

**BC FINANCIAL SERVICES AUTHORITY**  
**IN THE MATTER OF THE *MORTGAGE BROKERS ACT***  
**RSBC 1996, c. 313 as amended**

**AND**

**IN THE MATTER OF**  
**JESSICA PAULA ASHLEY LABONTE**  
**(also known as JESSICA PAULA ASHLEY WEBBER)**  
**(REGISTRATION NO. 501748)**

**Decision on Penalty and Costs**

**[This Decision has been redacted before publication.]**

**Date of Hearing:** March 15 – 16, 2023  
**Counsel for BCFSA:** Simon Adams  
**Counsel for the Respondents:** Self-Represented  
**Hearing Officer:** Andrew Pendray

**Introduction**

1. On July 4, 2022, a Notice of Hearing was issued alleging that Jessica Paula Ashely Labonte<sup>1</sup> had, in her capacity as a submortgage broker, conducted mortgage business in a manner prejudicial to the public interest, contrary to section 8(1) of the *Mortgage Brokers Act* (the “MBA” or the “Act”).
2. The Notice of Hearing also alleged that Ms. Labonte had failed to keep books and records necessary for the proper recording of business transactions and financial affairs, contrary to section 6(a) of the *Mortgage Broker Act Regulations* (the “Regulations”).
3. The allegations against Ms. Labonte relate to mortgage applications that occurred between March 2017 and March 2019.
4. On January 24, 2023, Ms. Labonte entered into an Agreed Statement of Facts with the B.C. Financial Services Authority (“BCFSA”) in which she admitted to the allegations set out in the Notice of Hearing.
5. This decision relates to the appropriate orders to be issued against Ms. Labonte in respect of those admissions.

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<sup>1</sup> In her registration with BCFSA, Ms. Labonte has changed her last name to Webber. I will, in this decision, continue to refer to her as Ms. Labonte.

6. An oral hearing was held, at which BCFSA was represented by legal counsel, and Ms. Labonte was self-represented.
7. BCFSA seeks an order that Ms. Labonte be suspended from registration under the MBA, and an order that the Registrar of Mortgage Brokers (the "Registrar") will not accept an application for registration from Ms. Labonte for a period of five years from the date the order is made. BCFSA further seeks an order that Ms. Labonte pay an administrative penalty of \$30,000, and an order that Ms. Labonte pay investigation expenses of \$13,736.49 incurred by BCFSA in the course of its inquiry.
8. Ms. Labonte seeks an order placing a condition on her registration, which would require that her managing broker review all of her files, and that her files be available to be audited, at her own expense, at any time BCFSA sees fit. In Ms. Labonte's submission, the penalty sought by BCFSA is unjust.

### **Issues**

9. The issue is the appropriate orders to be issued in respect of Ms. Labonte's conduct, as provided for by section 8(1) of the MBA.
10. Additionally, there is the question of whether Ms. Labonte should be required to pay investigative and hearing costs pursuant to section 6(9) of the MBA.

### **Jurisdiction**

11. BCFSA Hearing Officers are appointed to act for the Registrar in respect of orders under section 8 and 6(9) of the MBA, pursuant to a May 16, 2023 Acting Capacity Instrument.

### **Notice of Hearing**

12. The Notice of Hearing set out the following allegations against Ms. Labonte:
  1. Ms. Labonte conducted mortgage business in British Columbia in a manner prejudicial to the public interest, contrary to section 8(1) of the MBA by:
    - a. Failing to use reasonable due diligence when verifying the accuracy of income and documentation that she submitted to lenders;
    - b. Submitting inaccurate information in support of the borrowers' income, including altered Notice of Assessments and T1's where she knew or ought to have known that the documents were altered or did not represent the true income for the borrower; and
    - c. Providing misleading or false information to lenders when:
      - i. Stating that the property would be owner occupied when in fact it would not;
      - ii. Providing conflicting rental information;
      - iii. Providing conflicting income information;
      - iv. Failing to disclose that the borrower was seeking concurrent mortgage financing; and
      - v. Directing the borrower to withhold important information from the lenders.
  2. Ms. Labonte failed to keep books and records necessary for the proper recording of business transactions and financial affairs, contrary to section 6(a) of the Regulations.

### **Background**

13. The evidence and information before me consists of the Agreed Statement of Facts (the “ASF”), as well as the evidence provided at the hearing by Ms. Labonte, and [Witness 1], the CEO of [Brokerage 1].
14. Much of the following is taken from the ASF.

#### *Agreed Facts*

15. Ms. Labonte was originally registered as a submortgage broker in December 2015.
16. From December 9, 2015 until December 8, 2019 Ms. Labonte was registered with VERICO Compass Mortgage Group Corporation.
17. Ms. Labonte is currently registered with [Brokerage 1] doing business as [Brokerage 1].
18. Prior to the issuing of the Notice of Hearing in this matter, Ms. Labonte had no prior disciplinary issues.

#### *Investigation*

19. Registrar staff discovered, during the performance of an open internet search, a news article dated June 2, 2020 which alleged that a property located at [Property 1] in Kelowna, BC (the “[Property 1]”), was the subject of a BC Civil Forfeiture Office court action, with an allegation that illicitly derived funds had been used to purchase that property. Registrar staff determined that Ms. Labonte had acted as the mortgage broker for the owner of [Property 1].
20. Based on that finding, Registrar staff commenced an investigation into Ms. Labonte.
21. During that investigation into Ms. Labonte’s activities, Registrar staff identified six deals of concern that involved four borrowers with mortgage application dates between March 2017 and March 2019. I will review each of those in turn.

#### *[Borrower 1] Applications*

##### [Property 2], Kelowna, BC – Mortgage Application Date of November 28, 2017

22. [Borrower 1] was self-employed as a residential and commercial cleaner. Her business was called [Company 1]. She owned a property on [Property 3] in Kelowna (the “[Property 3]”).
23. [Borrower 1] informed Ms. Labonte that she had low income on her 2015 and 2016 CRA notice of assessments (NOAs) but that she was making more money than she had declared on her taxes in those years.
24. Ms. Labonte informed [Borrower 1] that “A” lenders required two years of tax returns in order to determine her income for the purposes of financing and that if [Borrower 1] wanted to rely on the income she had stated on her tax returns she would have to apply for mortgages with “B” lenders.
25. Ms. Labonte obtained and reviewed [Borrower 1’s] personal bank statements for the period of May 1, 2017 through November 23, 2017 in order to determine a stated income for [Borrower 1] rather than relying on her NOAs. Ms. Labonte estimated [Borrower 1’s] revenue by adding up [Borrower 1’s] bank deposits over a 3 month or 6 month period, and then annualizing that figure.
26. Of note, credits to [Borrower 1’s] personal bank account that were used by Ms. Labonte to calculate [Borrower 1’s] stated income were all e-transfers into that bank account, always in round numbers, and largely ranged from \$100 to \$3,000.
27. On November 28, 2017, Ms. Labonte submitted a mortgage application on behalf of [Borrower 1] to [Lender 1] (the “[Property 2] Application”). In that application Ms. Labonte indicated that [Borrower 1] was a self-employed cleaner for [Company 1] with an annual income of \$88,720. Ms. Labonte further indicated that [Property 3] was rented for \$2,000 per month.

28. On December 5, 2017, Ms. Labonte prepared a form entitled "Self-Employed Declaration of Income" for [Lender 1] (the "stated income form"), and indicated on that form that [Borrower 1's] gross business income was \$160,076.84, and that her net operating income was \$88,000.
29. Also on or about December 5, 2017, [Borrower 1] entered into a lease agreement for [Property 3] to be rented to [Tenant 1], from January 1, 2018 until at least December 31, 2018, for \$2,000 per month. Ms. Labonte submitted this lease agreement to [Lender 1] in support of the [Property 2] Application.
30. Ms. Labonte admitted that she failed to use reasonable diligence to verify [Borrower 1's] stated income including by:
  - Failing to verify the accuracy of the information provided to her by [Borrower 1] regarding her income;
  - Failing to perform an open source search on [Borrower 1's] cleaning business and only reviewing the business license;
  - Determining [Borrower 1's] stated business income by adding up deposits made into [Borrower 1's] personal bank account without any corresponding invoices or other documents to verify the reasons for those deposits.

[Property 1], Kelowna, BC – Mortgage Application Dates of January 21, 23 and March 1, 2019

31. In January of 2019, Ms. Labonte once again acted for [Borrower 1] in relation to the purchase of a property, in this case located on [Property 1] (the [Property 1]).
32. In commencing the application process for [Property 1], Ms. Labonte first copied the [Property 2] Application.
33. [Borrower 1] advised Ms. Labonte that her income had increased as she had received some larger contracts, and that she wanted to obtain a "normal" mortgage for [Property 1].
34. On January 21, 2019, Ms. Labonte submitted two mortgage applications to [Lender 2] on behalf of [Borrower 1] in respect of [Property 1].
35. On each of those [Lender 2] applications Ms. Labonte indicated that [Borrower 1's] income was \$143,931.49 (\$141,085.45 from her cleaning business, with the remainder from rental income). Ms. Labonte noted that the income was \$122,683 grossed up by 15%.

*Tax Information for [Property 1] Applications*

36. On January 22, 2019 [Borrower 1] provided Ms. Labonte with her 2016 and 2017 CRA notices of assessment and T1 general income tax forms. Those indicate that:
  - For 2016 [Borrower 1] had gross business income of \$197,222.60; net business income of \$120,600.43, and net income of \$113,236.13;
  - For 2017 [Borrower 1] had gross business income of \$187,167.80; net business income of \$130,680.65; and net income of \$113,476.55.
37. The 2016 and 2017 CRA NOAs and T1 general income tax forms provided by [Borrower 1] were altered and did not represent [Borrower 1's] true income. In response to a summons from BCFSa, [Borrower 1] provided her 2017 CRA reassessment, which showed that her CRA net income for 2017 was only \$13,547.
38. On January 23 and March 1, 2019, Ms. Labonte submitted mortgage applications to [Lender 3] ("[Lender 3]") in respect of [Property 1].
39. In the January 23, 2019 [Lender 3] application, Ms. Labonte indicated that [Borrower 1's] income was \$135,203 (\$125,730 from her cleaning business and \$9,473.76 in rental income). Ms. Labonte noted that she had "taken the income by 2 year average".

40. In the March 1, 2019 [Lender 3] application, Ms. Labonte indicated that [Borrower 1's] income was \$144,000.
41. Ms. Labonte admitted that she had provided false or misleading income information on the Lendwise mortgage application and on the two [Lender 3] applications.
42. Specifically, Ms. Labonte admitted that she knew the income information submitted to [Lender 2] and [Lender 3] was higher than [Borrower 1's] actual income, and that she had submitted higher income information for the purpose of increasing the likelihood that the lenders would approve [Borrower 1's] mortgage applications.
43. Ms. Labonte further admitted that she ought to have known, at the time she submitted them on the [Property 1] applications, that the 2016 and 2017 CRA NOAs and T1 generals were altered and did not represent [Borrower 1's] true income.

*Rental Information for the [Property 1] Applications*

44. Ms. Labonte provided rental lease agreements on [Borrower 1's] properties (both [Property 3] and [Property 2]) to both [Lender 2] and [Lender 3].
45. The lease agreement for [Property 2] appeared to have been signed on December 5, 2018, the same date as the [Property 3] lease, and the tenant was the same tenant as named on the [Property 3] lease agreement.
46. In the January 23, 2019 [Lender 3] Application, Ms. Labonte indicated that [Property 3] rented for \$2,200 per month, with a lease expiring in March 2019, and she further indicated that [Property 2] would be rented for \$1,800 per month.
47. Ms. Labonte admitted that she provided false or misleading information to [Lender 3] when she told them that [Property 2] would be rented for \$1,800 per month when it was already rented for \$1,650 per month.
48. Ms. Labonte admitted that she had used the higher rental amount for the purpose of increasing the likelihood that the lenders approved [Borrower 1's] mortgage applications.
49. Ms. Labonte admitted that she knew, or ought to have known, that the [Property 3] Lease Agreement and/or the [Property 2] Lease Agreement were not authentic.

*[Borrower 2] Applications*

50. Ms. Labonte submitted four applications on behalf of [Borrower 2] which contained contradicting information to different lenders as to which property would be owner occupied and which property would be rented.
51. On March 6, 2017 Ms. Labonte submitted, on behalf of [Borrower 2], applications to [Lender 4] and [Lender 5] in respect of a property located at [Property 4], West Kelowna (the "[Property 4]").
52. Those March 6, 2017 applications stated that the purpose of the mortgage was to refinance the [Property 4] in order that [Borrower 2] could purchase another property at [Property 5], West Kelowna, BC (the "[Property 5]") as a rental property.
53. The March 6, 2017 application further states that [Property 4] would be "owner occupied" and that [Borrower 2] [was] hoping to "pull out equity in their home to pay off debts and purchase a rental property".
54. Subsequently, on March 10, 2017, Ms. Labonte submitted, on behalf of [Borrower 2], applications to [Lender 6] and [Lender 7] in respect of [Property 5].
55. Those March 10, 2017 applications indicated that [Borrower 2] would occupy [Property 5], and that [Property 4] would be rented out.
56. The [Lender 5] refinancing of [Property 4] was approved, as was the [Lender 7] mortgage for the purchase of [Property 5].

57. Ms. Labonte admitted that she did not apply to the same lenders in respect of the [Property 4] refinance and the [Property 5] Purchase because she knew that she was given the lenders contradictory information regarding the occupancy of the properties.
58. Ms. Labonte further admitted that, in 2017, she knew that:
  - Lenders were more likely to finance owner occupied properties;
  - Lenders offered better financing rates on owner occupied properties; and
  - Due to the higher interest rates for rental properties, it was more difficult to qualify for a mortgage for rental properties.
59. Ms. Labonte admitted that she had provided false and/or misleading information when she provided contradicting statements to lenders regarding whether [Property 4] or [Property 5] would be owner occupied.

*[Borrower 3] Applications*

60. Ms. Labonte acted for [Borrower 3] in or about June 2018 in order to obtain refinancing for [Borrower 3's] property located at [Property 6], Port Coquitlam (the "[Property 6]").
61. At the time, [Borrower 3] had been primarily living in Kelowna, and anticipated continuing to live in Kelowna until late 2018. On or about June 1, 2018, [Borrower 3] rented out [Property 6] for \$700 per month.
62. On or about June 26, 2018, Ms. Labonte received a letter from [Borrower 3's] employer stating that [Borrower 3] worked full time based in the employer's Burnaby office (the "Employment Letter").
63. Ms. Labonte proceeded, on June 26, 2018, to submit an application to [Lender 8], on behalf of [Borrower 3], for a refinancing of [Property 6]. In the comments of that application Ms. Labonte indicated that [Borrower 3] may possibly look to buy another property in the near future as an income property and would like to use extra funds obtained from refinancing towards such a purchase. Ms. Labonte further indicated that [Property 6] was owner occupied.
64. [Borrower 3] had in fact already made an offer to purchase a property located at [Property 7], Kelowna (the "[Property 7]") on June 25, 2018.
65. Also on June 26, 2018, Ms. Labonte commenced an application to [Lender 5], on behalf of [Borrower 3], for the purchase of [Property 7]. Ms. Labonte submitted the application on [Property 7] to [Lender 5] on June 27, 2018. Ms. Labonte subsequently submitted another application on [Property 7] to [Lender 6] on July 4, 2018.
66. In the [Property 7] applications, Ms. Labonte indicated that [Borrower 3] was seeking to purchase a condo in Kelowna where he was working, and that [Property 6] was rented out for \$1,950 per month.
67. Ms. Labonte obtained refinancing on [Property 6] where it was contractually required that [Borrower 3] occupy that property as his principal residence.
68. On or about July 3, 2018 [Borrower 3] signed the mortgage commitment letter with [Lender 8] in respect of [Property 6] which stated that "You must occupy the subject property as your principal residence".
69. On July 6, 2018, Ms. Labonte sent a text message to [Borrower 3] setting out the following:

Just a reminder to give your HR department a quick call and ask them not to disclose or confirm how long you were working in Kelowna for just that you are working Kelowna. Realistically, it's a construction so I don't think that with be due difficult for her.

[reproduced as written]

70. Ms. Labonte sent a subsequent text to [Borrower 3] on July 9, 2018 in which she indicated that the lender in respect of [Property 7] was:  
...waiting for your work to return their call. They will be asking if you are working in Kelowna HR needs to agree
71. On July 18, 2018 Ms. Labonte sent a further text message to [Borrower 3] indicating that the lender had concerns that [Property 7] was a rental, and that “this bank does not finance rentals and it will pull the entire file.”
72. Ms. Labonte admitted that:
- She had not corrected the [Property 6] refinance application information regarding owner occupancy despite having submitted incorrect information;
  - She had stated to one financial institution that [Borrower 3] was renting out [Property 6] for \$1,950 per month, when she knew that was not true.
73. Ms. Labonte further admitted that she had submitted false and/or misleading information to lenders in support of one or more of the [Borrower 3] applications including by:
- Indicating in the [Lender 8] refinance application that [Property 6] would be owner occupied;
  - That [Borrower 3] “may possibly” purchase a property in Kelowna when he was in fact in the process of negotiating a purchase agreement for [Property 7];
  - Including the Employment Letter indicating that [Borrower 3] would be working in the employer’s Burnaby office; and
  - Indicating that [Property 6] was rented out for \$1,950.
74. Ms. Labonte admitted that she had submitted the false and/or misleading information to prospective lenders knowing that it was false and/or misleading.
75. Ms. Labonte also admitted that she had omitted from the [Property 6] refinancing application that [Borrower 3] was seeking concurrent financing for [Property 7].
76. Finally, Ms. Labonte admitted that she had made the false and/or misleading statements with a view to increasing the likelihood that the lenders would approve the [Borrower 3] applications and/or to obtain better finance rates.

#### *Failure to Keep Records Safe and Secure*

77. Ms. Labonte admitted that she failed to keep records in a safe and secure location, thereby putting borrowers’ private information at risk.
78. Ms. Labonte, beginning in or around April 2020, had stored her hard drive with her mortgage records on it in the garage of a friend’s home. That friend had multiple criminal charges against him, including possession of a controlled substance for the purpose of trafficking. Some of her records were lost in a fire that occurred in that garage.
79. Ms. Labonte acknowledges that her friend’s garage was not a safe and secure location for her mortgage records to be stored as required.
80. Ms. Labonte was also unable to provide all text correspondence she had with her clients, as she had changed her phone twice and had not saved that correspondence.

#### *Labonte Testimony*

81. Ms. Labonte testified that after she had initially started her career as a mortgage broker in 2015, she had taken some time off to have a child. She stated that when she came back she no longer had a job, and had to go “out on her own”.
82. Ms. Labonte explained that she had very little guidance at that time, and around the time of the transactions at issue in this hearing. She stated that she was embarrassed that this was how

she had started her career, and indicated that she had simply not done the due diligence that she needed to do.

83. Ms. Labonte stated that as she took more courses over the years, she had learned substantially more. She noted that at the time of the transactions she had not been aware that one could obtain a rental property with less than a 20% downpayment, or that there were concerns when all deposits were rounded numbers.
84. In Ms. Labonte's explanation, she simply did not have sufficient mentorship at the beginning of her career.
85. Ms. Labonte noted that she had not had any further infractions since the investigation had taken place, and noted that she now researched her clients. She indicated that she has had recent experiences with clients where she had refused to bend the rules.
86. With respect to the storage of her files, Ms. Labonte noted that her hard drive had been password protected, though she acknowledged that the files ought not to have been stored where they were. She indicated that she had not been aware of her friend's criminal background.
87. Ms. Labonte reiterated that she was embarrassed that any of this had occurred. She noted that she had changed her practice significantly, and that she had fully cooperated with BCFSa when they had called her.
88. Ms. Labonte stated that she was not purposefully trying to mislead lenders for "years and years". She indicated again that although she had not done her due diligence, she had simply thought, in the [Borrower 1] case, for example, that [Borrower 1] had seemed like a normal hard working person, and that she had not known that she needed to look any further.

*[Witness 1] Testimony*

89. [Witness 1] indicated that he was the CEO of [Brokerage 1], where Ms. Labonte was currently registered. He noted that he had been in the industry for more than 30 years.
90. [Witness 1] explained that Ms. Labonte had been with [Brokerage 1] since 2019, and that she had not been with his company when the applications at issue in this hearing arose.
91. [Witness 1] stated that when Ms. Labonte had approached him seeking to join his firm, he had spoken to lenders about their interactions with Ms. Labonte and had received nothing but great feedback from those lenders at that time. [Witness 1] noted that he had once again spoken with lenders since the allegations in the Notice of Hearing arose, and that he had again received nothing but great feedback regarding Ms. Labonte.
92. [Witness 1] described Ms. Labonte as being well respected amongst her peers within the company, and noted that she attended most educational seminars, conferences, and industry events. [Witness 1] indicated that in his view Ms. Labonte had always seemed willing to maintain her education and knowledge of the industry. He noted that Ms. Labonte had been rewarded by lenders in the form of trips.
93. [Witness 1] noted that he did not condone any type of fraudulent activity, and that he would normally terminate someone who engaged in such activity. He explained, however, that his perception of this case was that the mistakes that Ms. Labonte had made were those of someone who had a lack of management support and training at the start of their career.
94. Overall, [Witness 1] indicated that his experience with Ms. Labonte was that she conducted herself in a professional manner and that she tried to better herself and her knowledge in the industry.

*[Individual 1] Letter*

95. Ms. Labonte also provided a February 15, 2023 letter from [Individual 1]. [Individual 1] indicated that she had known and worked with Ms. Labonte since late 2014. [Individual 1] indicated that she had been in a business development role with several lenders who had



accepted and completed financing requests submitted by Ms. Labonte. [Individual 1] wrote that she had not been made aware of any issues with a file submitted or funded by Ms. Labonte.

## Discussion

### Findings On Liability

96. As set out above, Ms. Labonte has admitted to each of the allegations at items 1(a), 1(b), and 1(c) of the Notice of Hearing, as well as the allegation at item 2.
97. I accept that Ms. Labonte's admissions and actions of:
- Failing to use reasonable due diligence when verifying the accuracy of income and documentation she submitted to lenders;
  - Submitting inaccurate information in support of a borrower's income, including altered notices of assessment and T1's when she knew or ought to have known that the documents were altered and did not represent the borrower's true income; and
  - Providing misleading or false information to lenders, including stating that a property would be owner occupied when in fact it would not be; providing conflicting rental information; providing conflicting income information; failing to disclose that a borrower was seeking concurrent mortgage financing; and directing a borrower to withhold important information from lenders;
- constitutes the conduct of mortgage business in a manner that is prejudicial to the public interest, contrary to section 8(1)(i) of the MBA.
98. Simply put, I consider that when a submortgage broker submits false or misleading information to a lender, submits inaccurate information regarding income to a lender, or fails to use reasonable due diligence to verify the accuracy of income and other documentation to a lender, the submortgage broker is creating a risk to the public.
99. In reaching this conclusion, I note that the Registrar has previously concluded that a person submitting incorrect or false information on a mortgage application to a lender amounts to the conducting of business in a manner that is prejudicial to the public interest contrary to section 8(1)(i): *Kia (Re)*, Decision on Merits, October 3, 2017 (Registrar of Mortgage Brokers) (*Kia*).
100. The risk to the public that is created through the provision of misleading, or inaccurate information of the type that Ms. Labonte has admitted to in this case could serve to place borrowers at risk of entering into mortgages they cannot in fact afford, and could serve to place lenders at risk of making loans they would not have otherwise made. Overall, the provision of this type of inaccurate information by submortgage brokers undermines public confidence in the submortgage industry: *Kia*, page 30.
101. As I indicated in *Anderson (Re)*, 2023 BCRMB 11, I agree with the comments in *Kia* that, in maintaining public confidence in the submortgage industry through the administration of the MBA, the Registrar must consider the "public as a whole", which is broad, and ought to be taken to include:
- ...lenders, borrowers, public and private mortgage insurance companies like CMHC, the mortgage broker industry, and numerous other interested stakeholders.

***Kia*, page 25**

102. In order for the public, which includes lenders, to have confidence in the industry, the Registrar expects that submortgage brokers provide fulsome and accurate information on borrowing applications submitted to lenders. I consider that allowing brokers to submit incorrect or false information on a mortgage application to a lender would cause public confidence in the mortgage system to be lost. I find that a broker who undertakes such an action should be found to have conducted business in a manner that is prejudicial to the public interest contrary to section 8(1)(i).

103. Having considered the above principles, along with Ms. Labonte's admissions, I find that while registered as a submortgage broker, Ms. Labonte conducted business in a manner prejudicial to the public, contrary to section 8(1)(i) of the MBA by

- a. Failing to use reasonable due diligence when verifying the accuracy of income and documentation that she submitted to lenders;
- b. Submitting inaccurate information in support of the borrowers' income, including altered Notice of Assessments and T1's where she knew or ought to have known that the documents were altered or did not represent the true income for the borrower; and
- c. Providing misleading or false information to lenders when:
  - i. Stating that the property would be owner occupied when in fact it would not;
  - ii. Providing conflicting rental information;
  - iii. Providing conflicting income information;
  - iv. Failing to disclose that the borrower was seeking concurrent mortgage financing; and
  - v. Directing the borrower to withhold important information from the lenders.

104. I turn to section 6(a) of the Regulations. That section sets out that every registered mortgage broker shall keep such books and records as are necessary for the proper recording of their business transactions or financial affairs.

105. Section 17.2 and 17.5 of the MBA set out requirements for mortgage brokers to maintain records for seven years such that they are able to provide copies of information statements and disclosure statements which may be required in certain circumstances.

106. Here Ms. Labonte was unable to provide records of some of her transactions and affairs due to the fact that a fire occurred where she had, as she admits, not safely or securely stored her files. Similarly, Ms. Labonte failed to keep a record of her text message interactions with her clients.

107. In my view, that Ms. Labonte was unable to provide records as required, constitutes a failure to keep books and records necessary for the proper recording of business transactions and financial affairs, contrary to section 6(a) of the Regulations.

108. I find that the allegations set out at items 1 and 2 of the Notice of Hearing have been made out.

### Findings on Sanctions

#### *Applicable Law and Legal Principles*

109. Section 8 of the MBA addresses the orders that the Registrar may make in respect of registration and compliance with the Act.

110. Section 8(1) and section 8(1.1) address the sanctions or actions the Registrar may take against a person who is registered under the MBA.

111. Specifically, section 8(1) provides that:

**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 has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest;
- (f) the person is in breach of this Act, the regulations or a condition of registration;
- (...)
- (i) the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest;
- (...)

112. Section 8(1.1) further provides that after giving a person registered under the MBA an opportunity to be heard, the Registrar may order the person to pay an administrative penalty of not more than \$50,000, if, in the opinion of the Registrar, any of the paragraphs (f) to (i) of section 8(1) apply.

113. Having reviewed the applicable legislation, I turn to the general principles to be considered when applying sanctions in the regulatory context.

114. As the Supreme Court of Canada indicated in *Cooper v. Hobart*, 2001 SCC 79, the regulatory scheme governing mortgage brokers provides a general framework to ensure the efficient operation of the mortgage marketplace (para. 49). This efficient operation of the mortgage marketplace requires the Registrar to balance a number of interests, including the instillation of public confidence in the mortgage system, with a view to the protection of the public as a whole.

115. The issuing of sanctions in the professional regulatory context is done with a view to achieving the overarching goal of protecting the public. Previous decisions of the Registrar have contemplated this purpose and concluded that:

The purpose of sanctioning orders is fundamentally to ensure protection of the public by promoting compliance with the MBA, thereby protecting the public from mortgage brokering activity that is non-compliant, not in the public interest, and that may result in loss of public confidence in the mortgage industry.<sup>2</sup>

116. Sanctions may serve multiple purposes, including:

- (a) denouncing misconduct, and the harms caused by misconduct;
- (b) preventing future misconduct by rehabilitating specific respondents through corrective measures;
- (c) preventing and discouraging future misconduct by specific respondents through punitive measures (i.e. specific deterrence);
- (d) preventing and discouraging future misconduct by other registrants (i.e. general deterrence);
- (e) educating registrants, other professionals, and the public about rules and standards; and
- (f) maintaining public confidence in the industry.

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<sup>2</sup> *Allan (Re), Decision on Penalty and Costs*, May 11, 2020 (BCFSA)

117. Administrative tribunals generally consider a variety of mitigating and aggravating factors in determining sanctions, largely based on factors which have been set out in cases such as *Law Society of British Columbia v. Ogilvie*, 1999 LSBC 17, and *Law Society of British Columbia v. Dent*, 2016 LSBC 5. In *Dent*, the panel summarized what it considered to be the four general factors, to be considered in determining appropriate disciplinary action:

**(a) Nature, gravity and consequences of conduct**

[20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

**(b) Character and professional conduct record of the respondent**

[21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?

**(c) Acknowledgement of the misconduct and remedial action**

[22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

**(d) Public confidence in the legal profession including public confidence in the disciplinary process**

[23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

118. While the factors set out above are not binding on me, I find them to be of use in considering the appropriate penalty to be issued.

*Discussion*

The Misconduct

119. BCFSA describes Ms. Labonte's conduct in this case as having been serious, and, in respect of Ms. Labonte's use of fraudulent documents, including the altered NOAs, T1's and rental lease agreements, as being arguably one of the more serious forms of misconduct that a professional can commit.
120. Ms. Labonte, on the other hand, takes the position that she was simply an individual who was new to the industry and who lacked the knowledge to know what she ought to be looking for in terms of potentially fraudulent documents.
121. Having considered all of the evidence, I am of the view that Ms. Labonte's misconduct in this case can appropriately be described as being severe.
122. While I acknowledge Ms. Labonte's submissions as to her inexperience and lack of knowledge, I do not consider the evidence to support a conclusion that those were a factor in respect of all of the transactions at issue in this case.

123. Rather, in my view, the only transaction in which Ms. Labonte's submission regarding her inexperience can be seen to be entitled to any real consideration were the [Property 2] Applications.
124. While Ms. Labonte has admitted that she did not use reasonable diligence to verify the accuracy of the income information or in calculating [Borrower 1's] stated business income, I consider that, on the facts before me, there is at least some possibility that Ms. Labonte simply did not understand what she ought to be looking for in terms of a potentially fraudulent application at that time.
125. Ms. Labonte's submissions as to her inexperience and lack of knowledge fall away, however, when considering her admissions on the [Borrower 2] Applications.
126. On those applications, not only does Ms. Labonte admit to having provided false and/or misleading information to lenders by providing contradicting statements to differing lenders regarding which property in the [Borrower 2] Applications would be owner occupied, Ms. Labonte has gone further and admitted that she was specifically aware, at that time, of the fact that lenders were more likely to finance owner occupied properties and to provide better financing rates to such properties, and that she was specifically aware of the fact that it was more difficult to qualify for a mortgage on rental properties.
127. In my view, Ms. Labonte's admissions as to her knowledge makes clear that she was in fact intentionally providing differing information to different lenders in the [Borrower 2] Applications, with a view to ensuring that her clients received financing at the best possible rates. While I accept that Ms. Labonte has a duty to provide a service to her clients, I consider that the reality of the situation in the [Borrower 2] Applications is that Ms. Labonte was knowingly providing false and/or misleading information to lenders.
128. I consider the risk created by Ms. Labonte's misconduct in respect of the [Borrower 2] Applications to have been significant.
129. Simply put, the provision of false and/or misleading information to a lender creates a significant risk of an adverse outcome for lenders (who may fund mortgages based on that incorrect information). It may also produce significant adverse outcomes for borrowers, who may end up with mortgages that they cannot in fact afford, causing them to experience, potentially, the loss of their home or the destruction of their credit rating.
130. The fact that Ms. Labonte's misconduct in the [Borrower 2] Applications was not related to a lack of diligence, but in fact was related to knowingly providing information that was false and/or misleading, increases the severity of the misconduct.
131. I consider the misconduct on the [Borrower 3] Applications to be similar in their nature to that in the [Borrower 2] Applications.
132. Once again, Ms. Labonte knowingly provided prospective lenders with false and/or misleading information. This information included providing incorrect rental income amounts, when Ms. Labonte in fact was aware that the correct amount was far less. It also included specifically telling her client to ensure that his employer did not disclose how long he had been working in Kelowna. In my view, Ms. Labonte's actions in that regard showed clearly that she was attempting to mislead the prospective lender.
133. In my view, Ms. Labonte's admitted misconduct in the [Borrower 3] Applications is once again properly characterized as severe.
134. Finally, I note that Ms. Labonte has admitted, that in the 2019 [Property 1] applications completed for [Borrower 1], she knew that the income information she was submitting on those applications was higher than [Borrower 1's] actual income, and that she ought to have known that the NOAs and T1 generals were altered. I consider that although it is true that Ms. Labonte did not alter any documents herself, the fact that she submitted income information that she knew to be inaccurate is misconduct that is severe in nature.

135. Having considered all of the facts and admissions before me, I am of the view that Ms. Labonte did, in the majority of the transactions, intend to deliberately mislead the prospective lenders in the [Borrower 2] and [Borrower 3] transactions, as well as in the [Property 1] applications. I consider this misconduct to be severe, and to require some degree of specific deterrence.
136. I further consider that the circumstances of the misconduct in this case require general deterrence, in that it must be made clear to mortgage brokers that although their role must be to promote the interests of their clients, the promotion of that interest cannot be allowed to take place to the detriment of the public as a whole.
137. The failure to conduct due diligence with respect to a client's financial claims such that inaccurate income information is provided to lenders, and the knowing provision of inaccurate information regarding issues such as rental income, owner occupancy, and in fact the coaching of clients to ensure that lenders are provided with inaccurate information, are not actions that can be tolerated under the MBA.
138. In reaching that conclusion, I acknowledge that there is no evidence before me that there was any specific harm caused to either the lenders or the applicants Ms. Labonte was representing in the applications at issue. Nevertheless, Ms. Labonte's actions of knowingly providing misleading and inaccurate information had the potential to result in significant financial loss to both lenders and borrowers.

#### Other Relevant Factors

139. Ms. Labonte had no discipline history prior to BCFSA commencing its investigation in 2020 which led to the issuing of the Notice of Hearing in 2022. I note further that Ms. Labonte has continued to work in the industry as a submortgage broker and has had no further disciplinary issues raised.
140. I accept that, at least since 2019, there does not appear to have been any pattern of misconduct present in Ms. Labonte's work as a submortgage broker.
141. I note, however, that the applications at issue in this hearing occurred over the course of a two year period. While there does not, on the evidence before me, appear to be any ongoing pattern of misconduct, I consider it to be clear that Ms. Labonte was, for a period spanning two years, engaging in severe misconduct.
142. With respect to Ms. Labonte's character, I accept the evidence from [Witness 1] that Ms. Labonte is well-regarded at their company, and that the lenders he has spoken to speak highly of her.
143. I consider that this character evidence, along with the fact that there does not appear to be any ongoing pattern of misconduct, is entitled to some weight as a mitigating factor in determining the sanction to be imposed.
144. Ms. Labonte has not pointed to any other mitigating circumstances such as mental health or addiction which may have played a role in her misconduct.

#### *Submissions on Previous Cases*

145. As set out above, in determining the appropriate sanction, consideration should be given to disciplinary action that has been issued in similar cases. While prior disciplinary decisions and consent orders are not binding on me, they can be of assistance in determining a penalty that the public will have confidence in.
146. The parties have referred to a number of previous decisions in their submissions, and I have reviewed them all.

#### BCFSA Submissions

147. BCFSA has referred to the following cases:

- *In the Matter of the Mortgage Brokers Act, RSBC 1996, c. 313 and Danh Van Nguyen and Express Mortgages Ltd.* December 13, 2004 (“*Nguyen*”): The respondent received the maximum \$50,000 administrative penalty, combined with a 10-year exclusion order. The respondent was found to have knowingly submitted false documents to lenders in 19 mortgage transactions, to have failed to provide conflict of interest disclosure statements, to have knowingly arranged mortgages through companies which were carrying on mortgage broker business without being registered to do so under the MBA, and to have employed sub-mortgage brokers who were not registered under the MBA. Further of note is that the respondent was found by the Registrar to have shown complete contempt for the regulatory framework in place to protect the public.
- *Kia*: The respondent submitted false or misleading statements in nine mortgage applications involving five sets of borrowers, failed to verify client income information in multiple transactions, and represented that various properties would be owner occupied when he knew they would in fact become rental properties. The respondent received a two-year suspension, along with requirements that he complete an educational course, that he consent and cooperate with any audit and bear the costs of such an audit, that he not be eligible to act as a designated individual for a period of seven years, and an order that he pay investigation costs.
- *In the Matter of the Mortgage Brokers Act and W.I. Mortgage Pros Ltd dba Dominion Lending Centres Mortgage Pros and Margaret Schulz (“Schulz”)*: The respondent consented to pay an administrative penalty of \$37,500 and not to be eligible for re-application for five years. The respondent admitted that she had failed to provide proper disclosure and information to an unsophisticated client, that she had submitted several mortgage applications without disclosing to the lenders that the client was seeking concurrent financing on other properties, that she submitted mortgages based on what she knew to be inaccurate residency information, and submitted mortgage applications where the clients income varied on different applications to different lenders.
- *In the Matter of Kambiz Ali Mahinsa (“Mahinsa”)*, Registrar of Mortgage Brokers, December 22, 2015. In that case, Mr. Mahinsa admitted that he had conducted mortgage business in a matter that was prejudicial to the public interest when he, in six mortgage applications:
  - (a) failed to investigate whether borrowers owned properties in addition to those disclosed in a mortgage application when he knew or ought to have known of such ownership;
  - (b) failed to advise lenders that borrowers were concurrently seeking financing for the purchase of other properties;
  - (c) prepared mortgage applications on the basis that the properties would be owner occupied when he knew or ought to have known that was not the case; and
  - (d) completed and submitted mortgage applications concurrently to different lenders where the borrowers’ income and employment history varied significantly.

Mr. Mahinsa was cooperative with the investigation and consented to pay an administrative penalty in the amount of \$13,000, and to be ineligible to be a designated individual at a mortgage brokerage for a period of two years from the date of the consent order.

- *In the Matter of the Mortgage Brokers Act and Anil Kumar Singh (“Singh”)*, September 28, 2018: the respondent agreed to the cancellation of his registration, with a period of 10 years before he could re-apply for registration. In that consent order, the respondent admitted to having submitted misleading information, including altered CRA documents, in at least 17 mortgage applications.

- *In the Matter of Mortgage Brokers Act, RSBC 1996, c. 313 and Jordan Lee Ly (“Ly”)* June 14, 2022: The respondent agreed to a lifetime ban and to pay an administrative penalty in the amount of \$10,000. The respondent admitted to having submitted seven mortgage applications that he knew or ought to have known had documents and information that were not genuine, and to having failed to take sufficient or any steps to verify a borrower’s personal information, employment information, and supporting documents he submitted to lenders. The respondent also admitted to having permitted an unlicensed third party to direct the course of mortgage applications.
148. BCFSA takes the position that the above noted cases demonstrate that a period of suspension, together with an administrative penalty, is an appropriate sanction having regard to the nature of Ms. Labonte’s conduct, which it notes involved the use of fraudulent documents and false or misleading statements for the purpose of having lenders approve mortgages they would not otherwise approve, and/or to obtain a better financing rate.
149. BCFSA further submits that the amounts of administrative penalties payable under the MBA will be increasing in the near future with new legislation having already received royal assent which includes penalties up to \$250,000 for an individual.
150. In BCFSA’s submission, general deterrence is of particular importance in this case, and that public confidence in the process and the profession can only be ensured by the imposition of a significant administrative penalty as well as a significant period of ineligibility.

#### Labonte Submissions

151. Ms. Labonte indicated that she had reviewed the cases identified by BCFSA, and considered that they were distinguishable.
152. Ms. Labonte noted in particular that in *Kia* the respondent was an experienced broker of more than 18 years, and that he had been uncooperative with the investigation.
153. Ms. Labonte provided three previous cases:
- *In the Matter of Adil Jafferli Virani*, April 21, 2020: The respondent consented to pay an administrative penalty in the amount of \$30,000, and a suspension of his registration for a period of two years, following which there would be a variety of restrictions on his registration including that he be under direct supervision and that a supervisor sign-off on all mortgage transactions he was involved with either directly or indirectly. The respondent had admitted to having permitted a third party to direct the course of mortgage applications in respect of 16 files, and to having accepted personal information regarding borrowers from a third party without having taken sufficient steps to verify the accuracy and authenticity of those documents. In five of the applications, the documents and information the respondent submitted to lenders were false and not genuine, although the respondent stated that he was unaware of that fact.
  - *In the Matter of Tanya Ann Smith*, February 14, 2021: The respondent consented to pay an administrative penalty in the amount of \$4,000, and a supervision period of 12 months upon the renewal of her registration. The respondent admitted to having facilitated unregistered mortgage broker activities by allowing an unregistered individual to direct the course of mortgage applications, and permitting the unregistered individual to arrange and obtain property appraisal reports and perform credit checks in support of mortgage applications, and to having provided to lenders borrowers’ personal information that had been provided to her by the unregistered individual. Of note, the respondent had, by the time the consent order was issued, been excluded from the industry for a period of approximately 18 months.
  - *In the Matter of Dean Frank James Walford and In the Matter of Loan Depot Canada*: The respondent was ordered to pay the maximum administrative penalty of \$50,000. The respondent was found to have carried on business as a mortgage broker or submortgage broker without being registered to do so as required. The panel noted that the respondent



had not taken any responsibility for his conduct, and had operated with a complete disregard for the regulatory scheme for a significant number of years.

154. Ms. Labonte submitted that, having reviewed all of the cases, she did not consider that a five-year suspension would be helpful to the protection of the public, or provide specific deterrence to her. She indicated that she had never intended to harm the public, and proposed that she receive a 24-month supervision order, along with an order that her files be subject to an audit at any time, at her expense. She submitted that the amount of the penalty sought by BCFSA felt, to her, unjust.

#### Decision on Sanction

155. Penalties in the regulatory context must not be imposed purely for the purpose of being retributive or denunciatory. Rather, penalties may be imposed with the intention to encourage compliance with regulations in the future, with a view to specific or general deterrence, and with the intention of protecting the public: See *Thow v. BC (Securities Commission)*, 2009 BCCA 46, at para. 38.
156. As the court in *Thow* noted, however, the fact that a penalty imposes a burden, even a very heavy burden, on an offender, does not mean that penalty is necessarily punitive in nature, as long as the penalty is designed to encourage compliance with regulations in the future.
157. I am of the view that, having regard to the number of transactions at issue in this case, as well as the severe nature of the misconduct engaged in, a significant sanction is warranted.
158. Ms. Labonte failed to exercise due diligence to prevent the use of fraudulent documents in the [Borrower 1] Applications. She further knowingly submitted mortgage applications that contained false or misleading information regarding owner occupancy, rental income, and she specifically sent applications to different lenders containing different information because she knew she was providing that contrary or misleading information. Ms. Labonte further directed [Borrower 3] as to what false and/or misleading information he needed his employer to provide to the prospective lender in terms of his employment. Finally, Mr. Labonte admitted to having failed to inform a prospective lender that [Borrower 3] was seeking concurrent financing.
159. In sum, I consider there to have been six separate applications in which Ms. Labonte has admitted to and has been shown to have committed mortgage business in a manner prejudicial to the public interest, and in a manner that was, in at least five of those transactions, knowingly and deliberately false and/or misleading.
160. I consider that the misconduct Ms. Labonte engaged in relates to the most fundamental and important aspects of being a mortgage broker. In my view, a mortgage broker who engages in the type of misconduct that Ms. Labonte did, creates a danger of being able to conceal incorrect or fraudulent mortgage applications, due to the reliance that lenders place on mortgage brokers, as the intermediary, to have ensured that the information they are submitting in an application is accurate, as opposed to false and/or misleading. The danger that such activity creates to the public is, in my view, plain.
161. Ms. Labonte also failed to keep her records as required by the MBA, which led to BCFSA not being able to obtain some records it sought in association with its investigation.
162. While I consider all of the above to demonstrate misconduct that was severe in nature, I acknowledge that Ms. Labonte did not in fact create any of the fraudulent documents in the [Borrower 1] Applications.
163. I further do not consider that Ms. Labonte has been shown to have a complete disregard for the MBA's regulatory framework, as was the case in *Walford and Nguyen*. I do not consider that a maximum penalty, nor a period of exclusion as long as that issued in *Nguyen*, or as long as that sought by BCFSA in its submissions in this case, would be appropriate.
164. I note in reaching this conclusion that although Ms. Labonte did engage in serious misconduct in six transactions over an approximately two year period, it appears that she has been able to continue to work in the industry without further issue since that time. In fact, according to the

CEO of her employer, she is well regarded by lenders and colleagues alike. I note, as well, that BCFSFA accepts that Ms. Labonte cooperated with the investigation into this matter.

165. While I acknowledge the mitigating factors present in this case, I do not consider that the imposition of only a brief period of supervision, as suggested by Ms. Labonte, would be sufficient to provide the specific and general deterrence that is required to ensure that the public is protected from the kind of severe misconduct that Ms. Labonte has admitted to in this case. Were Ms. Labonte not issued a significant sanction for her severe misconduct, I do not consider the protection of the public would be ensured, in that I do not consider there would be sufficient deterrence present to encourage compliance in the future. In my view, the circumstances of Ms. Labonte's misconduct are more significant than those in *Smith*, in that Ms. Labonte has admitted to knowingly providing false and/or misleading information in five applications, whereas although the respondent in *Smith* permitted an unregistered individual to direct the course of mortgage applications, there was no indication in that consent order that Ms. Smith had knowingly provided lenders with false and/or misleading information.
166. I consider that Ms. Labonte's case bears a closer degree of similarity to that of the respondent in *Virani*. Mr. Virani not only permitted an unregistered third party to direct mortgage applications, but he also submitted information that was not genuine in five applications. Of note, Mr. Virani did not admit to having known that he was providing information that was false and/or misleading as Ms. Labonte has.
167. Having reviewed all of the cases referenced by the parties, and noting that caution must be taken when comparing an agreed upon penalty from a consent order to a penalty imposed by a discipline hearing, given that there may be a myriad of reasons for a respondent to agree to a consent order which are not apparent from a review of that consent order, I consider it to be telling that the circumstances in *Schulz* do bear some similarities to the case at hand.
168. In *Schulz*, as in the instant case, the respondent submitted mortgage applications on the basis that the properties would be owner occupied, when the respondent knew or ought to have known that they would not. The respondent also failed to disclose that their client was seeking concurrent financing to purchase other properties, and submitted concurrent applications where the clients' income varied dependent on the lender.
169. This is a serious case. As in *Schulz*, I am of the view that both a significant period of ineligibility and a significant administrative penalty is warranted.
170. Taking into account the nature of the misconduct, the mitigating factors and the need for both specific and general deterrence, I am of the view that an administrative penalty of \$30,000, and a 24-month period of ineligibility is warranted. I note, in setting out the period of ineligibility, that this is not a case in which Ms. Labonte has been out of the mortgage industry in advance of the discipline decision being issued.

## Costs

171. Section 6(9) of the MBA provides that if an inquiry discloses a contravention of the MBA or the regulations, or orders or directions of the Registrar, the Registrar may order the costs of the inquiry to be paid by the person.
172. The Registrar does not have its own tariff of costs.
173. I consider that, in the circumstances, it is appropriate to assess legal costs using Rule 14-1 of the BC Supreme Court Civil Rules. Importing the BC Supreme Court Rules method of assessing costs into the administrative tribunal context has been endorsed by the BC Court of Appeal in *Shpak v. Institute of Chartered Accountants of British Columbia*, 2003 BCCA 149, where the court held, at paragraph 56, that:

...where the provisions for costs in the constituent statute, or Rules properly passed pursuant to the statute, do not indicate otherwise, the provisions of Rule

57 [now Rule 14-1] will govern the tribunal's award of costs. In those cases, Rule 57 will define the nature of the costs available, including special costs.<sup>3</sup>

174. Previous decisions of the Registrar have also considered orders for costs. In *Allan (Re)*, Decision on Penalty and Costs, August 19, 2020 (BC Financial Services Authority), the designate of the Registrar noted that:

Costs are typically awarded to the litigant who has been substantially successful, unless there is some reason why that party ought to be deprived of costs (*Fotheringham v. Fotheringham*, 2001 BCSC 1321). While a costs award is discretionary, the burden of displacing the usual rule that costs follow the event falls on the person who seeks to displace that rule (*Giles v. Westminster Savings Credit Union*, 2010 BCCA 282).

In addition to indemnification of the successful litigant, the courts have identified a number of objectives of a costs award including: deterring frivolous actions or defences; encouraging conduct that reduces the duration and expense of litigation and discouraging conduct that has the opposite effect; encouraging litigants to settle whenever possible; and to have a winnowing function in the litigation by requiring litigants to carefully assess the strength or weakness of their respective case at the start of and throughout the litigation (*Giles*, supra).

175. BCFSA has submitted a Bill of Costs in the amount of \$13,736.49 in respect of inquiry expenses into Ms. Labonte. Those expenses include investigative costs (billed at \$100 per hour); and various disbursements including the issuing of summonses, transcription of interviews, and the administrative costs of holding the hearing. BCFSA does not claim legal costs.

176. I accept that BCFSA has achieved substantial success in this matter. Ms. Labonte did not make any submissions as to why BCFSA should be deprived of their costs in the circumstances.

177. I would therefore order that Ms. Labonte should pay \$13,736.49 for investigative costs.

### **Conclusion and Orders**

178. Having found that Ms. Labonte conducted mortgage business in British Columbia in a manner prejudicial to the public interest contrary to section 8(1)(i) of the MBA, as described at item 1 of the Notice of Hearing, and that Ms. Labonte failed to keep books and records necessary for the proper recording of business transactions and financial affairs, contrary to section 6(a) of the Regulations, I make the following orders:

- Pursuant to section 8(1)(a) of the *Mortgage Brokers Act*, I order that Jessica Paula Ashley Labonte's (also know as Jessica Paula Ashley Webber) registration is suspended, effective 30 days from the date of this order, and that Jessica Paula Ashley Labonte will not be eligible to apply for registration as a submortgage broker under the *Mortgage Brokers Act* for a period of 24 months from the effective date of her suspension;
- Pursuant to section 8(1.1) of the *Mortgage Brokers Act*, Jessica Paula Ashely Labonte (also know as Jessica Paula Ashley Webber) is ordered to pay to BCFSA an administrative penalty of \$30,000, within 60 days of the date of this order;
- Pursuant to section 6(9) of the *Mortgage Brokers Act*, Jessica Paula Ashley Labonte (also known as Jessica Paula Ashley Webber) is ordered to pay to BCFSA \$13,736.49 for investigative costs of this proceeding, within 60 days of the date of this order.

179. Pursuant to section 9 of the *Mortgage Brokers Act*, Jessica Paula Ashley Labonte (also known as Jessica Paula Ashley Webber) may appeal the above orders to the Financial Services

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<sup>3</sup> Rule 57 is now Rule 14-1.

Tribunal within 30 days from the date of the decision: *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at Kelowna, British Columbia, this 15 day of December, 2023.

“Original signed by Andrew Pendray”

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Andrew Pendray  
Chief Hearing Officer