IN THE MATTER OF
SASKATCHEWAN REAL ESTATE COMMISSION
and
BRITTANY MARIE SMITH
APPLICATION FOR TEMPORARY SUSPENSION PURSUANT TO
SECTION 36 OF *THE REAL ESTATE ACT*

DECISION AND REASONS OF THE SUPERINTENDENT OF REAL ESTATE

I. DECISION

[1] The investigation committee ("Investigation Committee") of the Saskatchewan Real Estate Commission (the "Commission") has applied to the Superintendent of Real Estate (the "Superintendent") for an order pursuant to section 36 of *The Real Estate Act* (the "Act") temporarily suspending Brittany Marie Smith's (the "Registrant") certificate of registration (the "Application"). For the reasons that follow, the Application is denied.

II. JURISDICTION

[2] I make this decision pursuant to an appointment made under subsection 85.2(1) of the Act. Roger Sobotkiewicz, K.C., Superintendent of Real Estate appointed pursuant to subsection 79(1) of the Act, has appointed me, Janette Seibel, to perform the responsibilities imposed on and exercise the powers conferred on the Superintendent by the Act. As set out in subsection 85.2(2) of the Act, my performance or exercise of those responsibilities or powers is deemed to be that of the Superintendent.

III. INTRODUCTION AND PROCEDURAL HISTORY

[3] On December 8, 2025, the Superintendent received the Application from the Investigation Committee seeking an order "temporarily suspending the Registrant's certificate of registration." As section 36 of the Act refers to "an order temporarily suspending a registrant," that is the terminology I will use throughout this decision.

[4] The Application included a request to proceed without the Registrant being provided notice. By a letter dated December 15, 2025, I advised the Investigation Committee that its request that the hearing proceed without notice was denied. Formal written reasons for that decision were provided on February 24, 2026, stating that the Investigation Committee had not demonstrated that there was a serious risk of harm to the public or an effect on the integrity of the investigation that necessitated proceeding without notice to the Registrant.

[5] Following my December 15, 2025 letter, the Investigation Committee sent a copy of the Application and supporting materials to the Registrant. I also sent a letter to the Registrant, dated December 30, 2025, advising that she could make written or oral submissions in response to the Application on or before January 13, 2026. Receipt of the Application was confirmed by the Registrant's legal counsel on January 8, 2026, and the Registrant provided written submissions in response to the Application on January 13, 2026 (the Registrant's "Submissions"). The Investigation Committee followed with a written reply to the Registrant's Submissions on January 16, 2026 (the Investigation Committee's "Reply").

IV. BACKGROUND AND SUMMARY OF ALLEGATIONS:

[6] The Registrant has been registered with the Commission in accordance with the Act since May 10, 2021, initially in the category of salesperson and, since August 18, 2023, in the category of broker. She conducts business from Prince Albert, Saskatchewan, through her brokerage, JUST B REALTY. Her current certificate of registration states that she is authorized, as a broker, to trade in "residential, commercial and farm" real estate.

[7] In support of the Investigation Committee's request, the Application sets out the history of eight complaints against the Registrant dating from shortly before she became a registrant until the present day. As described in the Application, the Investigation Committee requests that the Registrant be suspended pending the completion of the hearing of File 2024-116 and the investigation of File 2025-80. These two files are summarized as follows:

> **File 2024-116.** This is an unresolved investigation file arising from a complaint that was received by the Commission on November 27, 2024. In this complaint, the complainant (the owner of a 7-unit commercial building and a 7-unit apartment building) alleged that the Registrant was operating as a property manager without being registered to do so and requested that she be penalized for dishonest and fraudulent behaviour.
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> The complainant claimed that the Registrant had been managing two properties on his behalf. He provided various invoices from the Registrant for a period of time spanning from May of 2023 to August of 2024, which described the services provided as "property checks and drive-bys, project management, background camera watching, pest control, tenant communications, arranging maintenance teams and contractors, listing and showing units, dealing with utilities and organizing snow removal." Commission staff calculated the total sum of the invoices to be $47,118.81.
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> Additionally, the complainant provided ledgers from June of 2023 to September of 2024 which he claimed were prepared by the Registrant and which include descriptions of rent received from a commercial tenant, payments to the Registrant by the complainant, and invoices paid to JUST B REALTY.
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> The complainant also submitted an unsigned document entitled "Proposal and Schedule for [address]" (the "Proposal") with a schedule of tasks including vacating tenants from a 7-unit "house", rental arrears collection for house, managing the vacant house and commercial building, sale/lease preparation, finding commercial tenants, negotiating lease contracts, installing security cameras, and dealing with an order issued by the City of Prince Albert. The Proposal further included an item titled "Reserve Fund" described as "can be used for emergency repairs or paying labor as necessary, when the landlord may be unavailable or to carry the team for work completed until the end of the invoicing period. …" The complainant claimed that the Proposal was prepared by the Registrant and provided an email from the Registrant (attaching the Proposal) in which the Registrant stated "[p]lease see attached and updated! Sent to [complainant] for electronic signing as well. Looking forward to helping you!".

The complainant further provided email correspondence between himself and the Registrant, in which the Registrant indicated that a business partner had assumed responsibility for bookkeeping functions related to property management endeavours and provided an overview of bookkeeping entries.

Commission staff report that the officer manager for the complainant's commercial tenant advised that rent was paid by cheque made out to the Registrant. Copies of such cheques, dated from June of 2023 to October of 2024, were provided. Commission staff calculated the total amount of rent paid by the commercial tenant during that period to be $37,432.50.

Commission staff allege that the rent payments from the commercial tenant were collected on behalf of the complainant but were not deposited into the trust account of the Registrant's current brokerage or her former brokerage. Commission staff further state that the Registrant has not produced bank statements for the account into which the cheques were deposited.

In response to inquiries from Commission staff during their investigation, the Registrant asserted that she had clearly communicated from the outset of her dealings with the complainant that she was not certified in property management and that she could not collect rent from tenants. She indicated that this was conveyed through the complainant's translator who had been assisting the complainant with property management tasks, including the collection of rent from the residential apartment tenants.

Commission staff further state that the Registrant maintained that her role was limited to providing services such as project management, working with city bylaw and law enforcement, and connections with other contractors including maintenance coordination, security and bookkeeping. She further states that certain correspondence from one of her contractors may have used language that created a misperception that she was providing property management services. The Registrant asserts that none of the invoices were issued through her brokerage, but rather through other companies unrelated to regulated real estate activities.

With respect to the funds received, the Registrant explained that reserve funds were applied exclusively to tasks approved by the complainant, such as boarding up windows and installing security systems to comply with the bylaw order. She further asserted that approximately $8,000 in funds held on behalf of the complainant were related to a private contractual arrangement and not regulatory violations under the Act. The Registrant stated that she was advised by legal counsel to verify the complainant's status as a tax paying resident prior to remitting such funds.

Commission staff indicated that they requested a copy of any agreement assigning rental income to the Registrant. The Registrant stated that the assignment was communicated verbally by the complainant through his translator. Staff further claim that the Registrant indicated she was instructed to apply rental payments from the commercial tenant toward invoices issued for goods and services, with any outstanding balance to be paid by the complainant.

In her Submissions, the Registrant contends that there is no unique category of registration of "broker for property management" nor are there any terms to which her registration is subject. She submits that no specific lease or rental has been identified, that there is no evidence she negotiated or approved a lease or rental, and that the mere collection of rent does not constitute property management.

Finally, the complainant alleges that the Registrant discouraged him from filing a complaint with the Commission. In support of this allegation, he provided text messages between himself and the Registrant.

Commission staff have recommended that the Registrant be charged with breaching the following provisions of the Act and the Saskatchewan Real Estate Commission Bylaws (Bylaws), as set out at paragraph 94 of the Application:

(i) Section 39(1)(c) of the Act, by acting contrary to the terms to which her registration is subject by trading in property management while not registered with the Commission to do so;
(ii) Section 70 of the Act, by failing to pay money received in connection with a trade in real estate to her brokerage;
(iii) Bylaw 701, by providing statements to the Commission that omit to state a material fact; and
(iv) Bylaw 702, by failing to protect and promote the interests of her client by having no professional liability insurance for this unregistered trading, precluding him (*the client*) from accessing the Real Estate Assurance Fund by not depositing the rent collected from the tenant into a brokerage's trust account, and by discouraging him (*the client*) from filing a complaint with the Commission.

The Investigation Committee indicated that the investigation is complete and the next step for this complaint is to proceed to a hearing.

The Commission also submitted a separate request on November 17, 2025, pursuant to subsection 81(1) of the Act, asking that the Superintendent investigate the Registrant for unregistered trading in real estate in relation to the alleged property management activity.

The request asks that the Superintendent either conduct the inquiry directly or appoint the Commission, or another person, to conduct the inquiry on behalf of the Superintendent. I have deferred consideration of this request until the present Application has been resolved, to preserve the integrity and fairness of the process followed for this Application.

File 2025-80. This is an unresolved investigation file arising from a complaint that was received by the Commission on September 4, 2025, from a former client of the Registrant and the former client's mother. The complainants claimed that the Registrant advised the former client not to disclose that the property being purchased contained knob and tube wiring and asbestos when seeking insurance and a mortgage and not to provide the home inspection report to anyone. In support of this claim, the complainants provided text messages wherein the Registrant made statements such as: "DO NOT SEND AFFINITY THE INSPECTION. You won't get the mortgage if you do." "Be careful what you tell the insurance ppl too about your wiring… you know?" and "Also… I'm not requesting a property condition disclosure statement".

Other documents and communications between the Registrant, the client and other parties have been included in the Application. For example, there is an email from an insurance broker to the client advising her that insurance options might be limited because of the presence of knob and tube wiring, galvanized steel and cast-iron pipes, and a copy of the property condition disclosure statement ("PCDS") prepared by the seller. The PCDS states that there is "asbestos or vermiculite on heating pipes". The PCDS also states that the seller does not think that the property contains lead water pipes and that it does not contain live knob and tube wiring.

The complainant (former client) stated that the Registrant's father conducted a home inspection of the subject property and pointed out asbestos on an exposed pipe. The complainant claims that the Registrant took notes during the inspection and subsequently prepared the inspection report herself. In support of this assertion, the complainant provided copies of text messages in which the Registrant refers to "writing" or "typing up" the inspection. The complainant further claims that the inspection report did not contain any reference to the presence of asbestos.

During the investigation by Commission staff, the Registrant stated she was unable to confirm the presence of asbestos in the property, as neither she nor the seller had test results to verify its presence. The Registrant indicated that she provided the complainant with a general explanation of asbestos to the best of her understanding and encouraged her client to seek professional advice if this was a concern.

The text messages provided by the complainant indicate that the Registrant advised the complainant that she was already speaking with Affinity and to let her "handle the banker". Additional text messages reflect that the Registrant contacted the seller's registrant to inquire which insurance company insured the property so she could refer her client to them, on the basis that it would already be familiar with the property.

Commission staff have alleged that this conduct could amount to counselling mortgage and insurance fraud and referred the matter to the Deputy Minister of Justice for consideration of criminal charges, pursuant to section 41 of the Act. The Registrant's Submission notes that this matter was also reported to the Prince Albert Police Service, but states that to date, no charges have been laid.
The investigation into this file is ongoing and Commission staff have recommended that the Investigation Committee charge the Registrant with respect to the following alleged contraventions of the Act and Bylaws, as set out at paragraph 140 of the Application:

(i) Section 39(2) of the Act, by displaying a lack of judgment and disregard for the welfare of members of the public served by the real estate industry to an extent that demonstrates that the Registrant is unfit to continue to be registered;
(ii) Bylaw 701(a), by providing untrue statements to the Commission;
(iii) Bylaw 701(b), by omitting material facts in information provided to the Commission;
(iv) Bylaw 702, by failing to protect and promote the best interests of her client; and
(v) Bylaw 702.1, by engaging in conduct that is disgraceful, unprofessional or unbecoming of a registrant in the course of her practice.

[8] In its Application, the Investigation Committee included another outstanding complaint file that has not yet been resolved. The Investigation Committee refers to this file in its Application as part of its submissions regarding the Registrant's disciplinary history. It is summarized as follows:

> **File 2025-01.** This is an unresolved investigation file arising from a complaint that was received by the Commission on January 2, 2025. Commission staff are investigating an allegation that the Registrant improperly acted as a dual agent for both the seller and buyer of a property while also acting as the seller's representative under a power of attorney ("POA"). Commission staff have recommended that the Registrant be charged with a breach of Bylaw 702 for failing to protect and promote the interests of her client. The Investigation Committee accepted Commission staff's recommendation, a formal complaint was provided to the Registrant pursuant to section 35 of the Act, and the Registrant has elected to proceed to a hearing.

[9] The remaining five complaint files have been closed. The Investigation Committee states in its Reply that it has included details about these closed files in which no further action was taken against the Registrant for the following reason:

> "104. By including files in which no further action was taken against Ms. Smith, the Commission is not attempting to re-open closed matters. In making this application, the Commission did not want to "cherry pick" only the files where the Commission has evidence that a breach has occurred; these files were provided in the interests of transparency and in providing the superintendent with a complete picture of Ms. Smith's compliance history."

These complaint files are summarized as follows:

> Pre-registration Complaint. On March 17, 2021, Commission staff became aware of videos posted by the Registrant in which she appeared to be holding herself out as a registrant. On March 19, 2021, Commission staff contacted the Registrant and a brokerage by email requesting that the Registrant take down the video and reminding the Registrant and the brokerage that holding oneself out as trading real estate while unregistered constitutes a breach of the Act. The Registrant was registered as a salesperson less than two months later.
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> File 2022-25. On June 21, 2022, Commission staff received a complaint claiming that the Registrant permitted the complainant's former spouse to enter into a property jointly owned by the complainant and the former spouse, contrary to the complainant's instructions. The complainant also raised concerns regarding the Registrant's valuation of the property. Commission staff stated that they found no evidence of professional misconduct and the complaint was dismissed by letter to the complainant dated November 9, 2022.
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> File 2024-79. On August 26, 2024, Commission staff received a complaint claiming that a video posted online by the Registrant on August 18, 2024, was advising viewers to avoid living near the South Hill Mall in Prince Albert. Commission staff reviewed the matter and advised the Investigation Committee that the video complained of did not raise issues of professional misconduct or professional incompetence, but that they did identify two other TikTok videos posted by the Registrant that they flagged as "having the potential to weaken public trust in registrants and the real estate industry." The Investigation Committee recommended that no further action be taken with respect to the video under investigation, and instructed Commission staff to issue a "firm warning" regarding the importance of the Registrant

conducting herself in professional manner on social media and to not disparage specific properties or areas of Prince Albert. A letter containing this warning was sent to the Registrant on January 24, 2025.

File 2024-112. Commission staff investigated a complaint dated November 17, 2024, claiming that the Registrant was acting as an intermediary between the complainant and the complainant's landlord and that the Registrant was acting unprofessionally in their dealings. On October 7, 2025, the complaint was dismissed with a warning letter reminding the Registrant to conduct herself in a professional manner, that she was not registered to trade in the category of property management, and that she should only trade in real estate within the terms of her registration. The Application states that this investigation may be revisited.

File 2025-67. On July 11, 2025, Commission staff received a complaint claiming that the Registrant did not accurately describe the condition of a property the Registrant had listed for sale. Commission staff reviewed the listing and identified one issue: that the description of shingles as "newer" was not, in their view, supported by verifiable information. The complaint was dismissed with a letter to the Registrant dated November 17, 2025, warning her not to use potentially misleading descriptors.

V. ISSUES

[10] The Application gives rise to the following issues:

1. **Whether an order temporarily suspending the Registrant should be made pursuant to section 36 of the Act?**

   In addressing this question, the following sub-issues arise:

   (a) Whether the statutory prerequisites for making an order pursuant to section 36 of the Act have been met, including:

   (i) Whether the Application has been made by the proper party?

   (ii) Whether the Investigation Committee was of the opinion that the Registrant should be suspended pending the outcome of the investigation or hearing?

   (b) Whether the Application was brought under the correct section of the Act?

   (c) What legal test governs whether an order temporarily suspending the Registrant should be made pursuant to section 36 of the Act?

   (d) Whether the evidence submitted by the Investigation Committee is admissible for the purposes of determining the Application?

   (e) Whether the Investigation Committee has met the test for an order to be made temporarily suspending the Registrant?

2. **Whether the Registrant's request for an order for costs is warranted in the circumstances?**

3. **Whether the Investigation Committee should be required to provide an undertaking for damages?**

VI. ANALYSIS

1. Whether an order temporarily suspending the Registrant should be made pursuant to section 36 of the Act?

[11] The main issue to be determined in this matter is whether I should make an order that the Registrant be temporarily suspended pursuant to section 36 of the Act. Section 36 of the Act provides as follows:

> **Interim suspension**
> **36**(1) Where the investigation committee is of the opinion that, on the basis of the allegations or the nature of the case, the registrant should be suspended pending the outcome of the investigation or hearing, it may, with the prior approval of the Commission, apply to the superintendent for an order temporarily suspending a registrant whose conduct is the subject of an investigation pursuant to subsection 35(1) or against whom a formal complaint has been made pursuant to subsection 35(2).
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> (2) An order of suspension made pursuant to subsection (1) expires on the earliest of:
> (a) 90 days from the date of the order;
> (b) the date of a report of the investigation committee made pursuant to clause 35(2)(b);
> (c) where the Commission finds that a registrant is not guilty of professional misconduct or professional incompetence, the day of its decision; or
> (d) where the Commission finds that a registrant is guilty of professional misconduct or professional incompetence, the day that an order is made pursuant to section 38.

1(a) Whether the statutory prerequisites for making an order pursuant to section 36 of the Act have been met?

[12] The Registrant has raised preliminary matters related to the nature and form of the Application. These matters will be addressed first, before consideration is given to the substance of the Investigation Committee's request for an order under section 36.

[13] The Registrant has noted that in order to bring an application pursuant to section 36 of the Act, the application must:

- be made by the investigation committee, and
- be made after the investigation committee has formed the opinion that the registrant should be suspended.

[14] The Registrant submits that the Application did not satisfy these statutory conditions. In particular, the Registrant submits that:

- the Application was brought by Aaron Tetu, Registrar and Executive Director of the Saskatchewan Real Estate Commission and not the Investigation Committee, and therefore it was not brought by the proper party as required by section 36; and
- the precondition under subsection 36(1) that the Investigation Committee *is of the opinion that the registrant should be suspended pending the outcome of the investigation or hearing* has not been met, as no such opinion was attached to nor evident from the Registrar's letter that accompanied the Application.

1(a)(i) Whether the Application has been made by the proper party?

[15] The Registrant submits that an application pursuant to section 36 must be brought by the Investigation Committee, but that the letter from Aaron Tetu, Registrar and Executive Director of the Commission, proceeds as if the Application is being made by the Commission or the Registrar himself. The Registrant further submits that, in these circumstances, "[t]he superintendent may presume that members of the investigation committee have no knowledge of this application, were not asked to submit it, and have not considered and endorsed it." On this basis, the Registrant argues that the Application is not, an application by the Investigation Committee and is therefore "*ultra vires" the* authority of the Registrar.

[16] I do not agree with the Registrant's characterization of the Application. I find that it does identify the Investigation Committee as the party bringing the Application and that Aaron Tetu is acting in his capacity as staff of the Commission submitting the Application on behalf of the Investigation Committee.

[17] Regarding the Application itself, the first page includes the following statements:

> "The Saskatchewan Real Estate Commission (the "Commission") is applying to the Superintendent of Real Estate (the "Superintendent") for an order temporarily suspending Ms. Smith's certificate of registration pursuant to section 36(1) of *The Real Estate Act*."
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> "The investigation committee is of the opinion that, on the basis of the allegations or nature of the case, the certificate of registration of Ms. Brittany Marie Smith, the broker of JUST B REALTY, should be suspended pending the completion of the investigation of file 2025-80 and the hearing of file 2024-116. On November 17th, 2025, the Commission carried a motion made by Cliff Iverson and seconded by Lori Patrick that the Commission approve of the investigation committee making an application to the Superintendent of Real Estate pursuant to section 36 of *The Real Estate Act* for interim suspension. No Commission member opposed this motion."

[18] At paragraph 165 of the Application, the Investigation Committee reaffirms its opinion that the Registrant should be suspended pending the outcome of the hearing of file 2024-116 and completion of the investigation of file 2025-80. At paragraph 166, the Application indicates that the Commission made a motion approving that the Investigation Committee make an application to the Superintendent pursuant to section 36 of the Act.

[19] Although the Application was signed by Aaron Tetu, Executive Director and Registrar of the Commission, throughout the Application the submissions are variously described as having been made by either the Investigation Committee or the Commission. While these factors individually may cause some ambiguity regarding who is submitting the Application, that ambiguity is clarified by the statements on the first page of the Application and in paragraphs 165 and 166 specifically noting that the Application is made by the Investigation Committee and approved by the Commission. Further, it is reasonable to infer that Aaron Tetu, as Executive Director and staff of the Commission, submitted the Application on behalf of the Investigation Committee. As the Investigation Committee is comprised of members of the Commission who are not employees of the Commission, it is understandable that the decisions and directions of the Investigation Committee are physically carried out by staff employed by the Commission on behalf of the Investigation Committee, and not directly by the Investigation Committee members themselves.

[20] I find that these statements set out in the Application, as signed by the Executive Director, are sufficient to find that the Application was made by the Investigation Committee in accordance with the requirement set out in subsection 36(1) of the Act.

1(a)(ii) Whether the Investigation Committee was of the opinion that the Registrant should be suspended pending the outcome of the investigation or hearing?

[21] The Registrant submits that a necessary precondition to subsection 36(1) of the Act is the requirement that "the investigation committee is of the opinion that" the Registrant should be suspended. The Registrant argues that no such opinion is attached to, nor evident from, the covering letter accompanying the Application. The Registrant emphasizes that the statutory precondition requires an identifiable opinion of the Investigation Committee that the Registrant should be suspended pending the outcome of the investigation or hearing.

[22] In this regard, the Registrant submits that no member of the Investigation Committee has attested to holding the opinion that the Registrant is "ungovernable" or that she has "shown a repeated pattern of concerning conduct".

[23] As noted in paragraph 17 above, the first page of the Application includes a statement "The investigation committee is of the opinion that, on the basis of the allegations or nature of the case, the certificate of registration of Ms. Brittany Marie Smith, the broker of JUST B REALTY, should be suspended pending the completion of the investigation of file 2025-80 and the hearing of file 2024-116." The Application goes on in the next paragraph to provide that:

> "It is the opinion of the investigation committee that Ms. Smith has shown a repeated pattern of concerning conduct and a lack of judgment, a disregard for the welfare of the members of the public served by the real estate industry, a blatant disregard for following the rules set in place by the legislation and a disrespect for the regulation of the Commission. It is the opinion of the investigation committee that Ms. Smith is ungovernable, and that the only measure available to ensure the protection of the public is a suspension of her certificate of registration pending the completion of the investigation of file 2025-80 and the hearing of file 2024-116."

[24] Section 36 of the Act does not require a specific format within which an Investigation Committee's opinion is to be provided in an application pursuant to that section. There is no requirement that it be set out in a separate written document or formally appended to the application materials. The statutory requirement is that the Investigation Committee be "of the opinion" that a registrant should be suspended pending the outcome of the investigation or hearing.

[25] The Application expressly states that the "investigation committee is of the opinion that, …, the certificate of registration of Ms. Brittany Marie Smith, …, should be suspended pending the completion of the investigation of file 2025-80 and the hearing of file 2024-116." The materials following that statement set out details of the Investigation Committee's opinion and the purported facts upon which the Investigation Committee based that opinion.

[26] When this statement is considered together with my finding that the Investigation Committee made the Application, I am satisfied that the Application clearly identifies that the Investigation Committee is of the opinion that the Registrant should be suspended pending the outcome of the investigation of file 2025-80 and the hearing of file 2024-116. On this basis, I am satisfied that this statutory precondition has been met.

1(b) Whether the Application was brought under the correct section of the Act?

[27] The Registrant argues that the Application should be dismissed on the basis that it was brought under the wrong section of the Act as it does not expressly request that the order expire within the time limit set out in subsection 36(2) of the Act. The Registrant submits that the temporary order requested by the Investigation Committee is framed as a suspension that expires "pending the completion of the investigation of file 2025-80 and the hearing of file 2024-116". The Registrant characterizes this as "temporally unbounded relief" and argues that such relief can only be granted by the Court of King's Bench under section 36.1 of the Act.

[28] Subsection 36(2) of the Act sets out when an order granted pursuant to subsection 36(1) expires. Specifically, a suspension ordered pursuant to section 36 expires on the earliest of the following:

> (a) 90 days from the date of the order;
> (b) the date of a report of the investigation committee made pursuant to clause 35(2)(b);
> (c) where the Commission finds that a registrant is not guilty of professional misconduct or professional incompetence, the day of its decision; or
> (d) where the Commission finds that a registrant is guilty of professional misconduct or professional incompetence, the day that an order is made pursuant to section 38.

[29] By contrast, section 36.1 of the Act provides for a temporary suspension of indefinite duration pending the outcome of the investigation or hearing, upon application by the Commission to the Court of King's Bench. An application under section 36.1 is available where the Commission is of the opinion that, on the basis of the allegations or the nature of the case, the time required to complete the investigation and hearing will exceed 90 days. Section 36.1 of the Act provides as follows:

> **Temporary suspension**
> **36.1** The Commission may apply to the court for an order temporarily suspending a registrant whose conduct is the subject of an investigation pursuant to this Part if the Commission is of the opinion that, on the basis of the allegations or the nature of the case:

(a) the time to complete the investigation and hearing will exceed the expiry date of the suspension mentioned in clause 36(2)(a); and
(b) the registrant should be suspended pending the outcome of the investigation or hearing.

[30] In the Application, the Investigation Committee begins by stating that it is applying to the Superintendent "for an order temporarily suspending [the Registrant's] certificate of registration pursuant to section 36(1) of [the Act]", without specifying an expiration date. The subsequent references in the covering letter to suspension of the Registrant "pending the completion of the investigation of file 2025-80 and the hearing of file 2024-116" appear in the context of articulating the Investigation Committee's opinion that the Registrant should be suspended. Read in context, these statements mirror the language of subsection 36(1) of the Act, which requires that the Investigation Committee be "of the opinion that, …, the registrant should be suspended pending the outcome of the investigation or hearing, …". They do not, in my view, demonstrate an intention to seek a temporary suspension extending beyond the statutory maximum of 90 days set out in clause 36(2)(a) of the Act.

[31] Additionally, while the Application does not expressly indicate that any suspension would expire within 90 days, it clearly provides – at paragraphs 286 and 308 of the Application – that the Investigation Committee anticipated completing the investigation of file 2025-80 and scheduling a hearing of file 2024-116 within 90 days:

> "286. **The overall passage of time in the conduct proceedings, including the likely timeline until the conclusion of the proceedings:** The investigation of file 2024-116 is complete and the Commission anticipates being able to set this matter down for a hearing within 90 days. The investigation of file 2025-80 is ongoing, but the Review Officer anticipates being in a position to finish the investigation within 90 days.
> …
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> 308. As noted above, the Commission anticipates being able to schedule the hearing of file 2024-116 within the 90 days contemplated by the interim suspension, and the level of procedural fairness owed by the Commission to Ms. Smith is higher at that stage."

[32] In any event, subsection 36(2) of the Act functions automatically to limit the duration of any suspension ordered pursuant to subsection 36(1) of the Act to a maximum of 90 days, at which time the suspension would lapse and the registration would be reinstated unless a further suspension was brought pursuant to section 36.1 of the Act. Even if an investigation committee were to request an indefinite suspension, I would not have the authority to issue such an order, but that alone would not invalidate the Application.

[33] The Act establishes two distinct mechanisms for a temporary suspension. The Investigation Committee may apply under either subsection 36(1) or section 36.1 of the Act for a suspension and is bound by the limits that apply depending on the provision selected. That selection would take into consideration the Investigation Committee's assessment of the anticipated duration of the investigation and hearing. As the Investigation Committee has consistently indicated that it expects the hearing to be scheduled and the investigation to be completed within 90 days, I find that the absence of an explicit expiry date in the Application does not render the Application invalid.

1(c) What legal test governs whether an order temporarily suspending the Registrant should be made pursuant to section 36 of the Act?

[34] While section 36 of the Act authorizes the Superintendent to order the temporary suspension of a registrant, it does not set out the test to be applied in determining whether such an order should be made.

[35] It should be noted that, as acknowledged by both the Registrant and the Investigation Committee, this is the first time that an investigation committee has requested an order pursuant to section 36 of the Act. As such, there are no previous Superintendent decisions setting out the test to be satisfied before granting such an order. Therefore, I must turn to case law for guidance in making my decision. Both the Investigation Committee and the Registrant have provided submissions regarding the proper test to be applied.

[36] In its Application, the Investigation Committee submits that the test established in *RJR-MacDonald Inc. v. Canada* (AG), 1994 CanLII 117 [*RJR*], as articulated in *Saskatchewan College of Psychologists v. Lebell,* 2019 SKQB 54 [Lebell], should be applied. Paragraph 223 of the Application states:

> "223. As *The Real Estate Act* is silent on the test that the Superintendent must meet in the present circumstances, the Commission submits that the test from *RJR* articulated by Justice Allbright in *Lebell* is the appropriate test. The test states as follows:
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> a. The strength of the *prima facie* case;
> b. That the applicant will suffer irreparable harm if the suspension is not granted; and
> c. That the balance of convenience favours the granting of an injunction."

[37] The Registrant submits that the applicable test is that set out in *R. v. Canadian Broadcasting Corp*., 2018 SCC 5 [*CBC*], which sets a higher standard for imposing an injunction. The Registrant states that the test in *CBC* requires that the applicant for a mandatory interlocutory injunction must show a case of "such merit that it is *very likely* to succeed", meaning that there is a "*strong likelihood* on the law and evidence presented" that the applicant will ultimately be successful in proving the claims. The Registrant goes on to argue that the applicant would need to provide a *prima facie* case both that: 1. misconduct will be established to the degree required by law; and 2. it will result in a *permanent* suspension if established, rather than some lesser remedial outcome such as monetary fines.

[38] In its Reply, the Investigation Committee states that "The Commission is not opposed to the Superintendent utilizing the test from *CBC* in making its determination of this matter as it has a strong likelihood of success on both the law and the evidence." However, I am not satisfied that the test in *CBC* is the appropriate test to apply in this circumstance.

[39] In *RJR*, the Supreme Court of Canada established a three-part test for determining whether a court should exercise its discretion to grant an interlocutory injunction. Under this test, the party applying for an injunction must establish that:

1. there is a serious question to be tried;
2. it will suffer irreparable harm if the injunction is not granted; and
3. that the balance of convenience favours granting the injunction.

[40] Relying on *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, 1987 CanLII 79 (SCC), [1987] 1 SCR 110 (*Metropolitan Stores*), the Supreme Court of Canada in *RJR* recognized that a stay of proceedings is analogous to an interlocutory injunction, as both remedies are intended to preserve the status quo pending the final determination of the parties' rights. The Court stated as follows (*RJR* at 334):

> Generally, the same principles should be applied by a court whether the remedy sought is an injunction or a stay. In *Metropolitan Stores*, at p. 127, Beetz J. expressed the position in these words:
>
> > A stay of proceedings and an interlocutory injunction are remedies of the same nature. In the absence of a different test prescribed by statute, they have sufficient characteristics in common to be governed by the same rules and the courts have rightly tended to apply to the granting of interlocutory stay the principles which they follow with respect to interlocutory injunctions.
>
> We would add only that here the applicants are requesting both interlocutory (pending disposition of the appeal) and interim (for a period of one year following such disposition) relief. We will use the broader term "interlocutory relief" to describe the hybrid nature of the relief sought. The same principles apply to both forms of relief.

[41] The first branch of the test requires the applicant to establish that there is a "serious question to be tried." In *RJR*, the Supreme Court of Canda adopted the formulation articulated by the House of Lords in *American Cyanamid* as follows (page 335):

> Prior to the decision of the House of Lords in *American Cyanamid Co. v. Ethicon Ltd.*, 1975 CanLII 2598 (FC), [1975] A.C. 396, an applicant for interlocutory relief was required to demonstrate a "strong *prima facie* case" on the merits in order to satisfy the first test. In *American Cyanamid*, however, Lord Diplock stated that an applicant need no longer demonstrate a strong *prima facie* case. **Rather it would suffice if he or she could satisfy the court that "the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried".** The *American Cyanamid* standard is now generally accepted by the Canadian courts, subject to the occasional reversion to a stricter standard: see Robert J. Sharpe, *Injunctions and Specific Performance* (2nd ed. 1992), at pp. 2-13 to 2-20.
>
> In *Metropolitan Stores*, Beetz J. advanced several reasons why the *American Cyanamid* test rather than any more stringent review of the merits is appropriate in *Charter* cases. These included the difficulties involved in deciding complex factual and legal issues based upon the limited evidence available in an interlocutory proceeding, the impracticality of undertaking a s. 1 analysis at that stage, and the risk that a tentative determination on the merits would be made in the absence of complete pleadings or prior to the notification of any Attorneys General.
> [Emphasis added]

The court in *RJR* then considered at page 337 what would indicate that there was a serious question to be tried:

> "What then are the indicators of "a serious question to be tried"? **There are no specific requirements which must be met in order to satisfy this test. The threshold is a low one. The judge on the application must make a preliminary assessment of the merits of the case.**
> . . .
> Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable."
> [Emphasis added]

[42] The *RJR* test was also applied in *Kalia v. Real Estate Council of Alberta, 2021 ABQB 950* [*Kalia*], a comparable real estate matter that was before the Alberta Court of King's Bench.

[43] The Registrant submits that *CBC* has displaced *RJR* as the governing standard. Accordingly, I must determine whether *CBC* in fact modifies the first branch of the *RJR* test or whether *CBC* should apply in these circumstances at all. Notably, neither *Lebell* nor *Kalia* refer to *CBC*, even though *CBC* was decided before both decisions.

[44] In *CBC*, a media outlet declined to remove material from its website that became subject to a publication ban. The Crown responded by seeking a mandatory interlocutory injunction directing the outlet to take down the prohibited content. The Court held that when a party is required to perform a positive act—such as removing information—the first branch of the *RJR* test must be adjusted to impose a heightened threshold, as follows:

> 15 In my view, **on an application for a mandatory interlocutory injunction, the appropriate criterion for assessing the strength of the applicant's case at the first stage of the *RJR — MacDonald* test is *not* whether there is a serious issue to be tried, but rather whether the applicant has shown a strong *prima facie* case.** A mandatory injunction directs the defendant to undertake a positive course of action, such as taking steps to restore the *status quo*, or to otherwise "put the situation back to what it should be", which is often costly or burdensome for the defendant and which equity has long been reluctant to compel. Such an order is also (generally speaking) difficult to justify at the interlocutory stage, since restorative relief can usually be obtained at trial. Or, as Justice Sharpe (writing extrajudicially) puts it, "the risk of harm to the defendant will [rarely] be less significant than the risk to the plaintiff resulting from the court staying its hand until trial". The potentially severe consequences for a defendant which can result from a mandatory interlocutory injunction, including the effective final determination of the action in favour of the plaintiff, further demand what the Court described in *RJR — MacDonald* as "extensive review of the merits" at the interlocutory stage.
> [Emphasis added]

[45] In *Patel v. Saskatchewan (Health Authority)*, 2022 SKQB 183 [*Patel*], Justice Brown considered the Defendant's assertion that the "strong *prima facie* case" test from CBC should apply to the Plaintiff's application for a stay of proceedings before the Practitioner Staff Appeals Tribunal. Justice Brown concluded that in order to determine whether or not the CBC test applies, one has to look at the injunction being requested and determine if a positive action is required. Where a positive action is required the *CBC* test will apply. If the person to whom the injunction will apply must refrain from doing something, then the *RJR* test will apply.

[46] This approach has been consistently affirmed and applied in Saskatchewan as reflected in the following decisions:

- *Mokelky v Animal Protection Services of Saskatchewan Inc*., 2019 SKQB 80 - Justice Kalmokoff recognized that "where the relief sought is a mandatory injunction, rather than a prohibitive injunction, the test is more stringent. In such cases, the first stage of the test requires the applicant to demonstrate a strong *prima facie* case, rather than merely a serious question to be tried. This is because the potential consequences to a defendant are far more serious when an injunction requires it to take action, as opposed to merely refraining from acting…" (at para 65).

- *Ghiasi v Huntley*, 2021 SKQB 112 - Justice Robertson affirmed the approach and applied the higher standard after determining that the injunction application, involving the return of a remote-control device, required a positive, mandatory action, rather than refraining from doing something.

- *Farms and Families of North America Inc. (Farmers of North America) v AgraCity Crop & Nutrition Ltd*., 2024 SKCA 22 – The Saskatchewan Court of Appeal considered whether the test in *RJR* or *CBC* applied and, having determined that the substance of the injunction sought was prohibitory rather than mandatory, held that the Chambers judge erred by applying the strong prima facie case threshold.

- *Students' Union of the University of Regina Inc. v. University of Regina*, 2025 SKKB 120 – Justice Bergbusch identified one of the applicant's requests as being for a prohibitory interlocutory injunction and the other as being a mandatory interlocutory injunction. He affirmed that the three-part test applied and determined that the "serious question to be tried" test from *RJR* applied to the prohibitory interlocutory injunction and the more stringent "strong *prima facie* case" from *CBC* applied to the application for a mandatory interlocutory injunction.

[47] I am satisfied, therefore, that the "serious question to be tried" threshold articulated in *RJR* applies to requests for prohibitory interlocutory injunctions, whereas the more stringent "strong *prima facie* case" standard set out in *CBC* governs applications for mandatory interlocutory injunctions.

[48] Having reviewed the relevant case law, I conclude that the test articulated in *CBC* does not apply to this Application. Although *CBC* was decided after *RJR*, it does not displace the *RJR* framework. As confirmed in *Patel*, the heightened standard of demonstrating a "strong prima facie case" from *CBC* applies only in circumstances where the applicant seeks to compel a party to take a positive action. In the absence of such a requirement here, the traditional *RJR* test remains the appropriate standard. Where the subject of the injunction is required to refrain from acting, *RJR* still applies and it is

sufficient to determine that the case is neither frivolous nor vexatious to establish that there is a "serious issue to be tried." In the case at hand, the Application does not seek to impose a positive obligation on the Registrant but instead seeks to require the Registrant to refrain from performing activities while her registration is suspended. Given that no positive obligation is being placed on the Registrant, I am satisfied that the *RJR* test is the appropriate one to apply in this context.

[49] Before applying the test in *RJR* to the facts at hand, I note that the Court expressly recognized limited exceptions to the general principle governing the first branch of the test—namely, that a decision-maker should not engage in an extensive review of the merits at the interlocutory stage. As explained in *RJR*, two exceptions may arise:

> "Two exceptions apply to the general rule that a judge should not engage in an extensive review of the merits. The first arises when the result of the interlocutory motion will in effect amount to a final determination of the action. This will be the case either when the right which the applicant seeks to protect can only be exercised immediately or not at all, or when the result of the application will impose such hardship on one party as to remove any potential benefit from proceeding to trial. Indeed Lord Diplock modified the *American Cyanamid* principle in such a situation in *N.W.L. Ltd. v. Woods*, [1979] 1 W.L.R. 1294, at p. 1307:
>
> Where, however, the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have been already caused to the losing party by its grant or its refusal is complete and of a kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction if the action had gone to trial is a factor to be brought into the balance by the judge in weighing the risks that injustice may result from his deciding the application one way rather than the other.
> …
>
> The second exception to the *American Cyanamid* prohibition on an extensive review of the merits arises when the question of constitutionality presents itself as a simple question of law alone. This was recognized by Beetz J. in *Metropolitan Stores*, at p. 133:
>
> > There may be rare cases where the question of constitutionality will present itself as a simple question of law alone which can be finally settled by a motion judge. A theoretical example which comes to mind is one where Parliament or a legislature would purport to pass a law imposing the beliefs of a state religion. Such a law would violate s. 2(a) of the *Canadian Charter of Rights and Freedoms*, could not possibly be saved under s. 1 of the *Charter* and might perhaps be struck down right away; see *Attorney General of Quebec v. Quebec Association of Protestant School Boards*, 1984 CanLII 32 (SCC), [1984] 2 S.C.R. 66, at p. 88. It is trite to say that these cases are exceptional.
>
> A judge faced with an application which falls within the extremely narrow confines of this second exception need not consider the second or third tests since the existence of irreparable harm or the location of the balance of convenience are irrelevant inasmuch as the constitutional issue is finally determined and a stay is unnecessary."

I find that neither of these exceptions apply to the case at hand.

[50] With respect to whether a temporary suspension would amount to a final determination of the matter, the relevant question is whether the temporary suspension would have the same practical effect as a final decision. Neither party has submitted evidence to suggest that a temporary suspension would, in fact, finally determine the proceeding. While the Registrant has advanced arguments concerning the irreparable harm that could be caused to her business if she were required to cease operating during the temporary suspension, the harm alleged does not rise to the level of permanence required to conclude that a temporary suspension would have the same practical effect as a final decision. I therefore find that this exception does not apply.

[51] With regard to whether this case raises a question of constitutionality, I note that the Registrant suggested section 7 of the *Charter* may be applicable insofar as the case law is unsettled as to whether it extends to protecting a person's right to practice a profession. This proposition has not been further expanded upon, and I find that to consider its applicability would raise a question of mixed law and fact. As such, I do not find that it falls under the exception for constitutional questions of pure law, as described in *RJR*.

[52] For these reasons, I decline to apply *CBC* and the exceptions set out in *RJR* and will assess the Application through the lens of the tripartite *RJR* test.

[53] In *Potash Corp. of Saskatchewan Inc. v. Mosaic Potash Esterhazy Ltd. Partnership* (2011), 341 D.L.R. (4th) 407 (Sask. C.A.) [*Mosaic*], Richards J.A. (*as he then was*), writing for the Court of Appeal, explained at para. 26 that the Supreme Court's *RJR-MacDonald* test "should be regarded as a framework" and that "the ultimate focus of the court must always be on the justice and equity of the situation in issue".

[54] In *Mosaic*, Justice Richards summarized the proper approach to applying the *RJR* test at para 113 as follows:

> [113] In the interest of clarity, it may be useful to recapitulate the basic points which have been developed in the course of these reasons and to summarize the approach a judge should typically take when deciding whether to grant interlocutory injunctive relief. This can be done as follows:
>
> > (a) The judge should normally begin with a preliminary consideration of the strength of the plaintiff's case. The general rule in this regard is that the plaintiff must demonstrate a serious issue to be tried, i.e. the plaintiff must have a claim which is not frivolous or vexatious. If the plaintiff raises a serious issue to be tried, it is necessary for the judge to turn to the matters of irreparable harm and balance of convenience.
> >
> > (b) Irreparable harm is best seen as an aspect of the balance of convenience. The general rule here is that the plaintiff must establish at least a meaningful doubt as to whether the loss he or she might suffer before trial if an injunction is not granted can be compensated for, or adequately compensated for, in damages. Put another way, the plaintiff must demonstrate a meaningful risk of irreparable harm. If this is done, the analysis turns to the balance of convenience proper.

(c) The assessment of the balance of convenience is usually the core of the analysis. In this regard, the relative strength of the plaintiff's case, the relative likelihood of irreparable harm, and the likely amount and nature of such harm will typically all be relevant considerations. Depending on the particulars of the case, strength in relation to one of these matters might compensate for weakness in another. Centrally, the judge must weigh the risk of the irreparable harm the plaintiff is likely to suffer before trial if the injunction is not granted, and he or she succeeds at trial, against the risk of the irreparable harm the defendant is likely to suffer if the injunction is granted and he or she prevails at trial. That said, the balance of convenience analysis is compendious. It can accommodate a range of equitable and other considerations.

(d) The judge's ultimate focus in considering whether to grant interlocutory injunctive relief must be on the overall equities and justice of the situation at hand.

[55] I note that in *Lebell*, Justice Allbright, in adopting the test from *RJR* specifically in the context of ordering an interim suspension of a professional, emphasized the seriousness of imposing such a measure:

> "[15] Judicial authorities give rise to the proposition that the test for ordering the interim suspension of a professional is analogous to the three-part test for granting relief on interlocutory injunctions. (See *Chiropractors Association of Saskatchewan v Potapinski*, 2001 SKQB 194 at para 21, 205 Sask R 185.) As both counsel in their very able submissions have acknowledged, a court in considering the issue before **me is to consider an interim suspension as a severe measure of last resort to be used sparingly and carefully**." (emphasis added)

[56] In paragraph 16 of *Lebell*, Justice Allbright goes on to cite a number of additional cases that underscore the seriousness of immediately suspending a professional person or their privileges, including "…that it is a drastic step that should be taken only as a last resort and even then only after careful consideration of whether other measures might suffice," (as per Justice Danyliuk in *Abouhamra v Prairie North Regional Health Authority*, 2016 SKQB 293 at paras 131 and 132 [*Abouhamra*]), a "draconian power" (*Park v Institute of Chartered Accountants of Alberta*, [*Park*] at para. 30) and that "[t]otal suspension is a matter of last resort and prior to imposition warrants careful reasonable examination in the context of the harm said to have been caused, the nature of the impugned conduct and the circumstances in which and when it is said to have occurred." (*Huerto v College of Physicians and Surgeons of Saskatchewan*, 2004 SKQB 423, 256 Sask R 293 [*Huerto*]).

1. (d) Whether the evidence submitted by the Investigation Committee is admissible for the purposes of determining the Application?

[57] Before moving into an analysis of the facts as applied to the *RJR* test, I will address the Registrant's submissions with regard to the evidence provided by the Investigation Committee in its Application.

[58] The Registrant submits that the particulars set out in the Application do not meet an appropriate evidentiary standard to be admissible for consideration, and even if they were, the evidence is "spurious". At page 10 of her submissions, the Registrant states:

> "There is no basis to permit the registrar to depart from the meaning that courts have given to applications since long before this province was formed. Applications must be accompanied with evidence; here there is none. Nobody provided an affidavit. There are no under oath statements by named affiants and no opportunity for cross-examination. The registrar's letter format does not satisfy the formal application contemplated by the Legislature."

[59] The Registrant emphasizes that the Application is not supported by sworn affidavits or oath statements and asserts that it instead relies on "multiple levels of hearsay" which she characterizes at page 10 of the Registrant's Submissions as having been generated by "overly zealous review officers."

[60] The Application consists of an introductory covering letter, followed by approximately 68 pages outlining the factual background of eight investigation files involving the Registrant, together with legal context and analysis in support of the request for a temporary suspension. The materials also include multiple appendices containing memoranda summarizing complaints made to the Commission, as well as copies of documents, text messages, emails, and screenshots of videos and social media posts. It is undisputed that the Application does not include sworn affidavits or other evidence given under oath.

[61] Section 36 of the Act does not prescribe any requirements regarding the form or nature of the evidence to be filed in support of an application for temporary suspension. In order to determine the Legislature's intention regarding the type of material that would be acceptable evidence to consider when making an order, I must look to the Act and case law for guidance. Looking at other sections of the Act, I note that although section 37 governs discipline hearings before the Commission and does not directly apply to this Application, it provides useful context as it sets out the evidentiary standard that applies to the Commission's disciplinary hearings. Subsection 37(4) expressly provides that "[t]he Commission may accept any evidence that it considers appropriate and is not bound by rules of law concerning evidence."

[62] Discipline hearings are initiated following an investigation and determination by an investigation committee that there is sufficient evidence to proceed with a formal hearing on the merits. Such hearings afford registrants a full opportunity to respond to the allegations and are subject to a heightened duty of procedural fairness relative to earlier investigative or interim stages.

[63] Interim regulatory measures, including temporary suspensions, are preventative in nature and are intended to protect the public while conduct proceedings are ongoing. In light of the time-sensitive nature of such applications and the potential for immediate harm, the courts have consistently recognized that the duty of procedural fairness owed at the investigative and interim stage (*including applications for interim relief*) is lower than that owed at a full hearing on the merits. (*Kalia* at para 44). Applying that same standard to this Application, I find it reasonable to conclude that the Legislature intended that an interim order sought prior to a disciplinary hearing be subject to an evidentiary standard that is the same or lower than that applicable at the subsequent disciplinary hearing, and not a more exacting one.

[64] In determining whether to impose an interim suspension, the regulatory decision-maker does not assess whether the allegations are ultimately "true." Rather, the task is to determine whether a serious question to be tried has been established. The test for establishing a serious question to be tried from *RJR* is set out above in paragraph 41. The threshold is a low one. Once it is established that the question is not frivolous or vexatious, the decision maker can proceed to consider the other branches of the test.

[65] In *Kalia*, the Court of Queen's Bench of Alberta (*as it then was*) considered and rejected an argument similar to that advanced by the Registrant concerning the admissibility of hearsay evidence at the interim suspension stage. Justice Feth stated:

> [39] The legislative purpose of a temporary or interim suspension is to protect the public while the regulatory body undertakes conduct proceedings, including the investigation into the allegations against its licensee and any hearing of the merits. In deciding whether to impose an interim suspension, the regulatory body is not determining whether the complaints are "true" or choosing between two competing versions of events. Instead, the regulator is assessing whether a prima facie case of misconduct is established such that in the surrounding circumstances, and having regard for the personal impact on the licensee, action is necessary to protect the public on an interim basis until the conduct proceedings are concluded: Scott at paras 45-58.
>
> [40] In satisfying itself that a *prima facie* case is established, the regulator examines whether the evidence, if believed, covers all of the essential elements of the alleged misconduct and justifies a finding against the licensee in the absence of an answer. The regulator generally does not weigh the credibility or merits of a disputed allegation, except to discount evidence that is inconsistent with objective or undisputed evidence or which is manifestly unreliable. At this stage of the conduct proceeding, the regulator only seeks to exclude complaints that are manifestly unfounded or exaggerated: *Scott* at paras 55-57, 63.
>
> [41] Hearsay evidence on a stay application is consistent with the nature of the evidence on which the temporary suspension may be granted. A temporary suspension is "analogous to the jurisdiction exercised by the Courts to grant interim interlocutory relief in civil proceedings": J. Casey, The Regulation of Professions in Canada, vol 2 (Toronto: Thomson Reuters, 2020) at 14-3. Hearsay is generally admissible on interlocutory applications.
>
> [42] This approach to the evidentiary requirements recognizes that the regulator will usually be dependent on hearsay at this stage of the conduct proceedings, including hearsay from the complainants, given that the allegations are still under investigation or awaiting a full hearing. Timely protection of the public may not allow for a fulsome inquiry into the allegations. Interlocutory relief may be granted therefore on an urgent basis, relying on incomplete information, so that the public is safeguarded.

[66] Similarly, in *Basaraba v. College of Chiropractors of Alberta*, 2025 ABKB 572 [*Basaraba*](*application to restore appeal dismissed*), Justice Akgungor confirmed that the "degree of evidence required to support an interim suspension is plainly a lesser degree of evidence than would be required to support a finding of unprofessional conduct advanced before a hearing tribunal." (at para 71)

[67] Applications for temporary suspension of a registrant are typically brought where information before a regulator raises concerns that a regulated person's conduct may present an immediate risk of harm to the public. As set out in *Kalia* at paragraph 42, cited above, given the urgent nature of providing timely protection of the public, it may be necessary to rely on hearsay and incomplete information in order to act quickly.

[68] The materials filed in support of the Application include documentary records, copies of text messages and emails, and screenshots of social media posts or videos. Although no sworn affidavits or oath statements were provided, this form of evidence is consistent with that accepted by regulatory decision-makers in similar interim suspension applications, and what would be considered acceptable for a hearing conducted pursuant to section 37 of the Act. I am therefore satisfied that the evidence submitted is admissible for the purposes of this Application.

[69] My analysis of the sufficiency of the evidence provided is assessed in the determination of whether the Investigation Committee has met the test for imposing a temporary suspension, as examined under the next section.

1. (e) Whether the Investigation Committee has met the test for an order to be made temporarily suspending the Registrant?

Application of the Test

A. Serious Question to be Tried

[70] As noted above, under this first branch of the *RJR* test, I am to consider whether there is a serious question to be tried. As stated in RJR, a "serious question to be tried" is one that is not frivolous or vexatious. RJR goes on to state: "There are no specific requirements which must be met in order to satisfy this test. The threshold is a low one. The judge on the application must make a preliminary assessment of the merits of the case."

[71] The Court in RJR considers what is required to demonstrate a serious question to be tried (at page 348):

> At the first stage, an applicant for interlocutory relief in a Charter case must demonstrate a serious question to be tried. **Whether the test has been satisfied should be determined by a motions judge on the basis of common sense and an extremely limited review of the case on the merits.** The fact that an appellate court has granted leave in the main action is, of course, a relevant and weighty consideration, as is any judgment on the merits which has been rendered, although neither is necessarily conclusive of the matter**. A motions court should only go beyond a preliminary investigation into the merits when the result of the interlocutory motion will in effect amount to a final determination of the action, or when the constitutionality of a challenged statute can be determined as a pure question of law. Instances of this sort will be exceedingly rare. Unless the case on the merits is frivolous or vexatious, or the constitutionality of the statute is a pure question of law, a judge on a motion for relief must, as a general rule, consider the second and third stages of the Metropolitan Stores test.**
> [Emphasis added]

[72] The Investigation Committee submits that it has established a strong *prima facie* case regarding Files 2024-116 and 2025-80, so as to warrant a suspension. I note here that the Investigation Committee submits that the *RJR* test is the appropriate test to apply to this Application. However, in considering the first branch of the test, it refers to a "strong *prima facie* case". This formulation of the first branch of the test appears to derive from the reasons of Justice Allbright in *Lebell*, where he identified the *RJR* test as the appropriate test to be applied but then proceeded to refer to a heightened standard at the first stage. In my view, the proper threshold at the first step of the *RJR* test is whether there is a serious question to be tried.

[73] With respect to File 2024-116, the Investigation Committee alleges that the Registrant is carrying on activities that fall under the definition of property management, and that the Registrant's certificate of registration restricts her to trading in the categories of residential, commercial and farm real estate. Property management is defined in subsection 2(r) of the Act as follows:

> (r) **"property management"** means:
>
> (i) negotiating or approving a lease or rental of a landlord's real estate;
> (ii) holding money received in connection with a lease or rental mentioned in subclause (i); or
> (iii) both of the things mentioned in subclauses (i) and (ii);

[74] In its Application, the Investigation Committee alleges that cheques issued by one of the complainant's tenants to the Registrant constituted rent payments and asserts that the Registrant was collecting rent on behalf of the complainant. The Investigation Committee submits that collecting rent on behalf of a landlord constitutes "property management," which falls within the definition of a trade in real estate pursuant to section 2(bb)(iv) of the Act. The Investigation Committee further alleges that the funds collected were not paid to the Registrant's brokerage, as required by section 70 of the Act.

[75] The Registrant disputes the Investigation Committee's characterization of the payments received from the tenant, and claims that the funds were collected for other purposes. The Registrant also disagrees with the Investigation Committee's interpretation of "property management" under the Act, asserting that the mere collection of rent alone does not constitute a trade in real estate. The Registrant submits that, as the activities do not amount to a trade in real estate, there was no obligation to pay the funds received to her brokerage. Finally, the Registrant asserts that there are no restrictions on her certificate of registration against engaging in any type of "trade" in real estate, including property management.

[76] The Registrant argues that the test from CBC should be applied and that "The registrar would need to provide a *prima facie* case both that: 1. misconduct will be established to the degree required by law; *and* 2. it will result in a *permanent* suspension if established rather than some lesser remedial outcome such as the Commission's habitual monetary fines." The Registrant also states that "serious issue" threshold for a prohibitive injunction is also not met but does not elaborate on what that test requires or how it was not met. I do note however, that in *RJR*, as cited above, the court said:

> "Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable."

[77] As stated above, the test from *RJR* requires at the first stage of the analysis that only a preliminary investigation into the merits is required to determine whether the Applicant has demonstrated a serious question to be tried that is not frivolous or vexatious. At this stage, the task is not to resolve the uncertainty, decide the merits or assess the strength of competing allegations. This will occur at a later procedural stage. (Scott at para 73). The interim order sought in this matter would prohibit the Registrant from trading in real estate and therefore constitutes a prohibitive injunction. In such circumstances, the inquiry is limited to whether there is a serious question to be tried, rather than whether the applicant is likely to succeed at a full hearing.

[78] Regarding File 2024-116, the Registrant and the Investigation Committee disagree on the proper interpretation of the definition of "property management" under the Act, as well as whether the Registrant's certificate of registration prohibits her from trading in that category of real estate, and whether the Act requires the funds the Registrant received from a tenant to be paid to her brokerage. Each party has made submissions concerning the interpretation of the legislation and the relative strength of the evidence. At this stage, I am not required to resolve contested issues of mixed fact and law. I need only be satisfied that there is a serious question to be tried. On the record before me, I am satisfied that sufficient evidence exists to meet this threshold that there is a serious question to be tried with respect to whether the Registrant is trading in property management and whether her certificate of registration permits her to do so.

[79] Regarding File 2025-80, the Investigation Committee relies on text messages and other documents which it submits indicate that the Registrant knew that the disclosure of knob and tube wiring and asbestos would negatively impact her client's ability to obtain insurance and mortgage approval. The Investigation Committee further submits that these materials indicate that notwithstanding this knowledge, the Registrant counselled her client against providing that information to the insurance provider and mortgage broker. The Investigation Committee also submits that the evidence indicates that the Registrant rushed her client to sign documents and used unprofessional language in the course of her practice as a Registrant. The Investigation Committee asserts that this conduct displays a disregard for the welfare of members of the public served by the real estate industry of a nature or to an extent that demonstrates that she is unfit to continue to be registered. It submits that these actions constitute breaches of subsection 39(2) of the Act and of Bylaws 701(a), 701(b), 702, and 702.1. In support of its submissions, the Investigation Committee has provided copies of text messages between the Registrant and her client, including messages referring to the Registrant's communications to a mortgage lender, and the client's communications with "insurance ppl". The Registrant disputes the Investigation Committee's allegation that she was counselling her client to withhold the presence of asbestos and knob and tube wiring from a bank and insurer, instead characterizing the statements as "prudently advising her client to be "careful" in such communication." With regard to the unprofessional language, the Registrant states that the client had used the same language in messages to her. I am satisfied that there is also sufficient evidence to meet the threshold that there is a serious question to be tried with respect to whether the Registrant has committed professional misconduct.

[80] Having found that the material submitted in the Application is admissible, and without assessing the merits of either of these complaint files, I find that the allegations are sufficiently supported by evidence to demonstrate that the Application is neither frivolous or vexatious and that there is a serious question to be tried.

B. Irreparable Harm

[81] Having met the first branch of the test by establishing a serious question to be tried, the Investigation Committee must, at the second stage, demonstrate that it will suffer irreparable harm if the temporary suspension is not granted (*RJR* at page 334).

[82] In discussing the second branch of the test, the Supreme Court of Canada noted in *RJR* at page 341:

> At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicants' own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.
>
> "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision (*R.L. Crain Inc. v. Hendry* (1988), 48 D.L.R. (4th) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid*, supra); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, [1985] 3 W.W.R. 577 (B.C.C.A.)). The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration (*Hubbard v. Pitt*, [1976] Q.B. 142 (C.A.)).

[83] In *RJR, t*he Supreme Court further acknowledged that irreparable harm is not confined to private interests and may include harm to the public interest, especially where the impugned measure serves a protective legislative or regulatory purpose related to health, safety, or broader societal concerns. The Court stated at page 349:

> We would add to this brief summary that, as a general rule, the same principles would apply when a government authority is the applicant in a motion for interlocutory relief. However, the issue of public interest, as an aspect of irreparable harm to the interests of the government, will be considered in the second stage. It will again be considered in the third stage when harm to the applicant is balanced with harm to the respondent including any harm to the public interest established by the latter.

[84] Where the applicant seeking interlocutory relief is a public authority or regulatory body acting in furtherance of the public interest, courts have consistently recognized that the irreparable harm analysis must be adapted to reflect the nature of the regulator's statutory mandate. In such cases, the focus shifts from private harm to whether refusing interlocutory relief would expose the public interest to harm that cannot be adequately remedied at a later stage. Such harm may include risks to public safety, erosion of public confidence in the regulated profession, or damage to the integrity and effective operation of the regulatory regime.

[85] In this case, the applicant is the Investigation Committee, a subcommittee of the Commission, which is a statutory regulator acting pursuant to its legislative mandate and in furtherance of the public interest. The irreparable harm analysis therefore turns on whether denying the requested temporary suspension would give rise to irreparable harm to the public interest. This approach aligns directly with the Commission's public-protection mandate, as set out in section 4.1 of the Act, which provides:

> **Duty and objects of Commission**
> **4.1**(1) It is the duty of the Commission at all times:
> (a) to serve and protect the public; and
> (b) to exercise its powers and discharge its responsibilities in the public interest.
>
> (2) The objects of the Commission are:
> (a) to regulate the practice of registrants and to govern registrants in accordance with this Act, the regulations and the bylaws; and
> (b) 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.

[86] Where a regulatory authority seeks interlocutory relief in furtherance of the public interest, the threshold for establishing irreparable harm is comparatively low. As the Supreme Court of Canada explained in *RJR* at page 346:

> In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. **The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action**.
>
> **A court should not, as a general rule, attempt to ascertain whether actual harm would result from the restraint sought**.
> [Emphasis added]

[87] Saskatchewan courts have applied this principle consistently. In *Saskatchewan v. STC Health & Family Services Inc*., 2016 SKQB 236 [*STC*], Justice Schwann confirmed that public interest considerations are properly addressed under the irreparable harm branch of the analysis. She observed that, where the public interest is engaged, irreparable harm may consist of non-quantifiable or subjective harms to the public at large. Relying on *RJR*, she held that the threshold for establishing irreparable harm to the public interest is lower than in private law matters (paras 72-73).

[88] Courts have also emphasized that the irreparable harm analysis involves an assessment of risk rather than certainty. In *Mosaic*, Justice Richards described the analysis as a "weighing of *risks* rather than a weighing of *certainties*" (para 58). He held that an applicant need not establish irreparable harm to a high degree of certainty and that it is sufficient to demonstrate a meaningful risk of irreparable harm or a meaningful doubt as to the adequacy of damages if relief is denied. At paras 59 to 61, Justice Richards stated:

> [59] **Given this underlying reality, it seems wrong to demand that a plaintiff seeking an injunction must prove to a high degree of certainty that he or she will suffer irreparable harm if the injunction is not granted.** In many situations, this approach would self-evidently frustrate the balancing exercise which a court should be undertaking in deciding if interlocutory relief is warranted. For example, assume that failure to grant a plaintiff an injunction involves only a medium probability that the plaintiff will suffer irreparable harm. But, assume as well that, if such harm is incurred, it will be catastrophic. **If the analysis ends at the point of the plaintiff being unable to establish the prospect of irreparable harm to a high level of certainty, a full balancing of the risks concerning the relevant non-compensable damages will not be possible. In other words, the true overall risk of irreparable harm will always be a function of *both* the likelihood of the harm occurring and its size or significance should it occur. A sound analytical approach should take this into account.**
>
> [60] **In short, the same basic logic which recommends the serious issue to be tried standard in relation to the strength of the plaintiff's case consideration also recommends against requiring the plaintiff to prove to a high level of certainty that irreparable harm will result if the injunction is denied.** The purpose sought to be achieved by giving a judge the discretion to grant interlocutory relief will be "stultified," to use Lord Diplock's term, if he or she could consider in the balance of convenience only such irreparable harm as is certain or highly likely to occur.
>
> [61] **Therefore, in the end, it is sufficient that, as a general rule, a plaintiff seeking interlocutory injunctive relief be required to establish a meaningful risk of irreparable harm or, to put it another way, a meaningful doubt as to the adequacy of damages if the injunction is not granted.** This is a relatively low standard which will serve to fairly easily move the analysis into the balance of convenience stage of the decision-making. It is there that all of the relevant considerations can be weighed and considered with as much subtlety as the circumstances require. This said, I should add once again that I do not mean to deny any possibility of there being exceptions to this rule. The approach being endorsed here is one of general, but not necessarily universal, practice.
> [Emphasis added]

[89] In *STC*, Justice Schwann also considered the evidentiary burden required to satisfy the irreparable harm branch of the *RJR* test. At para 75, she noted that the uncertain state of the law regarding the proper standard of proof for irreparable harm had been thoroughly canvassed in *Mosaic* (paras. 49–71) and concluded that the Court of Appeal ultimately settled on the requirement that an applicant establish a meaningful risk of irreparable harm.

[90] In *STC*, the respondent argued that the applicant's (the Government of Saskatchewan's) submissions concerning risk and public safety were merely speculative and unsupported by "hard evidence" identifying an actual risk. Justice Schwann rejected that submission. She emphasized that, at the irreparable harm stage, the court is required to assess risk by examining "the nature and extent of the harm which might result if the injunction is not granted, even if the possibility of that harm is moderate" (at para. 83).

[91] After noting that there was some evidence of harm, Justice Schwann, relying on *Mosaic,* reiterated that "irreparable harm is a relatively low, risk-based standard," and concluded that in that case it had been met.

[92] Justice Schwann summarized her conclusion at para 93:

> [93] While the evidence before me falls well short of establishing a probability or certainty of harm, certainty is not the test. The question, rather, is whether there is a reasonable risk of harm. Based on the evidence before me, Saskatchewan has met the irreparable harm test with particular regard to the possibility of potential harm to children in need of protection in this unique setting.

[93] In the professional regulatory context, the jurisprudence recognizes that the public interest generally encompasses two closely connected considerations:

> (i) the protection of the public from harm; and
>
> (ii) the maintenance of public confidence in both the regulatory body and the integrity of the regulatory framework.

(*Green v. Law Society of Manitoba*, 2017 SCC 20; *Fraser v. Nova Scotia Barristers' Society*, 2024 NSCA 102; *Kalia*; *Dua v. College of Veterinarians of Ontario*, 2021 ONSC 6917; *College of Physicians and Surgeons of Ontario v. Porter,* 2003 CanLII 13109; *Hove v. College of Physicians and Surgeons (PEI)*, 2024 PESC 45; *Yazdanfar v. College of Physicians and Surgeons of Ontario*, 2012 ONSC 2422; *Boldt v. College of Immigration and Citizenship Consultants*, 2021 FC 1465; *Irwin v Alberta Veterinary Medical Association*, 2015 ABCA 176).

[94] The public protection mandate of self-regulating professions was addressed in *Park v. Alberta (Institute of Chartered Accountants*), 2002 ABQB 880 [*Park*]. In that case, the Court stated:

> [66] The self-regulating professions are charged with the responsibility of ensuring the protection of the public. It is their primary mandate. Accordingly, in doing so, the courts have traditionally (and properly) given great deference to the professional body charged with that obligation and the decisions it makes in fulfilment of that mandate. However, the deference provided cannot be absolute. **There must still be a reasonable basis for concluding that the public is at risk before the body can impose a drastic measure such as the suspension of one of its members pending a full hearing into his conduct.** [Emphasis added]

[95] The purpose of an interlocutory measure such as a temporary suspension is preventative. It is intended to avert harm, or further harm, that cannot be adequately remedied in later proceedings. Public confidence in the functioning of regulatory authorities and in the proper exercise of their statutory or delegated powers is fundamental. That confidence depends not only on the regulator's willingness to act where necessary, but also on the assurance that its powers are exercised fairly, responsibly and in accordance with its legislative mandate.

[96] Against this legal framework and having regard to the allegations advanced by the Investigation Committee, I must determine whether the Investigation Committee has established a meaningful risk of irreparable harm or a meaningful doubt as to the adequacy of damages if the temporary suspension is not granted.

[97] Before turning to the parties' submissions, I note one further implicit consideration in applications of this nature – that the anticipated harm may or is likely to occur within a relatively short period of time. The regulator's role at this interlocutory stage is neither to impose discipline, nor to pre-empt the outcome of the normal disciplinary process. Rather, it is to respond promptly to circumstances that present a risk of harm to the public. Justice Richards addressed this in *Mosaic*, saying:

> [97] And this, with respect, is where the Chambers judge appears to have taken a misstep on this issue. The question of irreparable harm to PCS is not a question of irreparable harm over an indefinite time horizon. The issue is whether, if an injunction is not granted, PCS will suffer irreparable harm between now and *the trial*. In short, there is no risk that PCS's allotment under the Canpotex agreement will be adjusted before the trial and, accordingly, there is no risk that PCS will suffer irreparable harm on this front.

[98] The Investigation Committee submits that the Commission has a statutory duty to serve and protect the public and to exercise its powers and discharge its responsibilities in the public interest. It asserts that the decision to apply for a temporary suspension was made in furtherance of that mandate.

[99] In its materials, the Investigation Committee has adduced evidence indicating that, in the context of advising on a property transaction, the Registrant may have counselled a client not to disclose material information to a mortgage provider and an insurer. The Investigation Committee submits that the Registrant's clients, as well as lenders and insurers, could suffer harm if a client were to rely on the Registrant's advice and withhold information from lenders or insurers. Additionally, the Investigation Committee alleges that the Registrant collected rental payments and failed to deposit or maintain those client funds in a designated trust account. It submits that this conduct raises concerns regarding the recoverability of potential client losses and the Commission's ability to effectively oversee funds that are not deposited into a trust account in accordance with regulatory requirements. The Investigation Committee submits that, in the event the Registrant were to carry out the alleged conduct in the future, members of the public could suffer financial loss and harm that may not be recoverable or adequately remedied after the fact. It further submits that, should such harm occur, it could undermine the integrity and effectiveness of the regulatory framework and could cause reputational harm to the Commission.

[100] The Registrant submits that the Investigation Committee's evidence of "public harm" is non-existent or speculative and unsupported by evidence that anyone has been or will be irreparably harmed. The Registrant further submits that it is "unbecoming to rely on evidence of complaints that were resolved in her favour". She argues that the Investigation Committee overlooks segments of the public that will be harmed if the temporary suspension is granted, such as her current and future clients and her staff.

[101] As supported by the judicial authorities, the threshold for an applicant to demonstrate irreparable harm is relatively low, and I am not required to determine whether actual harm will occur at this stage of the proceeding.

[102] Having regard to the record before me on this Application, I am satisfied that the Investigation Committee has established a meaningful doubt as to the adequacy of damages as a remedy should the temporary suspension not be granted. The Commission is charged with protecting the public interest. The risk identified includes potential harm to private individuals and to the public at large, as well as to the reputation and effective functioning of the Commission during the period in which temporary suspension would otherwise be in place. In these circumstances, the nature of the alleged harm is such

that it could not be adequately quantified in monetary terms or adequately remedied by an award of damages.

[103] Based on the foregoing, I find that the Investigation Committee has demonstrated a meaningful risk of irreparable harm and has therefore met the second branch of the applicable test.

C. Balance of Inconvenience and Public Interest Considerations

[104] The third part of the test requires an assessment of which of the parties will suffer greater harm from granting or refusing to grant the temporary suspension. In *RJR*, this branch of the test is described as follows (p. 342 to 343):

> The third test to be applied in an application for interlocutory relief was described by Beetz J. in *Metropolitan Stores* at p. 129 as: **"a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits".** In light of the relatively low threshold of the first test and the difficulties in applying the test of irreparable harm in Charter cases, many interlocutory proceedings will be determined at this stage.
>
> The factors which must be considered in assessing the "balance of inconvenience" are numerous and will vary in each individual case. In *American Cyanamid*, Lord Diplock cautioned, at p. 408, that:
>
> > [i]t would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.
>
> He added, at p. 409, that "there may be many other special factors to be taken into consideration in the particular circumstances of individual cases".
> [Emphasis added]

[105] In *T.D.B. Holdings Ltd. v. 101102382 Saskatchewan Ltd.*, 2021 SKQB 170, Justice Elson addressed the third element of the test and observed (at para 62):

> [62] As can be discerned from the comments in *Evergreen*, the balance of convenience inquiry in this type of application is substantively tied to the irreparable harm analysis. It is a balancing of the harm, particularly the irreparable harm, that each side will sustain from an order in favour of either the applicant or the respondent. **In this regard, the earlier cited reference from *Metropolitan Stores* to the concept being known as the "balance of inconvenience" is apt**.
> [Emphasis added]

[106] As referenced earlier in this decision, Justice Richards in *Mosaic* described the assessment of the balance of convenience as the "core of the analysis" and noted (at para 113):

> … In this regard, the relative strength of the plaintiff's case, the relative likelihood of irreparable harm, and the likely amount and nature of such harm will typically all be relevant considerations. Depending on the particulars of the case, strength in relation to one of these matters might compensate for weakness in another. Centrally, the judge must weigh the risk of the irreparable harm the plaintiff is likely to suffer before trial if the injunction is not granted, and he or she succeeds at trial, against the risk of the irreparable harm the defendant is likely to suffer if the injunction is granted and he or she prevails at trial. That said, the balance of convenience analysis is compendious. It can accommodate a range of equitable and other considerations.

[107] In *Kalia*, Justice Feth identified the following list of factors as being relevant to assessing the balance of convenience on an application to stay a temporary suspension:

> (a) whether a *prima facie* case of misconduct is shown on the merits;
> (b) the nature and gravity of the impugned conduct;
> (c) the circumstances in which the impugned conduct occurred;
> (d) whether interim relief remains necessary to protect the public from a real risk of harm;
> (e) the likelihood of the impugned conduct being repeated;
> (f) the licensee's disciplinary history, if any;
> (g) new allegations of misconduct reported or arising during the suspension;
> (h) the extent of the licensee's cooperation with the investigation, which may assist in demonstrating the licensee's respect for regulatory compliance and professional governance in the immediate future;
> (i) the overall passage of time in the conduct proceedings, including the likely timeline until the conclusion of the proceedings;
> (j) the extent of the irreparable harm to which the licensee will continue to be exposed; and
> (k) whether means less restrictive than a suspension are available to adequately protect the public.

[108] As emphasized in *Mosaic*, the assessment of relevant factors is not to be applied as a rigid checklist. Although irreparable harm and balance of convenience are essential components of the tripartite test articulated by the Supreme Court of Canada, they form a flexible analytical framework rather than an inflexible rule. The factors are interrelated and overlapping, and the ultimate task is to assess the justice and equity of the circumstances as a whole, having regard to the interplay among the three branches of the test rather than applying them mechanically. (*Mosaic* para 26).

[109] In the regulatory and professional discipline context, the public interest assumes particular significance at the balance of convenience stage. This analysis requires an explicit weighing of the need to protect the public, maintain confidence in the profession, and uphold the integrity of the regulatory framework against the harm that may be suffered by a registrant.

[110] In undertaking this analysis, however, it is important to recognize that interim suspensions are preventative rather than punitive in nature. Because an interim suspension removes a registrant's ability to practise their profession prior to any finding of misconduct, and before the registrant has had a full opportunity to respond to the allegations, such relief must not be imposed lightly.

[111] As noted in paragraph 57 above, an order of temporary suspension has been described by the courts as a "drastic step that should only be taken as a last resort" (*Abouhamra; Huerto*) and as a "draconian power" (*Park; Kalia; Gould v Law Society of Alberta (1990), 1990 ABCA 191 (CanLII), 206 AR 396 (Alta CA), leave to appeal denied at [1990] SCCA No. 379 (QL)*). It is clear that such a drastic measure should only be imposed after careful consideration of the context of the harm, the nature of the impugned conduct and a determination of whether other, less imposing, measures might suffice. (*Abouhamra*; *Huerto*)

[112] With these principles in mind, this branch of the test requires a weighing of the risk of irreparable harm to the Commission and to the public if the Registrant is not temporarily suspended against the risk of irreparable harm to the Registrant if a temporary suspension is imposed during the next 90 days. The question is which course of action presents the greater risk of harm in the interim, having regard to the specific circumstances of this case.

Nature of harm to the Registrant

[113] Having addressed the nature of the irreparable harm to the Commission and the public under the second branch of the test, I now consider the potential harm that a temporary suspension may cause the Registrant. The Investigation Committee has acknowledged that such an order would likely result in irreparable harm to the Registrant's income and professional reputation. As stated in its Application:

> **"**287 The extent of the irreparable harm to which the registrant will continue to be exposed: **The Commission recognizes that an interim suspension of Ms. Smith's certificate of registration will likely cause her irreparable harm**, and this is something that the Commission does not take lightly.
>
> 288 **The Commission notes that suspending Ms. Smith's certificate of registration will impact her income**. However, while the Commission has no knowledge of Ms. Smith's finances, Ms. Smith has advised the Commission that she runs other businesses including cleaning, renovations/repair, bookkeeping, and security. This suggests that Ms. Smith has other avenues to earn income if an interim suspension is granted.
>
> 289 **The Commission is also aware that an interim suspension of Ms. Smith's certificate of registration before the allegations against her have been heard and determined will cause harm to her professional reputation amongst both registrants and members of the public**. However, as noted above, the Commission submits that it has a strong *prima facie* case of misconduct with direct evidence from multiple sources proving the elements of the charges.
>
> 290 For these reasons, the Commission submits that the allegations are grave enough and the risk to the public is significant enough to tip the balance of convenience in favour of a suspension despite the likely damage to Ms. Smith's professional reputation and income-earning ability."
> [Emphasis added]

[114] The Registrant submits that the Investigation Committee has "clearly conceded" that she will suffer irreparable harm if a suspension is imposed. She argues that the "registrar" failed to engage in a traditional balancing of inconvenience and instead relied primarily on the strength of its *prima facie* case under the first branch of the test.

[115] The Registrant also identifies potential harms to third parties should the Application be granted. She submits that her current and prospective clients, particularly those involved in ongoing transactions, would be adversely affected by an interruption in her practice. She further asserts that a suspension would likely require her to lay off staff, noting that even a brief interruption of two weeks would cause them financial hardship.

[116] The Registrant's submission contains limited details concerning the precise extent of the harm she would suffer in the event of a suspension. However, as recognized by the Saskatchewan Court of Appeal in *Abrametz v Law Society of Saskatchewan*, 2019 SKCA 21, a lack of detailed evidence does not render such harm speculative where common sense supports the inference. Justice Leurer rejected the contention that the inability to rebuild a professional practice following suspension was merely hypothetical, observing as follows at para 27:

> [27] I do not draw the same line as the Law Society does between what is speculation and what is common sense. Even accepting that Mr. Abrametz's evidence on this point is thin, the Law Society's argument speaks only to the ability of Mr. Abrametz to mitigate loss after the outcome of his appeal is known. It does not address at all the loss that Mr. Abrametz will have suffered because of his inability to practice until the appeal is decided and the inevitable time it will take to rebuild his practice after his right to practice is reinstated, assuming that is the outcome of the appeal. Not only is the full extent of this loss incalculable, but, in any event, it is unrecoverable unless there has been a malicious or otherwise wrongful prosecution, which is in no way suggested.

[117] I also take guidance from *Kalia*, where the licensee asserted irreparable harm arising from loss of income without providing detailed evidence of his financial circumstances. Justice Feth nonetheless accepted that significant financial loss would likely result from a continuing suspension and found it reasonable to infer that the licensee's professional reputation would suffer. Reputational damage, by its nature, constitutes irreparable harm (*Kalia* at paras 52–62).

[118] In the present case, the likelihood of financial recovery for any losses suffered during a period of suspension would be extremely unlikely. As in *Kalia*, the governing statute provides immunity to the Commission and those acting under its authority for acts done in good faith in the exercise of regulatory powers (section 84 of the Act). Even in the absence of such immunity, courts have recognized the discretion not to award damages where public bodies act in the public interest (see *Attorney General for Ontario v Yeotes*, 1982 CanLII 2127 (ON SC)).

[119] Harm to professional reputation is inherently difficult to quantify and may be substantial. It is reasonable to infer that an interim suspension would require notification to clients and the public that the Registrant is no longer authorized to practice, together with disclosure of the allegations giving rise to the suspension. This may be interpreted by clients and the public as reflecting wrongdoing, notwithstanding that the allegations have not been determined on their merits. Even if the allegations are ultimately not established, the Registrant may continue to experience a negative professional reputation affecting her ability to attract clients and maintain her business. Clients lost during a temporary suspension may not return, and prospective clients may be reluctant to engage her services.

[120] The Registrant operates as a sole broker and owns her own brokerage. The Investigation Committee acknowledges that a temporary suspension would likely cause irreparable harm to the Registrant's income and professional reputation. Given the unlikelihood of compensation for those losses, I accept that a temporary suspension would result in irreparable harm to the Registrant in the form of economic hardship and reputational damage.

Relative Strength of the Case

[121] As part of the balance of convenience, the relative strength of the applicant's claim is a relevant consideration in the overall assessment of whether to grant the requested relief (*AC and JF v. Alberta*, 2021 ABCA 24 [*AC and JF*] at paras 27 and 123). The assessment at this stage will necessarily be more involved than the preliminary consideration at the first stage but should not rise to a robust inquiry of the merits.

[122] The Investigation Committee requests an order suspending the Registrant pending the completion of the investigation of File 2025-80 and the hearing of File 2024-116. It submits that it has established a strong *prima facie* case of misconduct in each of these files. The Registrant disputes this characterization, challenges the Investigation Committee's interpretation of both the law and the facts, and submits that a strong *prima facie* case has not been made out.

<u>File 2024-116</u>

[123] Respecting File 2024-116, the Investigation Committee alleges that the Registrant traded in property management contrary to the terms of her registration and failed to deposit money received in connection with a trade in real estate into her brokerage's trust account.

[124] In support of its allegations, the Investigation Committee relies on evidence including copies of cheques that were made payable to the Registrant from a tenant who indicates they were for rent owed to the complainant, invoices issued to the complainant for services provided by the Registrant, and an unsigned document alleged to be an agreement for the Registrant to provide "property management" services to the complainant for commercial and residential properties.

[125] With respect to the allegation that the Registrant failed to deposit money into a brokerage trust account, the Investigation Committee states that Commission staff reviewed trust account records for the Registrant's current and former brokerages and did not find records of the rent cheques being deposited into those accounts.

[126] The Registrant disputes the Investigation Committee's interpretation of the law and its application of the law to the facts. She submits that she was not trading in property management as defined in the Act and further contends the terms of her certificate of registration do not restrict her trading in property management.

[127] The Registrant also denies that she collected rent on behalf of the complainant. She states that she advised the complainant she could not collect rent, that rent for the properties was collected by another party, and that the payments she received were related to goods and services provided to the properties rather than a trade in real estate. She also states that the cheques payable to her from the complainant's tenant were assigned to her by the complainant and were applied to outstanding invoices

for goods and services. On this basis, the Registrant submits that any funds she received were not required to be deposited into a brokerage trust account.

[128] The Registrant argues that the Investigation Committee does not allege that the Registrant misappropriated funds. The Investigation Committee provided some communications between the Registrant and the complainant relating to a dispute concerning approximately $8,000 allegedly owed by the Registrant to the complainant. The Registrant states that she withheld payment pending receipt of information regarding the complainant's citizenship and tax status, and that she intended to remit the funds to the Canada Revenue Agency (CRA) if the information was not provided. There is no evidence before me as to whether this amount was ultimately paid to the complainant or the CRA, or if it remains outstanding.

[129] The positions advanced by both parties turn on factual matters that have not yet been determined. The Investigation Committee relies on allegations that remain disputed and on documentary material does not constitute a complete factual record. The Registrant denies key aspects of the allegations and advances alternative explanations that have not been tested. The parties also disagree on the interpretation of "property management" under the Act and whether the Registrant's activities fall within that definition.

[130] Courts have consistently recognized that, at the interim stage, it is neither feasible nor appropriate for a decision-maker to resolve contested factual issues. The focus at this stage is whether, having regard to the public-interest mandate, the evidentiary record is sufficiently coherent and reliable to justify the interim relief sought, without effectively determining the merits of the dispute. On the record before me, addressing the issues in relation to File 2024-116 would require weighing conflicting evidence, assessing context, and making findings of fact that can only properly be made after a full hearing on a complete evidentiary record.

[131] In terms of the coherence and reliability, when considering the Investigation Committee's case on its own regarding File 2024-116, I note that there is an internal inconsistency in the Investigation Committee's interpretation of what the Registrant's registration authorizes her to do and the proposed relief sought. The Investigation Committee has taken the position that the Registrant's certificate of registration does not authorize her to trade in property management. To address the risk created by her trading in property management without authorization, the Investigation Committee requests a temporary suspension of her certificate of registration which already does not authorize her to trade in property management. If the Investigation Committee's interpretation is accepted, suspending the Registrant's certificate of registration will not address the risk of her trading in property management. A more appropriate remedy may be a cease trade order that would compel the Registrant to cease trading in property management. For the temporary suspension to be an effective remedy, I would need to accept the Registrant's interpretation that her authorization permits her to trade in property management. In that case, the temporary suspension would have the effect of remedying the risk in the manner the Investigation Committee intends. As there are contested interpretations of the extent of her authorization, I will take into account that a temporary suspension could be an appropriate remedy.

[132] In light of the above reasons, I find that the relative strength of the parties' positions with respect to File 2024-116 does not tip the balance of convenience in favour of the Application.

File 2025-80

[133] In File 2025-80, the Investigation Committee submits that the supporting materials demonstrate the Registrant advised her client, one of the complainants, to withhold material information about the property she was purchasing from a mortgage broker and an insurance provider. In particular, the Investigation Committee points to text messages in which the Registrant advised the client not to tell the mortgage broker and insurance provider about the presence of asbestos and knob and tube wiring in the property. In support of these submissions, the Investigation Committee has included in its Application copies of emails and text messages between the Registrant and her client, and between the Registrant and the seller's agent, as well as the complaint submitted by the client and the client's mother, the Registrant's response, and the PCDS signed by the seller.

[134] The Registrant disputes this allegation and states that she was advising her client to exercise care in her communications about the property.

[135] There is a conflict between the Registrant and her client's recollection of the discussions and communications they had regarding the presence of asbestos. In the materials provided, there are statements from both the Registrant and the client in which they indicate that the possible presence of asbestos was discussed with the seller during the home inspection. The Registrant states that the seller said the suspected asbestos had not been tested. The PCDS indicates that the property contained "Asbestos or Vermiculite." Contrary to the inspection report, the PCDS also indicates that the seller did not think the property contained live knob and tube wiring.

[136] The documentary record also includes references to the Registrant's efforts to assist the client in obtaining a mortgage and insurance. I have not been provided with any copies of correspondence between the Registrant and the mortgage broker or insurance provider, but I have been provided with a copy of an email about the property from an insurance broker to the client in which it is clear the insurance broker is aware of the presence of knob and tube wiring.

[137] The parties dispute the meaning and context of communications concerning disclosure to a mortgage broker and an insurance provider, and the evidentiary record does not include direct correspondence with those third parties, other than the aforementioned email from an insurance broker to the client. On the record before me, I am unable to conclude that either party's position is clearly stronger than the other at this stage. Resolving the issues raised would require weighing evidence, assessing context and credibility, and making findings of fact that can only properly occur after a full hearing on a complete evidentiary record.

[138] In these circumstances, the relative strength of the case does not tip the balance of convenience in favour of the Application. Given the contested nature of the facts and the law, such that the merits cannot be meaningfully assessed on the existing record, this factor remains neutral.

Allegations of Non-cooperation and Ungovernability

[139] In its Application, the Investigation Committee states that the Registrant withheld material information from Commission staff and showed a lack of co-operation with the investigations of File 2024-116 and File 2025-80. It states that the Registrant refused to provide bank statements for accounts into which alleged rental payments were deposited and that she withheld a number of "significant communications" from the Commission. The Investigation Committee asserts that the withheld communications include instances in which the Registrant communicated in an unprofessional manner,

counselled a client to engage in conduct that may amount to insurance or mortgage fraud, and communicated with third parties regarding insurance and mortgage applications. It infers from the content of these communications that the Registrant intentionally removed items she knew could lead to issues of compliance or breaches of the legislation. It also alleges that the Registrant discouraged clients from making complaints to the Commission.

[140] The Investigation Committee states that the Registrant's actions demonstrate "a blatant disregard for following the rules set in place by the legislation, and a disrespect for the regulation of the Commission." The Investigation Committee further asserts that, "[d]ue to Ms. Smith's repeated pattern of dishonesty, every response that she has provided to the Commission on other files is now suspect, and the Commission believes that she is ungovernable."

[141] The Application includes copies of ongoing correspondence between the Registrant and Commission staff in relation to both File 2024-116 and File 2025-80.

[142] With respect to Commission staff's request for access to the Registrant's bank account records regarding File 2024-116, the Registrant has taken the position that the payments she received were not related to a trade in real estate as defined under the Act. On that basis, she argues that section 32 of the Act does not apply and that she is not required to provide those records to the Commission.

[143] With respect to the allegation that the Registrant intentionally withheld communications in File 2025-80, the Application includes copies of emails exchanged between the Registrant and Commission staff from September 8, 2025, to October 20, 2025, concerning Commission staff's request for records and communications. In an email dated October 20, 2025, the Registrant wrote:

> "I want to assure you there has been no refusal or intent to withhold information on my part. I have been working diligently to assemble the requested documentation. To the best of my knowledge, nothing has been intentionally omitted and the file is now complete."

[144] There is no evidence before me of any further communication from Commission staff to the Registrant following this email. The Application does, however, include subsequent correspondence dated October 21, 2025, from the client's mother and the seller's agent to Commission staff.

[145] I have not been provided with evidence or material indicating whether Commission staff followed up with the Registrant to address any discrepancies between the records and communications provided by the Registrant and those in the Commission's possession. In her Submission, the Registrant states, in part:

> "The review officers' request for information respecting the (client) complaint in 2025-80 is especially concerning, as the compliance officer showed (the Registrant) the initial complaint, asked her to provide an initial response, and then asked her to provide copious amounts of information that took (the Registrant) 18 hours to collect, organize, and relay. Then the officer did not ask any follow-up questions; instead, the registrar made this application. The reason why (the Registrant) asked the review officers for specifics is so that she did not have to spend more than 18 hours assembling a complete chronology of texts, emails, and other communications, not because she was hiding something. Focusing on responses to the compliance officer took two days and diverted (the Registrant) from her active practice at her loss. (The Registrant) made best and honest efforts to provide all

> relevant information to the review officers within the time allowed and fairly requested that their demands for disclosure be proportionate to the issues raised."

[146] Despite asserting that the Registrant intentionally withheld records in relation to file 2025-80, the Investigation Committee has not indicated that it made any further requests or took further steps to obtain the information or inspect the Registrant's brokerage records. In this regard, there are statutory mechanisms that may be employed to obtain information or records from registrants.

[147] The Investigation Committee's allegations of non-cooperation and ungovernability are serious allegations. However, on the record before me, they remain disputed and are not supported by evidence demonstrating an immediate or ongoing risk that necessitates suspension at this stage. Most notably, despite asserting deliberate non-compliance and dishonesty, the Investigation Committee did not avail itself of other statutory tools to obtain the records in relation to File 2025-80, such as a demand for records pursuant to section 32 of the Act, or a request to the Superintendent to demand records pursuant to section 80 of the Act.

The nature and gravity of the impugned conduct

[148] The Investigation Committee submits that the allegations against the Registrant are serious, that the public is at risk, and that the Commission will be seeking significant sanctions. I accept that the allegations are serious in nature and, if ultimately established, may require a regulatory response. The question before me, however, is whether the circumstances justify the extraordinary measure of an interim suspension before the merits of the allegations have been determined.

[149] The Registrant has asked me to contrast the allegations in this matter with the conduct that has given rise to interim suspensions in other cases. While comparative decisions may provide contextual guidance, their utility is limited given the fact-specific nature of interim relief and the absence of prior applications under section 36 of the Act.

[150] Although the allegations raise legitimate regulatory concerns, they do not appear to be of the same character or magnitude as the allegations that have supported interim suspensions in other matters. For example, *Kalia*, a case arising under a comparable legislative framework, involved allegations of substantially more serious and sustained misconduct, including significant misuse of trust funds and a demonstrated history of regulatory non-compliance. Other cases in which interim suspensions have been imposed have involved materially different circumstances, such as criminal convictions for specified offences, inappropriate sexual relationships with clients, fraudulent conduct resulting in substantial financial loss, or incidents involving violence or threats to personal safety.

[151] In the present matter, the amount allegedly at issue is considerably lower than in *Kalia* and there is no evidence that any funds remain outstanding. These considerations weigh against characterizing the alleged conduct as comparable in gravity to cases where interim suspensions have been imposed and are relevant to the balance-of-convenience analysis.

Magnitude of irreparable harm

[152] With respect to the magnitude, the irreparable harm identified by the Investigation Committee consists of potential harm to private individuals, the public at large, and to public confidence in the Commission and the regulatory framework. While such harm could be significant if the allegations were established and resulted in loss to a member of the public, the circumstances alleged do not

suggest a scale comparable to cases involving substantial loss and the record before me does not demonstrate that harm of substantial magnitude has arisen to date. In particular, there is no evidence of significant monetary loss. This distinguishes the present matter from cases such as *Kalia*, which involved allegations of substantially greater financial impact.

[153] By contrast, the irreparable harm to the Registrant resulting from a temporary suspension would likely be substantial. Any loss of income during the suspension period would likely be unrecoverable given the Commission's statutory immunity, and harm to the Registrant's professional reputation would be difficult to quantify and unlikely to be fully remedied. Taken together, the financial and reputational consequences of a temporary suspension represent a significant degree of irreparable harm to the Registrant.

Likelihood of irreparable harm occurring during the temporary suspension

[154] A temporary suspension pursuant to section 36 is of limited duration and cannot exceed 90 days. The relevant inquiry is therefore the likelihood of irreparable harm arising within that interim period.

[155] The Investigation Committee submits that it believes the Registrant will continue to carry on property management activities, even if suspended, and that it believes that because the Registrant advised her client to withhold information about the knob and tube wiring and the asbestos and that she stated that there was asbestos in a majority of properties in Prince Albert built prior to 1990, she may do so again. However, the evidence before me does not establish a sufficient basis to conclude that such alleged conduct is likely to recur during the interim period. The mere fact that the Registrant is aware of property conditions such as asbestos or knob-and-tube wiring does not, without more, support an inference that she will advise clients to withhold material information. More broadly, there is no evidence of similar advice having been provided to other clients or a pattern of prior misconduct that would suggest a likelihood of harm to members of the public within the interim period.

[156] The Investigation Committee has provided limited evidence addressing the likelihood of harm arising if the Registrant were to continue engaging in property management activities during the next 90 days. The concern identified relates primarily to the Commission's ability to oversee the handling of funds where those funds are not deposited into a brokerage trust account. While this oversight function is an important element of the regulatory framework, the record before me does not establish a material risk of harm in the present circumstances, particularly given the absence of any allegation of serious financial loss. I also note that the Investigation Committee acknowledges that the Registrant has completed the required educational course, and that the parties continue to dispute whether the Registrant's prior activities fall within the statutory definition of property management.

[157] The Investigation Committee submits that, if the Registrant continues to engage in property management activities without being registered to do so, her clients will not have access to professional liability insurance or the Real Estate Assurance Fund. While the complaint in File 2024-116 refers to a dispute concerning approximately $8,000 pending the provision of information by the complainant to the Registrant, the Investigation Committee does not allege that the Registrant was fraudulently withholding those funds. I have not been provided with evidence of other disputed or unaccounted funds, potential insurance claims, or missing trust monies that might reasonably give rise to a claim against the Real Estate Assurance Fund. I also note that a social media post appended to the Investigation Committee's Reply, which references an allegation that the Registrant "stole" money, is not accompanied by particulars or supporting evidence and cannot be relied upon for the purposes of this Application.

[158] The Registrant refers to the lack of allegations to missing funds. In her argument addressing the Investigation Committee's *prima facia* case against her, the Registrant states that "[t]here is no allegation of any misappropriation of any funds, and thus no basis to believe that any claim would ever be made against the Real Estate Assurance Fund."

[159] In the absence of any evidence that funds remain unaccounted for, the likelihood of harm of this nature arising within the next 90 days is low.

[160] More generally, the record does not disclose any findings of prior misconduct or of similar advice having been provided to other clients that would support an inference of recurrence during the interim period. I am not persuaded that the evidence establishes a pattern of conduct indicating that harm to members of the public is likely to arise within that timeframe.

[161] Where the likelihood of harm to members of the public is low, it follows that the likelihood of corresponding reputational harm to the Commission during the interim period is also low.

[162] On the other hand, I find that the likelihood of harm to the Registrant in the interim period is high. As noted earlier, a temporary suspension will result in a loss of income to the Registrant that will largely be unrecoverable due to the immunity of the Commission. Further, a reasonable inference can be made that an interim suspension would require notification to the Registrant's clients and the public at large that the Registrant is no longer permitted to practice her profession. This is likely to have a negative effect on her professional reputation and may result in a loss of future clients, rendering at least some level of irreparable harm a certainty.

The Registrant's disciplinary history

[163] The Investigation Committee has also included the Registrant's discipline history in its Application. It summarized eight complaints made against the Registrant, noting that six of them were received in the 16 months preceding the Application. As previously noted, three files are currently open, and the five remaining files have been closed with no further action taken.

[164] The Registrant challenges the inclusion of the complaints resolved in the Registrant's favour, stating, "In reopening historical matters to impose present consequences, the registrar is not acting in good faith. Each matter was closed without further action. He now simply seeks to cast prejudicial bias against Ms. Smith by unfairly resurrecting dismissed complaints that have minimal (if any) probative value."

[165] The Investigation Committee explains the inclusion of closed files as follows: "104. By including files in which no further action was taken against Ms. Smith, the Commission is not attempting to re-open closed matters. In making this application, the Commission did not want to "cherry pick" only the files where the Commission has evidence that a breach has occurred; these files were provided in the interests of transparency and in providing the superintendent with a complete picture of Ms. Smith's compliance history."

[166] As previously discussed, in *Kalia*, Justice Feth identified disciplinary history as one of the factors that may be considered in weighing the balance of convenience on an application to stay an interim suspension. In that case, Mr. Kalia had a lengthy prior history of misconduct and had already been subject to other conduct proceedings and a three-month suspension as well as a substantial administrative penalty. The evidence put forth revealed that Mr. Kalia had also been the subject of further complaints since the suspension. Justice Feth commented that Mr. Kalia's serious disciplinary history, along with other factors, were "especially concerning and suggest a substantial risk that the impugned conduct [would] be repeated if his license [was] restored."

[167] As stated above, the Investigation Committee indicated that the closed files were included in the Application in the interests of transparency and to provide a complete picture of the Registrant's compliance history. No findings of professional misconduct or incompetence were made in relation to these closed files. As the jurisprudence makes clear, it is necessary not only to consider all relevant factors in the exercise of this statutory decision-making function, but also to exclude extraneous considerations (*Oakwood Development Ltd. v. St-François Xavier*, 1985 CanLII 50 (SCC) at para. 16; *Rohringer).*

[168] Further, the allegations contained in the complaints have not been tested through a hearing, and no findings of contravention of the legislation have been made. Even if I were to take these previous complaint files into account in my assessment of the Application, they would not provide support for the relief sought.

New allegations of misconduct reported or arising during the suspension

[169] There are no submissions before me identifying any new allegations of misconduct arising after the Application was submitted. The Investigation Committee's Reply includes a screenshot of a social media post by the Registrant, which appears to contain a message from an unidentified third party alleging that the Registrant had stolen money. As there are no specific allegations or particulars submitted in respect of this screenshot, I am not able to make any determination as to whether it is a new allegation of misconduct or whether it is substantiated by any evidence and I do not attribute any weight to it.

The overall passage of time in the conduct proceedings

[170] The passage of time is also a relevant consideration in assessing the balance of convenience. In evaluating the likelihood of irreparable harm, it is appropriate to consider both the overall duration of the proceedings to date and the interval between the initial complaint and the request for an interim suspension, as these factors may inform whether urgent relief is necessary to address the asserted risk.

[171] File 2024-116 arose from a complaint received on November 27, 2024. A recommendation to take further action was issued on November 7, 2025, nearly one year later. The information reviewed in that file appears to relate to alleged activities occurring up to October 2024. The Investigation Committee indicates that the investigation of this matter is complete and that the next step is to proceed to a hearing, which it anticipates will occur within 90 days. However, I have not been advised that a hearing date has been scheduled. Having regard to the length of time this matter has been under investigation and the absence of a scheduled hearing date, the record does not indicate a pressing urgency to address the alleged conduct through interim suspension.

[172] File 2025-80 arose from a complaint dated September 4, 2025, and an interim memorandum was provided to the Investigation Committee on November 7, 2025, in support of this Application. Given its more recent origin, the allegations in File 2025-80 appear to have been the primary impetus for seeking interim relief. The review officer has indicated that the investigation is ongoing and is expected to be completed within 90 days. I note, however, that while additional investigation is said to be required, the Investigation Committee has expressed a concluded view in the Application regarding the Registrant's fitness to remain registered at paragraph 162 of its Application as follows:

> "the information gathered thus far shows that Ms. Smith's conduct exhibits a worrisome lack of judgment, as well as a disregard for the welfare of members of the public…to such an extent that demonstrates that she is unfit to continue to be registered."

[173] The Investigation Committee has not indicated what further information it requires in order to complete the investigation or proceed to a hearing. Although the timing of File 2025-80 suggests a greater immediacy than File 2024-116, the lack of subsequent expedited steps toward resolution limits the weight that can be placed on urgency as a basis for interim suspension.

[174] Considered together, the timelines associated with both files do not indicate such a level of urgency that immediate intervention is required for the interim period of the temporary suspension.

Whether less restrictive measures are available to protect the public

[175] A further factor in the balance-of-convenience analysis is whether there are less restrictive measures available that would adequately protect the public. An interim suspension is an extraordinary measure and should be imposed only where lesser regulatory measures are insufficient to address the identified risk.

[176] In its Application, the Investigation Committee indicates that it considered and rejected several alternative measures. It maintains that the Registrant's conduct is not amenable to remediation through further education, asserting that the conduct at issue shows a lack of judgment and honesty, rather than a lack of knowledge. It further submits that additional guidance or warnings would be ineffective as she has received a number of written warnings and has continued to engage in unprofessional communication with clients and members of the public and has allegedly withheld information from the Commission.

[177] The Investigation Committee further submits that, as the Registrant is a broker and sole proprietor, she is not subject to day-to-day supervision, and there would not be someone within her brokerage to supervise her activities. In this regard, it asserts that even when the Registrant was operating under the supervision of another broker, she demonstrated a willingness to circumvent the legislative rules and safeguards. Finally, the Investigation Committee indicates that it considered seeking to freeze the Registrant's bank accounts but rejected that option on the basis of concerns that such an order could be readily circumvented through the opening of new accounts.

[178] The Registrant submits that there are less intrusive means to address the complaints short of an interim suspension. She argues that the Commission could simply proceed with the ordinary process of investigation, and deciding complaints, with or without a hearing. Alternatively, the Registrant submits that the Commission could seek relief from the Court of King's Bench, either pursuant to section 36.1 of the Act or by way of an originating application to determine the legal issue underlying the Application.

[179] Having regard to the record before me, I am not persuaded that this factor supports the relief sought. In particular, it does not appear that meaningful consideration was given to whether an undertaking or registration restriction could adequately protect the public. There is no indication that the Commission communicated with the Registrant's legal counsel to explore whether any interim restrictions or conditions were available that could abate, manage, or mitigate that risk, aside from temporary suspension from practice, nor that it pursued other statutory tools available to it before bringing this Application. In particular, the Investigation Committee did not meaningfully pursue or utilize its investigative powers under the Act, including compelling the production of information or records, prior to seeking an interim suspension.

Overall Equities and Justice

[180] As stated by Justice Richards in *Mosaic*, the "ultimate focus in considering whether to grant interlocutory injunctive relief must be on the overall equities and justice of the situation at hand." (at para 113) In consideration of the overall equities of the parties and circumstances of this matter, the exercise of discretion favours the Registrant.

Conclusion regarding whether the test has been met

[181] My role is not to impose a sanction that would be or might be the likely result of a hearing, nor is it to preempt the normal disciplinary process. It is to impose a suspension in cases where the applicant has demonstrated that the risk of irreparable harm to the public during the interim period of the temporary suspension is such that action is required prior to the full hearing of the allegations against a registrant to a maximum of 90 days.

[182] As set forth, I find that the Investigation Committee has established that there are serious questions to be tried arising from the matters under investigation and that there is a meaningful risk of irreparable harm to the public. However, given the significant degree of irreparable harm to the Registrant, in these circumstances, the balance of inconvenience favours the Registrant.

[183] Having carefully considered all the evidence before me and the submissions of the parties, whether or not they have been referred to in these reasons, and having regard to the preventative and protective purpose of section 36 of the Act, I conclude that a temporary suspension is neither necessary nor proportionate in the circumstances. Accordingly, the Application for an order temporarily suspending the Registrant is denied.

2. Whether the Registrant's request for an order for costs is warranted in the circumstances?

[184] The Registrant has requested that the Investigation Committee pay solicitor-client costs, asserting that "[a]ttacks on professional integrity and character should be sanctioned." In support of this request, the Registrant relies on two authorities involving private litigants in which solicitor-client costs were awarded.

[185] I decline to grant the requested relief as the Superintendent lacks statutory authority to order costs in the context of an application brought pursuant to section 36 of the Act. The Registrant relies on subsection 43(6)(h) of the Act, which permits the Superintendent to make an order as to costs in the context of an appeal under that provision. As this proceeding is not an appeal, subsection 43(6)(h) has no application.

3. Whether the Investigation Committee should be required to provide an undertaking for damages?

[186] As a final item, the Registrant submits that it is common practice when a party seeks interlocutory relief to require an undertaking from the party seeking the injunction to pay damages in the event that the application for an injunction is unsuccessful. The Registrant's argument relies on the Court of Appeal's decision in *Mosaic*.

[187] I note firstly that the *Mosaic* decision arose from a dispute between private parties and concerns the equitable principles governing interlocutory injunctions in civil litigation. By contrast, this Application arises in a regulatory context and involves the exercise of statutory authority for the purpose of public protection. Undertakings as to damages are a fairly standard requirement for private litigants seeking interlocutory injunctions before the courts to ensure that compensation is available if the applicant is ultimately unsuccessful. However, there is no basis for ordering an undertaking respecting the interim suspension of the Registrant in a professional regulatory context. Further, the Act does not provide me with statutory authority to issue such an order.

[188] Consequently, I am not convinced that the principles regarding an undertaking for damages as articulated in *Mosaic* are applicable to this Application.

VII. CONCLUSION

[189] For all of the above reasons, the Application for an order temporarily suspending the Registrant pursuant to section 36 of the Act is denied. The Registrant's requests for costs and for an undertaking are also denied.

DATED at Regina, Saskatchewan, this _4_ day of _May_, 2026.

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

Appeal Information

The Act provides:

Appeal to court

44(1) Within 30 days after the decision or order:

(a) a person who is the subject of a decision or order of the superintendent pursuant to section 36 or 43 may appeal the decision or order to a judge of the court by serving the superintendent and the registrar with a notice of appeal and filing the notice of appeal with the local registrar of the court; and

(b) if the registrar considers it to be in the public interest, the registrar may appeal a decision or order of the superintendent pursuant to section 36 or 43 to a judge of the court by serving the superintendent with a notice of appeal and filing the notice of appeal with the local registrar of the court.

(2) **Repealed.** 2019, c 19, s.14.

(3) On receipt of a notice of appeal, the superintendent shall file with the local registrar true copies of:

(a) all documents and materials that were before the superintendent in the making of the decision or order;

(b) the superintendent's decision or order; and

(c) any reasons for the decision as required by subsection 43(8).

(4) On hearing an appeal, the judge may:

(a) dismiss the appeal;

(b) allow the appeal;

(c) allow the appeal subject to terms;

(d) vary the decision or order of the superintendent;

(e) refer the matter back to the superintendent for further consideration and decision;

(f) make any order as to costs that the judge considers appropriate;

(g) make any other order that the judge considers appropriate.

(5) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order appealed from, but on five days' notice to the registrar, the appellant may apply to the court for a stay of the decision or order pending the disposition of the appeal.