

# REPORT TO OFFICE OF SUPERINTENDENT OF REAL ESTATE

RE: SASKATCHEWAN REAL ESTATE COMMISSION



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**Date:** **October 11, 2011**



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## **1. EXECUTIVE SUMMARY**

MNP was engaged by the Office of the Superintendent of Real Estate to conduct a forensic review of the allegations raised by a former employee of the Saskatchewan Real Estate Commission in a letter addressed to the Minister of Justice and Attorney General / Labour Relations & Workplace Safety regarding the Saskatchewan Real Estate Commission (“the Commission”).

The allegations covered areas relating to:

- Misappropriation of funds and the deletion of Commission records in 2010
- Untimely deposits of Commission revenue in 2010
- A bank account that was not reported to the auditor in 2007
- Questionable IBTA projects
- Large human rights settlements and severance packages in 2010
- Questionable spending on conferences
- Vacation pay-outs in 2009 and 2010
- The purchase of investments with Commission revenue
- Visa card expenditures
- A financial statement adjustment of \$57,000 in 2006
- Issues with the investigative process

The Commission has addressed all allegations by way of explanations and policy implementation.

We have also made further recommendations to improve the controls, policies and procedures at the Commission. These include recommendations that:

- The Commission implement a Personal Use Policy which outlines acceptable use of the Visa card, acceptable use of the related reward points, and procedures for the transfer or termination of the card in the event that the cardholder is no longer employed by the Commission;
- The Commission implement a policy which outlines spending thresholds on what can be purchased with the Visa card and what requires pre-approval from signing authorities;
- The Commission implement a separate accounting process for IBTA projects, whereby costs related to individual IBTA projects are tracked separately, such as through separate general ledger accounts;
- The Commission implement a policy with respect to conferences and training, which outlines the necessary procedures for approval of attendance;
- The Commission implement a policy with respect to allowable and acceptable investments;
- The Commission ensure that their website is updated to include all investigations, including appeals; and
- The Commission implement a formal procedure document or policy which outlines the restitution process for the investigation team, including aspects such as what constitutes a loss, the onus of proof for a loss, how restitution should be calculated, etc. The Commission should also have processes and procedures for training and oversight of investigators, including processes regarding sanctions.

Several of these recommendations are already in the process of being implemented by the Commission. The Executive Director indicated that all of the above recommendations will be approved and in place prior to the approval of the new budget in May of 2012.

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## 2. BACKGROUND

The Saskatchewan Real Estate Commission is “an independent, non governmental agency responsible for the regulation of the real estate industry in Saskatchewan. The Commission is mandated to protect consumers and to provide services that enhance and improve the industry and the business of industry members.”<sup>1</sup> The Commission is comprised of an Executive Director, an assistant Executive Director, a Registration and Office Administrator, a Systems Administrator, and a Director of Audits. The Commission Board is made up of publicly appointed members and registrant (industry) members. The public appointees (all Board members) serve a three year term that may be extended for up to three years.

### 2.1. LETTER OF ALLEGATIONS

On July 8, 2011, a former employee of the Commission wrote a letter addressed to the Minister of Justice and Attorney General / Labour Relations & Workplace Safety. The letter was subsequently forwarded to the Superintendent of Real Estate. In the letter, the former employee outlined his concerns around the financial and overall management of the Commission. He specifically summarized his concerns into eleven (11) allegations:

1. *Misappropriation of funds and the deletion of Commission records*
2. *Questionable deposits of Commission revenue*
3. *A bank account controlled by staff and not reported to the auditor*
4. *Questionable IBTA Projects*
5. *A large Human Rights Settlement with funds intended for public protection*
6. *Severance with funds intended for public protection*
7. *Questionable spending on conference spas and functions*
8. *Questionable T4's*
9. *Vacation pay-outs for the same two individuals*
10. *The purchase of Bonds with Commission revenue*
11. *Expense paid by auto-withdrawal.*

The former employee also expressed a concern in his interview with MNP about a \$57,000 adjustment that was made to the Commission financial statements in 2006. He also expressed a concern about whether the Commission adequately protects the public. Specifically, the former employee indicated that he feels that the sanctions issued against registrants are not sufficient, the public does not benefit from the restitution provisions of the legislation, and there are not enough proactive investigations being conducted.

MNP has been engaged by the Office of the Superintendent of Real Estate to investigate and report on these allegations. Each allegation is addressed in the Detailed Findings section below.

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<sup>1</sup> This description was sourced from the website for SREC [www.srec.ca](http://www.srec.ca)

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### **3. SCOPE OF WORK**

The engagement encompassed a forensic investigation of the concerns raised by the former employee in his letter. The project approach consisted of the following phases:

1. Phase 1 – Interviews
  - a. Conduct interviews with individuals who have first hand knowledge of the allegations and/or the process and procedures around the areas of concern
2. Phase 2 – Discovery
  - a. Complete a review of relevant documentation associated to the concerns
3. Phase 3 – Reporting

#### **3.1. SCOPE LIMITATIONS**

In performing our work, we requested and relied upon data provided to us by the Commission management and Board. We have assumed that all documentation and data provided to us are factual and representative of actual transactions.

Our observations, findings, and conclusions are based upon the results of our investigation and the evidence available for review as of October 7, 2011. We have planned and performed our engagement in accordance with *Standard Practices for Investigative and Forensic Engagements, 2006* required by the Canadian Institute of Chartered Accountants (“CICA”) and the Alliance for Excellence in Investigative and Forensic Accounting of CICA.

We have focused our work on the concerns identified by the Commission and the Office of the Superintendent of Real Estate and the scope of work as described above. We have not conducted an audit of financial statements as defined by the CICA.

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#### **4. METHODOLOGY**

The observations and findings of this report are based upon the following procedures performed:

1. Conducted interviews with individuals who have first hand knowledge of the allegations and/or the process and procedures around the areas of concern.
2. Obtain relevant supporting documentation from the individuals interviewed.
3. Analyzed the supporting documentation provided by the individuals interviewed. Specific analyses included:
  - a. Review of VISA statements and reconciliations, for evidence of review and approval;
  - b. Review of Commission minutes for review and approval of IBTA projects;
  - c. Review of correspondence from the Office of the Superintendent for approval of IBTA projects;
  - d. Review of all investigation files from 2000 to present; and
  - e. Review of various financial information, such as the annual report and budget

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## 5. DETAILED FINDINGS

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### 5.1. MISAPPROPRIATION OF FUNDS AND THE DELETION OF COMMISSION RECORDS; QUESTIONABLE DEPOSITS OF COMMISSIONS REVENUES

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#### 5.1.1. ALLEGATION

The first point in the letter of allegations relates to an incident where the former employee noted that a \$300 cash payment made to the Commission office in May 2010 was not deposited. Although the Commission staff member recalled that the payment had been made by the registrant, the cash was not located. The former employee also noted that the registrant payment of \$300 was deleted off the online registration system by the Commission staff member. It was also discovered that there were forty-three (43) other deletions made in the online registration system. Further, the former employee indicated that cash revenue was being kept at the Commission office and not deposited on a regular basis.

#### 5.1.2. COMMISSION RESPONSE

The Executive Director conducted an investigation into the deletions and presented his findings to the Board. The deletions were as a result of impatient registrants processing their online payments several times in the same session, resulting in duplicate payments that were subsequently refunded by the Commission. It should be noted that the online registration system operates independently from the Commission's accounting system. The online registration system tracks registrations and fees paid; however, this information is reconciled to the Commission's bank account and entered into the accounting system separately. The Executive Director conducted an investigation into the missing \$300 but was unable to locate the money. The Commission staff member indicated that the money was not secured properly and paid \$300 to the Executive Director, taking responsibility for the loss.

The Executive Director implemented several new controls and procedures that would prevent similar incidents from occurring again. These included:

- Fixing the registration system so that double payment would not occur if a registrant presses the "accept" button twice during the registration process. MNP verified this with the Commission's Systems Administrator;
- Daily bank deposits;
- A numbered receipt system; and
- Removal of authorities to make deletions to the online registration system.

#### 5.1.3. MNP CONCLUSION

Controls and procedures have been implemented by the Executive Director to ensure that: 1) double payments cannot occur; 2) bank deposits are made on a daily basis; 3) receipts are properly accounted for; and 4) the ability to make deletions in the system is restricted.

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## 5.2. BANK ACCOUNT NOT REPORTED TO AUDITOR

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### 5.2.1. ALLEGATION

In the letter of allegations, the former employee indicated that there was a bank account held at Scotiabank that was never reconciled or included in the financial statements.

### 5.2.2. COMMISSION RESPONSE

MNP inquired with Commission's external auditor for clarification on the bank account at Scotiabank. The external auditor explained that the Commission has interest bearing trust accounts (IBTA's) at several financial institutions. The Scotiabank account was treated as a holding account by the previous Executive Director and the interest was transferred by cheque each month to the Royal Bank IBTA account. Scotiabank then moved to a semi-annual reporting of interest on the IBTA account and instead of a manual cheque to transfer funds, the Scotiabank issued a cheque and report every 6 months. As such, the amount accumulated in this account at the end of 6 months was material and had not been recorded in the books and records of the Commission. The external auditor indicated that this matter was disclosed to the Board and recorded in the financial statements as a prior period adjustment in June of 2008. Also, procedures have been implemented whereby the Scotiabank account is reviewed and recorded on a monthly basis.

The external auditor indicated that other than the above situation, he has no knowledge of any sort of hidden bank accounts or unknown dealings with financial institutions.

### 5.2.3. MNP CONCLUSION

Procedures have been put in place since 2008 by the Commission to review and record the Scotiabank IBTA interest on a monthly basis. The Scotiabank IBTA amounts are now appropriately recorded in the financial statements.

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## 5.3. QUESTIONABLE IBTA PROJECTS; QUESTIONABLE T4'S

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### 5.3.1. ALLEGATIONS

The former employee alleged that the manner in which IBTA funds are being used on projects is not being appropriately scrutinized. Also, in relation to the law students' work on IBTA projects, the former employee believed that they were not properly supervised and claimed more hours than they worked.

### 5.3.2. COMMISSION RESPONSE

Annual budgets are prepared for requested IBTA project work. Commission staff put forward the budget and project descriptions to the Management Committee. After being reviewed and approved by the Management Committee, the IBTA information is provided to the full Commission for review and ultimately approval. The Superintendent of Real Estate receives the final IBTA budget request and project descriptions when the Commission requests approval for using IBTA funds. The Superintendent will review the information, request clarification when needed, and then either approve, request changes, or not approve the requests.

IBTA projects are reviewed by progress by the full Commission and approval for transfer of the formal budget amounts is made by motion at Commission meetings. Outstanding projects are updated during



the year with progress updates to the Commission. The Executive Director is responsible for the tracking and monitoring of ongoing IBTA projects.

MNP reviewed letters from the Superintendent of Real Estate to the Commission, approving the IBTA projects for the period between 2008 and 2011. MNP also reviewed various Commission minutes where information was provided to the Commission about various IBTA projects and motions were made to authorize the funding for these projects.

Per discussion with the Executive Director, IBTA projects are not separately accounted for. However, there have been no instances where more money was transferred from the IBTA account to the operating account. Expenses related to IBTA projects are initially paid out of the operating budget and then money is transferred from the IBTA account to the operating account to reimburse those expenses after the project is completed.

The Executive Director indicated that he is working on setting up a system or accounting process whereby IBTA projects are separately accounted for and tracked in the system.

Per discussion with the Executive Director, law students are sometimes hired for the summer to work on IBTA projects. The students are hired on a monthly basis and are expected to work seven hours a day, five days per week. The law students were hired to work on position papers for the summer and the position papers were completed before the end of the summer. The law students are supervised by the Assistant Director.

### **5.3.3. MNP CONCLUSION**

Processes are in place for the approval of IBTA projects and expenditures. Procedures are currently being implemented to separately track IBTA projects and related costs. Students hired to work on IBTA projects are hired to produce specific deliverables and are supervised by the Assistant Director. The deliverables have all been received by the Commission.

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## **5.4. LARGE HUMAN RIGHTS SETTLEMENTS AND SEVERANCE PACKAGES**

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### **5.4.1. ALLEGATION**

The former employee expressed his concerns about a human rights settlement and a severance package that was paid out by the Commission. The former employee's concern was that significant funds were being spent on labour issues that could be better spent on public education.

### **5.4.2. COMMISSION RESPONSE**

MNP inquired with the Executive Director regarding the labour issues at the Commission. The Executive Director concurred that there were two significant changes in staff over the past couple of years. He indicated that one employee was dismissed while on disability which resulted in Human Rights compensation. The other change in staff resulted from a change in the way investigations were conducted. The Commission was taking a new direction in using the skills of a lawyer in the position of Director of Investigations which resulted in the severance of the previous Director of Investigations.

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### **5.4.3. MNP CONCLUSION**

The severance payment and human rights settlement were a result of staffing changes necessary in the re-organization of the way the Commission was conducting business.

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## **5.5. QUESTIONABLE SPENDING ON CONFERENCE, SPAS, AND FUNCTIONS**

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### **5.5.1. ALLEGATION**

When MNP interviewed the former employee, he explained that he was concerned about questionable spending related to the escalating costs that the Commission was incurring for conferences and per diems.

### **5.5.2. COMMISSION RESPONSE**

Per discussion with management, an overall annual budget is set for conferences and training for Commission staff and management. Deviations from the budgeted amounts are discussed with the appropriate group (management committee, full commission, staff) to ensure that changes are reasonable and still in line with learning objectives.

The Commission's budgeting process begins in December of the previous year where assumptions for revenue and expenses for the upcoming fiscal year (July 1 to June 30) are discussed. A preliminary budget is prepared and presented to the Commission Board for ratification in March and made effective for July 1. At every Commission meeting, the Commission members are presented with comparative figures which include budgeted, actual and variance amounts. The Commission meets in March, May, July, Sept and December of every year, with an annual general meeting in October.

Given that the costs for specific conferences (registration and travel costs) can be significant and advance booking required, a large amount of these costs are paid for with the Visa card. Any additional costs incurred by individuals attending the conference are reimbursed with expense cheques and supporting documentation.

MNP also reviewed the budget and noted that the gross budget for conferences was \$81,451 for fiscal 2009 (July 1, 2009 to June 30, 2010) and \$134,625 for fiscal 2010 (July 1, 2010 to June 30, 2011). Per review of the Commission's general ledger, we noted that total dollars spent on conferences was \$47,229 in fiscal 2009 and \$97,052 in fiscal 2010. As well, we noted that expenses (\$49,195) related to the Canadian Regulators Conference that the Commission hosted in May 2011 were included for that year.

Per discussion with the Executive Director, the Commission does not pay for spouses to attend conferences. Although flights may be booked together on the credit card for convenience purposes, any charges relating to the spouse will be deducted off the employee's expense claim after the conference.

The Executive Director indicated that the increasing conference costs are due to: 1) more training of Commission Board members to understand their jobs and make good decisions; and 2) the fact that the Commission hosted the Canadian Regulators conference in May 2011.

### **5.5.3. MNP CONCLUSION**

Conference and training costs are budgeted for and approved by the Commission Board. Deviations from budget are discussed with the Board to ensure that they are appropriate and in line with learning

objectives. We recommend that the Commission implement a policy with respect to conferences and training, which outlines the necessary procedures for approval of attendance.

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## 5.6. VACATION PAY-OUTS

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### 5.6.1. ALLEGATIONS

The former employee alleged that the Executive Director and the Office Administrator receive vacation pay-outs as they do not take holidays. The former employee expressed concern as to whether these vacation hours and amounts are properly reconciled before being paid out.

### 5.6.2. COMMISSION RESPONSE

According to management, the previous Executive Director left the Commission in July of 2005 and was paid out a very large balance for unused vacation days. This created a potential cash flow issue for the Commission. After the new Executive Director was in place, the business decision to not allow excessive accumulation of vacation days was implemented. The Executive Director tracks the accumulation and usage of vacation pay for employees on a monthly basis.

According to the Executive Director, it is difficult for him to take actual vacation due to the increasing work load at the Commission and the limited staffing. He was paid out 20 days in 2009 and 10 days in 2010. The balance of vacation days for the Executive Director was adjusted to reflect these payouts during each year. With the hiring of the Assistant Executive Director in June 2010, it is anticipated that vacation payouts will decrease or be eliminated.

Per discussion with the Executive Director and review of the Ceridian payroll, the Office Administrator has not received any vacation payout.

### 5.6.3. MNP CONCLUSION

Vacation payouts to the Executive Director were a result of limited staffing and increasing workload. With the hiring of an Assistant Executive Director, it is anticipated that vacation payouts will decrease or be eliminated. All vacation payouts were reconciled.

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## 5.7. PURCHASE OF BONDS WITH COMMISSION REVENUE

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### 5.7.1. ALLEGATION

The former employee raised a concern that the Commission has purchased bonds with their excess cash and was making a profit as a result. He alleged that this conflicts with the organizations' status as a non-profit organization.

### 5.7.2. COMMISSION RESPONSE

Per the Executive Director, the Commission is created as a non-profit organization under legislation and not under *The Non-profit Corporations Act, 1995*. As such, the Commission must be in compliance with *The Real Estate Act*.

Per discussion with the Executive Director, the Commission is generating income from investments to:

1. Generate a reserve in case of a downturn in the economy;

2. Generate a reserve to cover off the increase in inflation;
3. Prevent the need to increase costs to registrants in case of an economic downturn or inflation increase; and,
4. Ensure that the Commission has adequate resources to fulfill their mandate over a long period of time.

Per *The Real Estate Act*, section 48(1):

*The Commission holds in trust all money received pursuant to subsection 47(2) and shall immediately deposit that money in an account in a financial institution in Saskatchewan separate and apart from any other money of the Commission.*

Section 48(2) states that:

*The Commission may invest the fund in investments in which trustees are authorized to invest pursuant to the Trustee Act and may sell or otherwise dispose of those investments and reinvest the proceeds in similar investments.*

Per *The Trustee Act, 2009*, section 24:

*A trustee may invest trust property in any form of property or security in which a reasonable and prudent investor would invest...*

*In planning the investment of trust property, a trustee shall consider the following factors, in addition to any others that are relevant in the circumstances:*

- (a) *General economic conditions;*
- (b) *The possible effects of inflation or deflation;*
- (c) *The expected tax consequences of investment decisions or strategies;*
- (d) *The role that each investment or course of action plays within the overall portfolio of trust property;*
- (e) *The expected total return from income and appreciation of capital;*
- (f) *Other resources of the beneficiaries of the trust;*
- (g) *Needs for liquidity, regularity of income and preservation or appreciation of capital;*
- (h) *An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries of the trust.*

The Executive Director provided MNP with a list of the bonds that the Commission has purchased. MNP noted that the investments were in compliance with *The Real Estate Act* and *The Trustee Act, 2009* and consisted of GIC's and mutual funds savings accounts.

### **5.7.3. MNP CONCLUSION**

The Commission's investments are in compliance with applicable legislation. We recommend that the Commission implement a policy with respect to allowable and acceptable investments.

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## 5.8. EXPENSES PAID ON VISA

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### 5.8.1. ALLEGATION

The former employee indicated that the majority of Commission expenditures were being paid on the Visa card. He alleged that this was to avoid having cheques signed, since the Visa was paid online through the bank account. He also indicated a concern of who was benefitting from the card's rewards program.

### 5.8.2. COMMISSION RESPONSE

Per review of documentation provided by Commission management, a majority of Commission expenses are processed on the Visa card that has been approved for use by the Commission. The Visa is in the Executive Director's name. Given the large volume of transactions that are processed on the Visa card, it has been set up on an automatic payment system. According to management, this was done primarily for the following reasons:

- The timing and availability of the Commission member that is the second signing officer for cheques is uncertain and delays in payment could result in significant interest charges being incurred; the auto payment would ensure that there are no interest charges being incurred as a result of a late payment;
- The auto payment provides the ability to always have the credit limit available should unexpected payments arise in a short time frame; and,
- With limited staff to process valid payments, the use of the Visa card has proven to be much more efficient and timely.

Per discussion with the Executive Director, the monthly Visa bill, the related receipts/invoices and a spreadsheet that shows the allocation of the expense to the correct general ledger (GL) account is prepared and submitted for review and data entry each month by the Registration & Office Administrator. The accompanying invoices are collated and attached to the Visa statement and Excel spreadsheet and the entire package is provided to the Executive Director for approval. Thereafter, the entire package is provided to the Assistant Executive Director. The reconciliation and support documentation is reviewed (verifies amounts and GL coding) by the Assistant Executive Director who then enters the data into the Simply Accounting software package.

At the next opportunity for cheque signing, the entire Visa package is provided to the Commission member with signing authority for his review and approval. Prior to August 2011, there was no evidence of review on the package. However, going forward, a procedure has been implemented for the Board member to initial the package as evidence of his review.

Per the Executive Director, the Visa reward points remain on the card until there is a work-related conference that is not budgeted for. The points will then be used to fund the airfare for those specific situations.

### 5.8.3. MNP CONCLUSION

MNP has made recommendations for the Commission to implement policies and procedures around the use of the Visa. These include recommendations over acceptable use, spending thresholds on the use of the Visa, and policies around the termination and transfer of the card.

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## 5.9. \$57,000 ADJUSTMENT

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### 5.9.1. ALLEGATION

The former employee stated that when he commenced work in 2006, he was made aware that SREC could not reconcile \$57,000 and that this amount was written off by the accountants. He stated that he was advised that this was due to a computer glitch but remained suspicious of the amount.

### 5.9.2. COMMISSION RESPONSE

Per the Executive Director, this error was the result of a computer system crash in 2001 that left the Simply Accounting trial balance out of balance. The Commission and its auditors chose to work around this problem. The Commission used Excel to generate internal financial statements and the external auditor reviewed the transactions and did such testing needed to confirm the transactions in any given year. The Commission has always received unqualified audit opinions.

During fiscal 2005-06, the Executive Director sought for and obtained approval to hire a consultant to review the accounting records and determine how to correct the problem so that financial statements could be generated directly from the accounting program. After reviewing the situation and seeking solutions, the only solution found was to set up a new entity in Simply Accounting and enter the properly verified balances into the trial balance. This was completed after a review of the transactions and the previously audited financial statements.

### 5.9.3. MNP CONCLUSION

MNP obtained a letter from the consultants who performed the review which indicated that there was no “write-off” of funds but was an error caused by the computer crash. The letter corroborates management’s assertion above.

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## 5.10. INVESTIGATION PROCESS

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### 5.10.1. ALLEGATION

The former employee alleged that the Commission does not adequately protect the public. Specifically, the former employee indicated that: a) the sanctions issued against registrants are not sufficient and consistent; b) there are not enough proactive investigations being conducted; and c) the public does not benefit from restitution.

### 5.10.2. COMMISSION RESPONSE

#### *A) Sufficiency and Consistency of Sanctions*

Per discussion with the Executive Director, we noted that decisions are based on decision guidelines and principles. The factors that go into the determination of a sanction include:

- Dollar value of property in question
- Market and economic conditions of the real estate market
- Education of person being disciplined
- Remorse exhibited by person being disciplined
- Magnitude of potential consequence to consumers

- Magnitude of potential consequence to industry
- Efforts taken to mitigate loss
- Sanction history of person being disciplined
- Severity of breach
- Effort required to remedy the breach
- The need for specific deterrence
- The need for general deterrence
- Past comparable decisions

Per discussion with the Executive Director, sanctions vary because Commission Hearing Committees are considering all of the above factors in determining the appropriate sanction taking into account the facts and merits of each case.

#### *B) Proactive Investigations*

We were advised by the Executive Director that the Commission does not permit anonymous complaints without sufficient details, such as the realtor's name or a description of the situation. The Executive Director indicated that all complaints must contain information and/or evidence which would allow for a substantive investigation to proceed, whether from a member of the public or anonymously.

We reviewed the Annual Report July 1<sup>st</sup>, 2010 to June 30<sup>th</sup>, 2011 and noted that the Compliance Report section provides information on the origin of complaints. The Annual Report indicated that complaints are submitted by the general public, registrants, the Commission, a real estate board, and anonymously. Out of sixty-one (61) investigation files opened in 2010-11, forty-one (41) were submitted by the general public, sixteen (16) were submitted by registrants, and four (4) were proactively opened by the Commission.

Per discussion with the Executive Director, he indicated that the Commission proactively opens investigations based on: 1) review of real estate related lawsuits filed in the province; 2) any issues identified as part of the Commission's normal audit process; 3) other peripheral issues that may arise from other complaints received from the public; and 4) general surveillance of the internet, media and advertisements. We believe that the Commission is in fact conducting proactive investigations.

#### *C) Restitution to the public*

We interviewed the Executive Director who advised that it is the responsibility of the Investigation team to put forward losses suffered by victims that may be recovered through fines. We noted that this process was not intended to replace the civil court process and does not allow for awards of damages where the losses cannot be quantified. Section 38 of *The Real Estate Act* sets out:

##### *Disciplinary powers*

*38(1) Where the Commission finds a registrant guilty of professional incompetence or professional misconduct, it may make one or more of the following orders:*

- (a) an order that the registration be cancelled;*
- (b) an order that the registration be suspended for a specified period;*
- (c) an order that the registration be suspended pending the satisfaction and completion of any conditions specified in the order;*
- (d) an order that the registrant may continue to be registered only under*

*conditions specified in the order, which may include, but are not restricted to, an order that the registrant:*

*(i) successfully complete specified classes or courses of instruction;*

*(ii) obtain treatment, counselling or both;*

***(e) an order requiring the registrant to pay restitution to any person as compensation for a loss suffered by that person as a result of the registrant's professional incompetence or professional misconduct;***

*(f) an order reprimanding the registrant;*

*(g) any other order that the Commission considers just.*

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

*(a) that the registrant pay to the Commission within a fixed period:*

*(i) a fine in a specified amount not exceeding \$5,000 for each finding and \$15,000 in the aggregate for all findings; and*

*(ii) the costs of the investigation and hearing into the registrant's conduct and related costs, including the expenses of the investigation committee and the Commission and the costs of legal services and witnesses; and*

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

The onus of proving the loss of victims is with the Investigation team and the Investigation team is responsible for putting forward sentence recommendations in their investigations based on the merits of each case. We recommend that the Commission implement a formal procedure document or policy which outlines the restitution process for the investigation team, including aspects such as what constitutes a loss, the onus of proof for a loss, how restitution should be calculated, etc.

During our review of the decisions, we noted that the Commission's website is not up-to-date with all decision appeals.

### **5.10.3. MNP CONCLUSION**

We recommend that the Commission ensure that their website is updated to include all decisions, including appeals. We recommend that the Commission implement a formal procedure document or policy which outlines the restitution process for the investigation team, including aspects such as what constitutes a loss, the onus of proof for a loss, how restitution should be calculated, etc. The Commission should also have processes and procedures for training and oversight of investigators, including processes regarding sanctions.



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## **6. RECOMMENDATIONS**

In our discussion with the Executive Director, we have made the following recommendations in response to the allegations discussed above:

- Visa card – we recommend that the Commission implement a Personal Use Policy which outlines acceptable use of the card, acceptable use of the related reward points, and procedures for the transfer or termination of the card in the event that the cardholder/Executive Director leaves the Commission. We also recommend that the Commission implement a policy which outlines spending thresholds on what can be purchased with the Visa card and what requires pre-approval from signing authorities.
- IBTA projects – we recommend that the Commission implement a separate accounting process for IBTA projects, whereby costs related to individual IBTA projects are tracked separately, such as through separate general ledger accounts.
- Conference and training attendance – we noted that the Commission prepares detailed budgets with respect to conferences and planned attendees. We recommend that the Commission implement a policy with respect to conference and training, which outlines the necessary procedures for approval of attendance.
- Investment policy – we recommend that the Commission implement a policy with respect to allowable and acceptable investments
- Investigations – we recommend that the Commission ensure that their website is updated to include all decisions, including appeals.
- The Commission implement a formal procedure document or policy which outlines the restitution process for the investigation team, including aspects such as what constitutes a loss, the onus of proof for a loss, how restitution should be calculated, etc. The Commission should also have processes and procedures for training and oversight of investigators, including processes regarding sanctions.

Several of these recommendations are already in the process of being implemented by the Commission. The Executive Director indicated that all of the above recommendations will be approved and in place prior to the approval of the new budget in May of 2012.

**7. RESTRICTIONS AND LIMITATIONS**

We reserve the right, but will be under no obligation, to review all comments included in or referred to in this report and, if we consider it necessary, to revise our comments in light of any information existing at the date of this report that subsequently becomes known to us.

In arriving at our findings we have relied on certain information provided and representations made by interviewees. Our report must be considered in its entirety by the reader. Selecting and relying on specific portions of the analyses or factors considered by us in isolation may be misleading. The procedures performed do not constitute an audit and an audit has not been performed on the financial information.

This report was directed by Mr. Brian Tario, CFI. Questions regarding this report can be directed to Mr. Tario at (403) 536-5602.

Yours truly,

**MNP LLP**

*MNP LLP*