

**IN THE MATTER OF THE MORTGAGE BROKERS ACT
R.S.B.C. 1996, C. 313**

-AND-

MURRAY ALLAN-A-DALE SAVAGE

SUSPENSION ORDER

(Pursuant to section 8(2) of the *Mortgage Brokers Act*)

I AM ADVISED and, based on the materials submitted by the staff of the Registrar of Mortgage Brokers, am of the opinion that:

Registration History

1. Murray Allan-a-dale Savage (“Mr. Savage”) has been registered in British Columbia as a submortgage broker since November 25, 2008 with Second Street Mortgages Ltd. / The Mortgage Centre – Second Street Mortgages (“Second Street”). He is the Designated Individual for Second Street.
2. There is one other submortgage broker registered to Second Street. She was registered in March 2022.

Criminal Conviction

3. On September 30, 2019, an investigation into possession and distribution of child pornography was commenced by the RCMP.
4. On December 4, 2019, Mr. Savage was arrested by the RCMP in relation to the above investigation and appears to be the date that Mr. Savage first became aware of the investigation. He was released on bail on that day subject to conditions which included that he not directly or indirectly be in contact with anyone under the age of 16 and not go to any public park, public swimming area, or community center where persons under the age of 16 are or can reasonably be expected to be present, or a daycare, school or playground.

5. On May 3, 2021, Mr. Savage was convicted of being in possession of child pornography contrary to section 163.1(4) of the *Criminal Code* on December 4, 2019. A Court Services Online search indicates that Mr. Savage plead guilty on May 3, 2021.
6. On August 18, 2021, Mr. Savage submitted a renewal for his submortgage broker registration and submitted a Police Information Check dated July 26, 2021. The Police Information Check disclosed that Mr. Savage had been charged under section 163.1(4) of the *Criminal Code*. It indicated that the matter was “Awaiting Disposition”.
7. On September 3, 2021, Mr. Savage admitted via email to staff of the BC Financial Services Authority that he was in possession of 25 pictures and 9 videos considered child pornography in December 2019, that they were sent to him via Facebook messenger, that he viewed them, and that they were saved to his Samsung Tablet.
8. In his emails to the Registrar’s staff in August 2021 to April 2022, Mr. Savage stated that he, among other things, was 69 years old, had volunteered and donated to children’s sports and causes, he rarely had meetings involving his clients’ children, that he viewed the pictures and videos at issue but did not know how they were saved on his tablet, that he would not repeat the conduct which lead to his conviction, that he complied with his bail conditions, and that he has sought out and participated in Cognitive Behavioral Therapy Courses and counselling.
9. Mr. Savage also reported on September 3, 2021 that he was considered by his counsellor to be “low risk”; however, a September 16, 2021 letter from Dr. Bruce Monkhouse, his psychologist, noted that Mr. Savage was of “Low Moderate Risk for sexual reoffending and a Low Risk for violent offending”.
10. In the course of Mr. Savage’s exchanges with the Registrar’s staff, he did not advise the Registrar’s staff that he had plead guilty on May 3, 2021. His emails indicate that further dates would be set and that he would know the outcome of the proceeding once a hearing occurs. He indicated that the court may “dismiss” the case.
11. Several pieces of correspondence are specifically relevant on this point:
 - a. On September 14, 2021, Mr. Savage’s counsel wrote to advise, among other things, “No conviction has been registered for the still outstanding alleged offence that arose on Dec. 4, 2019. Therefore, Mr. Savage has no record of criminal convictions.”

- b. On September 17, 2021, Mr. Savage provided a letter from Dr. Monkhouse dated September 16, 2021, stating, “As of this date, September 16, 2021, Mr. SAVAGE has not been convicted or sentenced for the current charges.”
- c. On October 7, 2021, while discussing whether a suitability review was necessary, Mr. Savage wrote “You are denying me my Constitutional Rights to earn a living and keep my job on Allegations and NO Convictions. I thought the Courts decided punishment and guilt or innocence in Canada.

...

What happens if in November 5th, the Courts dismiss my case? The you would have denied me my right to survive and work as a Canadian citizen for no reason other than speculation” [sic].

- d. On October 7, 2021, Mr. Savage also wrote, “My court date is Friday November 5th at 2 pm. I am curious as per what part of my possible conviction will affect my duties as a mortgage broker. My lawyer is working hard on my behalf to not only avoid the conviction but to protect my livelihood. He is trying to get my charges reduced and if the charges / possible conviction will affect my brokers licence, there is a chance the Courts will be lenient.” [sic].
- e. On October 7, 2021, Mr. Savage also wrote, “this will not be decided by the courts until November 5th. Why can I not continue brokering until November 5th when the court decides the outcome. What happens if the case is dismissed?” [sic].
- f. On November 8, 2021, Mr. Savage’s counsel wrote to advise, among other things, “... Mr. Savage remains at present without any record of criminal conviction.”
- g. On November 11, 2021, Mr. Savage’s counsel wrote to advise, among other things, “As previously indicated, Mr. Savage remains without any record of criminal conviction.”

12. On October 13, 2021, Mr. Savage’s registration was renewed on the condition that he provide updates following his hearings in the criminal matter. It is not clear why Dr. Monkhouse notes that Mr. Savage had not been convicted on September 16, 2021 when Mr. Savage had plead guilty on May 3, 2021. It appears that whether Mr. Savage had a registered conviction or not is conflated in Mr. Savage’s and his counsel’s correspondence with whether he has been convicted, that is found or plead guilty, of the offense in part because the possibility of a conditional discharge order might have resulted in Mr. Savage not having a lasting criminal conviction record. However, it is clear from the court records that Mr. Savage had in fact plead guilty and therefore was convicted on May 3, 2021, all that remained was his sentencing. He did not disclose this to the Registrar’s staff until April 18, 2022 as noted below. Instead, he actively represented that he was not convicted.

13. On April 8, 2022, Mr. Savage was sentenced to, among other things, a 10-month conditional sentence to be served in the community and subject to 16 conditions and a 24-month probation. The conditions include restrictions of Mr. Savage being in locations where one can reasonably expect persons under the age of 16 to be present and not communicating directly or indirectly with persons under the age of 16 with certain exceptions.
14. On April 18, 2022, Mr. Savage reported the terms of his sentence to the Registrar's staff and provided a copy of his Conditional Sentence Order which revealed that he had been convicted of the offense on May 3, 2021.

Test for Interim Suspension

15. Sections 4 and 8 of the *Mortgage Brokers Act*, RSBC 1996, c 313 9 (the "Act") states, in part:

Granting of registration by registrar

4 The registrar

- (a) must grant registration or renewal of registration to an applicant if in the opinion of the registrar the applicant is suitable for registration and the proposed registration is not objectionable, ...

Registrar's orders — registration and compliance

- 8 (1) After giving a person registered under this Act an opportunity to be heard, the registrar may do one or more of the following:

- (a) suspend the person's registration;
- (b) cancel the person's registration;
- (c) order the person to cease a specified activity;
- (d) order the person to carry out specified actions that the registrar considers necessary to remedy the situation,

if, in the opinion of the registrar, any of the following paragraphs apply:

- (e) the person would be disentitled to registration if the person were an applicant under section 4;
- (f) the person is in breach of this Act, the regulations or a condition of registration;
- (g) the person is a party to a mortgage transaction that is harsh and unconscionable or otherwise inequitable;

- (h) the person has made a statement in a record filed or provided under this Act that, at the time and in the light of the circumstances under which the statement was made, was false or misleading with respect to a material fact or that omitted to state a material fact, the omission of which made the statement false or misleading;
 - (i) the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest;
 - (j) the person is in breach of a provision of Part 2 or 5 of the Business Practices and Consumer Protection Act prescribed under section 9.1 (2).
- (2) If the length of time that would be required to give a person an opportunity to be heard under subsection (1), (1.2), (1.3) or (1.4) would, in the registrar's opinion, be prejudicial to the public interest, the registrar may, without giving the person an opportunity to be heard, suspend a registration under subsection (1) (a) or (1.3) (a) or make an order under subsection (1) (c) or (d), (1.2) (a), (1.3) (c) or (d) or (1.4) (a) or (b).

16. *Kalia v Real Estate Council of Alberta*, 2021 ABQB 950 (CanLII) (“*Kalia*”), in setting out the test to determine if an interim order should be stayed, in doing so the Court applied the three-part test for such a stay. That test is as follows:

- a. Whether there is a serious issue to be tried;
- b. Whether the subject of the order would suffer irreparable harm; and
- c. Whether the balance of convenience favours making the order.

17. In addressing the third part of the stay test, *Kalia*, summarizes the broad factors to consider in imposing an interim order, in including interim suspensions, as follows:

- a. whether a strong *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.

Kalia, at para 67 citing, *inter alia*,
Scott v College of Massage Therapists of British Columbia, 2016 BCCA 180 (“*Scott*”) at
para 55

18. In my view, *Kalia*’s list of the factors is clearer, when compared to other cited cases, because it breaks down those factors into the test’s constituent elements. Those criteria are developed from cases like *Scott* and I note that the result would be the same under the test as set out in *Scott*, at para 55. Therefore, I turn to an application of the factors from *Kalia*.
19. In *Law Society of Ontario v. Rooney*, 2019 ONLSTH 19 (CanLII) at para 11, it was noted that a decision maker determining whether to impose an interim order is not deciding whether the registrant has engaged in misconduct, instead the focus is on application of the statutory test. In this case, that is whether the length of time to bring the matter to hearing would be prejudicial to the public interest. Mr. Savage will still have an opportunity to be heard regarding whether orders under other portions of section 8 of the Act should be made.
20. A strong *prima facie* case is made out. Mr. Savage has been convicted and sentenced to a custodial sentence for possession of child pornography.
21. The impugned conduct is grave and serious. Victims of child pornography offenses often carry the trauma of the event for life and may be continually victimized by the knowledge that photographs or videos continue to exist: *R v Friesen*, 2020 SCC 9 (CanLII), paras 44, 48, and 51. Further, Mr. Savage has admitted to possessing child pornography, has been convicted of it, and has been sentenced to a custodial sentence and probation for it. Mr. Savage’s conduct would clearly stain the reputation of the profession of mortgage brokers.
22. The impugned conduct happened over the internet. Mr. Savage reports that it was not connected to his work as a submortgage broker and professes to be a low risk of repeating the misconduct. However, the conditions on his sentence, particularly the restrictions from contact with minors, indicates there is some risk that the conduct will be repeated and therefore that he represents some risk.

23. Mr. Savage has no prior disciplinary history and no new allegations of misconduct have been reported or arisen.
24. Mr. Savage answered questions raised by the Registrar's staff but did not report his conviction when it happened or disclose that his conviction had occurred until after he was sentenced. To the contrary, the correspondence referenced above indicates that Mr. Savage was actively obfuscating this issue to avoid it interfering with his registration, when compared to the date he was reported to have plead guilty and been convicted by a court services search and his Conditional Sentence Order.
25. Approximately a month has passed since Mr. Savage's sentencing and approximately three weeks since he reported the term of his sentence to the Registrar's staff. Given Mr. Savage has been convicted and sentenced the matter is likely able to proceed quickly to a hearing.
26. Mr. Savage advises that he relies on his income from his work as a submortgage broker, in part as a result of his discharge from bankruptcy in 2018.
27. Regarding whether an interim suspension is necessary to protect the public from a real risk of harm to the public and whether less restrictive means than a suspension are available, I am of the opinion that there is a real risk of harm and less restrictive means to address those risks are not available for the following reasons.
28. Although Mr. Savage professes to be a low risk, the letter he provides from Dr. Monkhouse notes that he is of "Low Moderate Risk of sexual offending" and his conditional sentence conditions indicate he should be restricted from access, both direct and indirect, to persons under the age of 16. Submortgage brokers have access to the personal, private, financial information of their clients. They routinely meet with clients and there is a possibility that children will be present at those meetings either physically or virtually. This presents a risk to those children, which I am of the opinion is not acceptable because the consequence of that risk materializing are dramatic for both the child and the reputation of mortgage brokers.
29. Two cases concerning interim suspensions have been addressed by the Law Society of Upper Canada: *Law Society of Upper Canada v Schulz*, 2016 ONLSTH 153 (CanLII), discipline decision at *Law Society of Ontario v. Schulz*, 2021 ONLSTH 178 (CanLII) and *Law Society of Ontario v. Rooney*, 2019 ONLSTH 19 (CanLII), varied by 2020 ONLSTH 45 (CanLII)

30. In *Law Society of Upper Canada v Schulz*, the lawyer was convicted of possession of child pornography and was sentenced to 45 days imprisonment and 3 years of probation. On an interim basis, the hearing panel imposed conditions restricting Mr. Schulz from being alone or representing persons under the age of 18. The risk assessments for Mr. Schulz placed him at very low or “virtually negligible” risk of re-offending (para 55). Further he was co-operative with the Law Society and self-reported (para 62).

31. In *Law Society of Upper Canada v Rooney*, the lawyer was initially placed on conditions by order of a hearing panel, but after his conviction he was suspended on an interim basis. The lawyer did not contest the suspension at that point. In deciding to impose the interim suspension the Tribunal stated:

[13] It is also important to note that at this stage in the proceeding we are not deciding whether the respondent engaged in misconduct. Rather, our task is to determine whether he should be suspended from practice on an interlocutory basis because his continued practice would present either a risk of harm to members of the public, or to public confidence in the administration of justice, and to assess whether an interlocutory suspension would reduce that risk: *Law Society Act*, RSO 1990, c. L.8, s. 49.27(2).

[14] The Tribunal had already determined that restrictions on the respondent’s licence were appropriate and necessary to address the risk to the public and public confidence in the administration of justice. We are satisfied that the respondent’s conviction and incarceration substantially increase this risk and that an order suspending his licence on an interlocutory basis is the only appropriate remedy.

[15] Refusal of such an order would communicate to the public that the Law Society endorses the respondent as one who meets the standard of “unquestionable integrity, probity and trustworthiness.” *Law Society of Upper Canada v Mucha*, 2008 ONLSAP 5 at para. 24. We are satisfied that, if the respondent continued to be entitled to practise law, this would significantly undermine public confidence in the integrity of the profession and, by extension, the administration of justice.

32. Mr. Savage’s case is different from that in *Law Society of Upper Canada v Schulz* because the evidence provided tends to indicate that Mr. Savage is not a “nearly negligible” risk to reoffend, instead he is a “Low Moderate Risk”. Further, Mr. Schulz co-operated and self-reported. In this case, the Registrar’s staff first heard of Mr. Savage’s charge approximately 20 months after his charge and 4 months after he had

plead guilty. Once Mr. Savage advised the Registrar's staff of his charge, he and his counsel continued to make representations that caused the Registrar's staff to conclude that Mr. Savage had not yet been convicted, which delayed this matter. Further, Mr. Savage's custodial sentence is substantially greater than Mr. Schulz was: Mr. Schulz was imprisoned for 54 days, Mr. Savage is subject to a 10-month custodial sentence. Although Mr. Savage is not confined to a prison, a conditional sentence order is still a custodial sentence.

33. Similarly, to *Law Society of Upper Canada v Rooney*, I am of the opinion that permitting Mr. Savage to continue practicing would present some risk of serious harm to the public and it would harm the public interest by communicating to the public that the Registrar endorses Mr. Savage as someone who meets the standards expected of a submortgage broker. That would undermine the public's confidence in the industry and the Registrar as a regulator, both of which are contrary to the public interest.

34. Although an order suspending Mr. Savage will remove his ability to earn an income as a submortgage broker and may have adverse impacts on the other registrant at Second Street, I am of the opinion that interim conditions will not suffice to protect the public interest in this case. They would not eliminate the risk posed by Mr. Savage. Further, Mr. Savage has demonstrated, by obscuring the fact of his guilty plea to the Registrar's staff, that he is willing to not be forthright with the Registrar's staff. Further, such conditions would not maintain public confidence in the industry or the Registrar and satisfy the concern that Mr. Savage's continued practice would signal an endorsement of Mr. Savage. Given his conviction the Registrar and the BC Financial Services Authority cannot be seen to endorse someone convicted of a crime that so seriously departs from the standards expected of registrants under the Act. Allowing Mr. Savage to continue to practice until a hearing can be conducted in this matter would therefore harm the public interest.

I AM THEREFORE OF THE OPINION THAT Mr. Savage is unsuitable for registration under section 4 of the Act and this registration as a submortgage broker is objectionable because he has been convicted of possession of child pornography contrary to section 163.1(4) of the *Criminal Code*.

I AM THEREFORE OF THE OPINION THAT the length of time that would be required to hold a hearing and make orders under section 8(1) of the Act would be prejudicial to the public interest because, for the reasons noted above, Mr. Savage poses a risk to the public and placing conditions on his registration will not sufficiently limit that risk.

I HEREBY ORDER THAT the registration of Murray Allan-a-Dale Savage be suspended from acting as a submortgage broker in British Columbia until the investigation into the conduct and activities of Murray Allan-a-Dale Savage is completed and a determination is made by the Registrar of Mortgage Brokers, after Mr. Savage has had an opportunity to be heard, as to whether the registration of Mr. Savage should be suspended or cancelled pursuant to s 8(1) of the Act.

THIS SUSPENSION ORDER will remain in force until the determination referred to above is made by the Registrar

TAKE NOTICE THAT Murray Allan-a-Dale Savage may, under section 9 of the Act, appeal this Order to the Financial Services Tribunal.

AND TAKE FURTHER NOTICE THAT the Registrar will proceed to issuing a Notice of Hearing pursuant to section 8 of the Act and that the hearing will commence at a date to be determined by the staff of the Registrar and Mr. Savage, and, if no agreement is reached within one month of the date of the Notice of Hearing, the hearing date will be determined by the Registrar.

Issued this 13 day of May, 2022
At Vancouver, British Columbia

“CHRIS CARTER”

Chris Carter
Acting Registrar of Mortgage Brokers
Province of British Columbia

Notice to: Murray Allan-a-Dale Savage
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Notice to: Second Street Mortgages Ltd / The Mortgage Centre – Second Street Mortgages
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Notice to: Financial Services Tribunal

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