outside Saskatchewan is evidence that the prospectus requirements in the Act are not widely known. The potential harm to Saskatchewan purchasers arising from the failure to comply with the prospectus requirements in section 74 of the Act is significant. Purchasers who buy property in other jurisdictions without being informed of the risks of the transaction could find themselves suffering a life-changing financial loss. By issuing this Order, it puts others contemplating engaging in similar trading activities in Saskatchewan on notice that the Act applies to them and there are consequences for contravening the Act.

89. In conclusion, after considering the need to protect the public, the need to preserve confidence in the regulated industry, and fairness to the Respondents, I conclude that it is in the public interest to issue the Order.

VIII. CONCLUSION

90. For all of the above reasons, I direct Regal Property Developments Ltd., Regal Properties de Mexico S. de RL de CV, and Michael Delaire to cease trading in Saskatchewan in real estate, except to the extent to which an express exemption in the Act or Regulations is applicable, or as required to fulfill any obligations imposed on them pursuant to a contract that was fully executed prior to the date of this Decision that relates to the sale of real property in Mexico owned by Regal Properties de Mexico S. de RL de CV.

DATED at Regina, Saskatchewan, this 24th day of September, 2026.



Janette Seibel
Acting pursuant to an appointment by the
Superintendent of Real Estate