Protecting and Modernizing Ontario’s Mortgage Broker Industry

Report to The Minister of Finance on the Legislative Review of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*

September 2019

September 30, 2019

The Honourable Rod Phillips
Minister of Finance
7 Queen's Park Crescent, 7th floor
Toronto, Ontario
M7A 1Y7

Dear Minister Phillips:

Please find attached our report on the 2018-2019 legislative review of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (MBLAA).

We are pleased to provide to you this report in accordance with the requirements set out in section 57 of the MBLAA. In fulfilling our mandate, we sought the views of the public and the mortgage broker sector on the MBLAA and its regulations through an open consultation process via a posting on Ontario's Regulatory Registry. We met with stakeholders via a roundtable session and through one-on-one meetings. The recommendations included in this report were substantially informed by the detailed written feedback we received from a variety of different financial services sector stakeholders, as well as the many direct conversations we had with interested parties, who shared their input on how we can streamline the legislation to reduce regulatory burden on mortgage brokerages so that they can better serve the needs of their clients.

We are grateful for the detailed input we received from stakeholders, as well as the support provided by Ministry of Finance staff. This legislative review has provided a unique opportunity to hear direct feedback from the affected sectors and, more broadly, the people of Ontario.

Sincerely,

Original signed by

Doug Downey
Lead -- MBLAA Legislative Review
Attorney General of Ontario
MPP, Barrie-Springwater-Oro-Medonte

Original signed by

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Strategic Advisor -- MBLAA Legislative Review
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MPP, Willowdale

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Introduction

The MBLAA requires that, every five years, the Minister of Finance appoint one or more persons to review the operation of the Act and the regulations and to make recommendations to the Minister. The legislation requires that the appointee(s) solicit the views of the public and that the recommendations be made available to the public.

On October 22, 2018, Doug Downey was appointed by the former Minister of Finance, the Honourable Vic Fedeli, to conduct a legislative review of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (MBLAA). Subsequent to Doug Downey's appointment as Attorney General in June 2019, Stan Cho became the Parliamentary Assistant to the Minister of Finance and was appointed as a strategic advisor to Minister Downey to support the legislative review.

The review was first launched in November 2018 with a posting on Ontario's Regulatory Registry inviting written submissions from the mortgage broker sector and the public. The Regulatory Registry posting highlighted the government's focus for this review — finding efficiencies and reducing unnecessary regulatory burden so that mortgage brokers can better focus on helping their clients.

A stakeholder roundtable was held on March 6, 2019. All stakeholders that provided written submissions were invited to attend. Following this roundtable, one-on-one meetings were held with stakeholders, as requested. In total, the Ministry of Finance received written submissions from 35 different stakeholders representing a variety of financial services sectors.

This report provides an overview of the issues that were brought to our attention during the consultation and in one-on-one meetings and sets out our observations and recommendations. We are hopeful that the implementation of these recommendations will result in: reduced red tape and burden that will create greater accessibility to the housing market for current and aspiring homeowners, and a streamlined framework for brokers and lenders; as well as increased consumer protection and anti-money laundering oversight.

The Mortgage Marketplace

The Canadian mortgage market currently represents approximately $1.55 trillion of residential mortgage credit outstanding provided by banks, credit unions and other financial institutions and lenders. Mortgage brokers play a critical role in helping Ontarians navigate a complex process – one, that for many, represents the largest financial decision of their lives.

According to Mortgage Professionals Canada, about 28% of Canadians use a mortgage broker to arrange their mortgage[1]. As of December 31, 2018, there were 1,221 mortgage brokerages, 2,765 mortgage brokers, 11,745 mortgage agents, and 210 mortgage administrators licensed in Ontario under the MBLAA.[2]

This review has been undertaken against the backdrop of significant changes in Canada's housing markets and the policies that affect them. Namely, rising real estate prices across Canada, notably in Toronto and Vancouver, combined with a prolonged low-interest rate environment, and record levels of household debt. The federal government's response to these issues was to restrict mortgage lending standards for federally-regulated financial institutions.

However, these changes have created significant challenges for many Ontario consumers seeking to qualify for a mortgage. In particular, the federal requirement for banks to test a borrower's ability to repay a mortgage if interest rates rise significantly, has made it difficult for many prospective home buyers to qualify. The result is that fewer consumers – in particular, first-time home buyers, such as young families and newer Canadians – are able to access mortgages from traditional banks. In fact, TD Bank estimates that these changes have reduced the average purchasing power of Canadian households by approximately 20%.[3]

Additionally, more consumers are now forced to seek mortgage loans from private lenders, often at much higher interest rates. Economists estimate that private lenders have increased their market share in housing markets like Toronto by 50% over the past year and now account for almost a tenth of Canada's mortgage market overall.[4] Ultimately, as Mortgage Professionals Canada observes, these policies have made it more difficult for Canadians to become homeowners and, as a result, may "significantly impair their long-term financial well-being."[5]

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[1] Mortgage Professionals Canada, "Annual State of the Residential Mortgage Market in Canada," January 2019. pg. 11.
[2] Financial Services Commission of Ontario (FSCO)
[3] R. Sondhi, K. Bushmeneva, D. Burleton, "Assess the Stress: Examining the Impact of the B-20 Rules on Housing 16 Months Later," *TD Economics.* pg. 2
[4] Matt Scuffham. "OSFI under pressure by banks, industry lobbyists to ease mortgage stress test: sources." *Financial Post* , February 4, 2019.
[5] Mortgage Professionals Canada. pg. 6.

In addition, there has been rapid growth in syndicated mortgage investments (SMIs) in Ontario. These types of investments were previously the domain of sophisticated investors, but in recent years, less experienced investors have been increasingly drawn to these riskier investments. Unfortunately, some of these SMIs failed, resulting in widespread losses to investors. Many of these failures resulted in the Financial Services Commission of Ontario (FSCO), the former regulator for the mortgage broker sector in Ontario, taking enforcement actions against a variety of mortgage broker sector licensees. To ensure that the appropriate regulation and protection of consumers exists going forward, the government will be transferring responsibility for more complex SMIs to the Ontario Securities Commission (OSC).

Finally, this review takes place alongside the creation of a new regulator, the Financial Services Regulatory Authority of Ontario (FSRA). On June 8, 2019, FSRA replaced FSCO as the regulator for mortgage brokers, insurance, credit unions, loan and trust corporations, and pensions. The creation of FSRA represents a significant transformation for the regulation of these sectors and offers abundant opportunities to reduce regulatory burden and "right- size" regulation for the sectors it oversees. FSRA will play a key role in implementing the recommendations contained in this report.

Feedback Received

We were pleased to receive written submissions from 35 different organizations in the mortgage broker sector and related sectors, including legal services, real estate, and banking. The submissions contained detailed and thoughtful suggestions on how the decade old MBLAA can be modernized and streamlined to reduce red tape and meet the requirements of the current marketplace. Some of the helpful feedback we received included the following suggestions:

> *"For any new added licence classes, we recommend that specialized education requirements be part of the licensing qualification." -Mortgage Professionals Canada and Canadian Mortgage Brokers Association – Ontario*

> *"We recommend that the Government of Ontario initiate a study of private lending activity…This exercise could also involve requiring or incenting brokers and lenders to disclose more information to their regulator, which would provide the regulator with a better understanding of private lending activity and a more complete picture of the housing market." -Mortgage and Title Insurance Industry Association of Canada*

> *"It is our view that sophisticated parties – both borrowers and lenders – can evaluate commercial mortgage transactions and protect themselves with rigorous analysis, due diligence and contractual arrangements. We believe that… commercial mortgage transactions (dealing, lending, trading and administration) made between (or performed by) sophisticated parties [should] be permissible without mortgage broker registration required by the lender." -Sun Life Financial*

Significant feedback was also received on the topic of syndicated mortgage investments. We encouraged those participants to provide feedback through the separate consultation that was undertaken by the Canadian Securities Administrators (CSA) on rules that will govern complex syndicated mortgages once regulatory responsibility for these mortgages is transferred to the OSC. Many concerns from stakeholders were raised regarding the SMI disclosure forms currently required by FSRA (previously required by FSCO), <u>which will no longer be used under the *Securities Act* once the transfer has taken effect.</u> The CSA comment period closed May 14, 2019, and we expect the helpful stakeholder comments provided to us will be equally useful within that forum.

The recommendations in this report will serve to: increase access to real estate through mortgage brokers for homeowners and investors; reduce unnecessary red tape and regulatory burden; and strengthen consumer protection and anti-money laundering oversight.

Key Issues and Recommendations

Stakeholder feedback received during the review led to the development of the following seven key recommendations aimed at modernizing and streamlining the MBLAA to increase accessibility to the mortgage market, reduce regulatory burden, and improve consumer and investor protection.

1. Reducing Burden and Increasing Access for Homeowners, Lenders, and Investors

Recommendation #1: Reducing Red Tape for Commercial Mortgage Transactions

Access to the commercial mortgage market is critical for Ontario's economy. Many institutional and sophisticated investors need to be able to more efficiently allocate capital in order to provide access to credit for Ontario businesses. The MBLAA generally applies the same regulatory framework to all types of mortgages, without distinction between residential and commercial mortgages.

Stakeholders indicated this approach has resulted in unnecessary regulatory burden being placed on some types of mortgages where high levels of consumer and investor protection may not be necessary.

As such, it is recommended that the Ministry of Finance share this stakeholder feedback with FSRA, and work with them to develop and propose amendments to the MBLAA that would reduce regulatory burden on commercial mortgage transactions between sophisticated entities such as large companies and financial institutions. Many requirements, such as requirements to receive or sign disclosure documents, pose an unnecessary burden on these businesses. It therefore makes sense to remove the red tape and exempt sophisticated entities from these requirements when they are dealing in commercial transactions.

Recommendation #2: Reducing Regulatory Burden by Establishing New Classes of Licensing

A considerable amount of feedback was received calling for the development of a licensing regime that better responds to the different functions that mortgage brokers and agents perform in the current marketplace.

It was highlighted that the current agent and broker licences (and the licensing education required to obtain them) do not accurately reflect the different duties and advice provided by agents and brokers who transact in different types of mortgages. For example, the risks and features of private mortgages are different from those of traditional mortgages provided by regulated financial institutions, and the knowledge required to properly advise clients is also unique.

It is recommended that the Ministry of Finance work with FSRA, in consultation with the industry, to propose options for licensing schemes that better reflects the unique practices required by different segments of the mortgage market and are consistent with other regulatory licensing regimes. The goal is to reduce regulatory burden on those dealing and trading in traditional types of mortgages. An additional licence could be required to engage in activities that require different skills from those obtained under the current licensing requirements. The Ministry and FSRA should work with the industry to identify which activities warrant an additional licence to ensure that mortgage brokers and agents have the appropriate competencies, and are properly serving their clients in these types of transactions.

Recommendation #3:
Reducing Regulatory Burden in Guidance, Bulletins and Forms

Our government has committed to a reducing 25% of regulatory requirements by 2020. The creation of FSRA provides an opportunity to make Ontario's mortgage broker industry part of this goal. With FSRA, our government will engage with stakeholders to review and revise all guidance, bulletins, and forms that affect the mortgage broker sector, to ensure they are streamlined and written in plain language, with a view to reducing red tape, regulatory burden and duplication.

Reducing red tape in the mortgage broker sector will help boost productivity and competitiveness, and will allow mortgage brokerages to serve their clients more effectively. Therefore, it is recommended that FSRA consult with the mortgage broker sector with regard to guidance, forms, rules and bulletins that affect the sector, as well as to gather suggestions from the industry on how required disclosures to consumers can be simplified and clarified. Significant effort should be made to ensure that documents are written in plain language and simplified as much as possible in order to enable both the industry and consumers to understand them and to support better outcomes.

Recommendation #4:
Maintaining Current Licensing Exemptions

Under the MBLAA, a person who provides a simple referral for a borrower to a lender (or for a lender to a borrower) is exempt from licensing if certain conditions are met. We received stakeholder feedback that supported maintaining this exemption, and we recommend that the existing licensing exemption for simple referrals be maintained.

Stakeholders had various views regarding the licensing exemption that is provided to lawyers under the MBLAA. Those outside the legal profession were concerned that the licensing exemption for lawyers could potentially be abused, especially with regard to syndicated mortgage transactions. However, those in the legal profession made it clear that the regulatory oversight and enforcement that is currently provided by the Law Society of Ontario (LSO) is more than sufficient to ensure lawyers are held to a high standard in all of their dealings with the public, including mortgage transactions. We received no feedback or evidence sufficient to support a new requirement for lawyers to be licensed under the MBLAA. Such a change would result in a duplication of regulatory regimes for the legal profession and would be contrary to the stated goals for this review.

However, while we recommend that the licensing exemption provided to lawyers under the MBLAA remain unchanged, we suggest that FSRA and the LSO cooperate to ensure that proper protocols are developed to facilitate timely information sharing in circumstances where the enforcement actions of either regulator have bearing on the licensees of the other.

Finally, we received feedback, both positive and negative, regarding the licensing exemption for employees of financial institutions. Financial institutions that are exempt from licensing under the MBLAA are regulated under other statutes, both federal and provincial, with respect to their mortgage activity, as well as their overall operations as they relate to market conduct. Removing this exemption would create regulatory overlap and duplication that could increase costs and reduce choices for consumers, which would not be consistent with the objectives of this legislative review. However, the Ministry of Finance should engage in discussions with the Financial Consumer Agency of Canada (FCAC) to ensure that consumers are receiving consistent treatment whether they receive their mortgage from a provincially-regulated mortgage broker/agent or from a federally-regulated bank employee.

2. Strengthening Consumer Protection and Anti-Money Laundering Oversight

Recommendation #5:
Raising and Streamlining Educational and Professional Standards for Agents and Brokers

Many stakeholders advocated for improvements to the mandatory education requirements for mortgage agents and brokers, including broadening and deepening the subject areas covered by these courses, as well as creating meaningful, “right-sized” education that focuses on teaching the skills that will properly prepare agents and brokers for their career within the mortgage broker sector. Similarly, stakeholders suggested specialized licensing education for brokers and agents who deal and trade in areas of practice that require added knowledge and additional skills.

These innovative suggestions for improvements to industry education represent the industry’s continued emphasis on raising standards for the mortgage brokering profession in Ontario.

The Mortgage Broker Regulators' Council of Canada (MBRCC) completed a multi-year project over the 2012-2014 period to harmonize competencies and learning outcomes for mortgage brokers and agents across Canada. To further promote consistency in the quality of licensing courses, the MBRCC also developed and published standards for the design, delivery and accreditation of mortgage agent and broker licensing education in 2018. This work by the MBRCC provides a useful foundation for the improvement of Ontario's mortgage agent and broker licensing education, and should be taken into account when changes to that education are contemplated.

It is recommended that FSRA work closely with the industry and mortgage licensing education providers to raise education requirements and improve their delivery systems. This would include expanding the content of the courses and consideration for additional licensing education courses appropriate to the new licensing regime, once it is developed.

Recommendation #6:
Incentivising Registration for Private Lenders

With the recent changes to underwriting standards for federally regulated financial institutions, Ontario homebuyers are now more frequently turning to private/unregulated mortgage lenders to enable them to purchase a home. Because these lenders are unregulated, governments have no clear line of sight on their activities and may not know the extent of their market participation. This has resulted in a lack of understanding of the level of financial risk in the private lending sector.

Recent reports in British Columbia[6] have noted that private lending in Canada's real estate market is particularly vulnerable to money laundering, and have recommended the British Columbia government introduce legislation to regulate all mortgage lending, including private lenders.

FSRA and the Government should have additional insight into this sector to support the broader fight against fraud and to remain consistent with other initiatives, such as the recent establishment of the Serious Fraud Office.

In Ontario, the MBLAA allows private lenders to perform mortgage lending, but only if they work through a licensed brokerage. This requirement applies even for lenders that exclusively do business with large corporations or high net worth individuals. The MBLAA also requires that mortgage brokerages, brokers and agents employ a high level of due diligence toward preventing fraud and other illegal conduct in the course of a mortgage transaction. These requirements represent preventative measures against money laundering via real estate transactions.

[6] Expert Panel on Money Laundering in BC Real Estate, *Combatting Money Laundering in BC Real Estate*; and Peter German and Associates Inc., *Dirty Money – Part 2*. Both reports were released March 31, 2019.

Although private lenders represent a relatively small portion of mortgages currently outstanding in the overall $132 billion mortgage brokerage market in Ontario, the market share of this segment has grown in recent years.[7] According to 2017 FSCO data, private lending accounted for approximately 8 per cent ($10.6 billion) of the total dollar value of all mortgage transactions reported by mortgage brokerages.[8] This figure grew by almost 77 per cent from the 2014 figure of $6 billion. During the same period, the number of brokerages that reported using a private lender increased by 11 per cent. A recent survey conduct by CMHC shows that private lenders' (such as mortgage investment companies) market share has recently grown and now represents 7 per cent of uninsured non-bank mortgage originations.[9]

During the review, many stakeholders noted that private/unregulated lending should not be restricted, but could be better understood or quantified. As such, it is our recommendation that the Ministry of Finance work with FSRA to create a registration regime for private/unregulated lenders that meet certain monetary or activity thresholds.

Registration could also be undertaken voluntarily by an entity if it does not meet these thresholds.

If registered with FSRA and lending to sophisticated entities, these private lenders would be able to carry out mortgage lending activities without the need for licensing under the MBLAA, and without the requirement to work through a licensed brokerage. This would significantly reduce regulatory burden.

Furthermore, it is recommended that FSRA cooperate with the LSO to share data around the size and scope of private lending facilitated by lawyers exempted from the MBLAA.

[7] Financial Services Commission of Ontario (FSCO), Mortgage Broker Sector Annual Information Return, 2017.
[8] FSCO. 2017.
[9] Canada Mortgage and Housing Corporation, "Residential Mortgage Industry Report", Q3, 2019. p.12.

Under this regime, registered private lenders should be required to report periodically to FSRA on their lending activities. This would make Ontario the only jurisdiction in Canada to directly collect data from unregulated mortgage lenders, facilitating a better understanding of these lenders' participation in Ontario's housing markets and their broader role in the provincial economy.

Recommendation #7:
Strengthening the Administrative Monetary Penalty Framework

An administrative monetary penalty (AMP) is a civil penalty imposed by a regulator for a contravention of an Act or its regulations. We received feedback from stakeholders that the AMPs that FSRA is permitted to levy under the MBLAA are not high enough for certain offences in order to properly ensure compliance. In fact, in some instances, it was suggested that it may be more cost-effective for a company to pay the AMP rather than take the necessary steps to achieve compliance. An effective AMP regime is important to promote compliance, to keep regulatory costs low, and to maintain consumer confidence in the mortgage broker sector.

As such, the Ministry of Finance should work with FSRA to review the existing AMP maximums set out by the MBLAA to ensure that they are tailored to specific risks and activities in the current marketplace and that they provide appropriate levels of deterrence in order to promote compliance. The MBLAA's AMP regime needs to be nimble, and must provide FSRA with the ability to penalize offending entities in a meaningful manner. Following review by the Ministry of Finance, with advice from FSRA, the industry should be consulted on any resulting AMP proposal prior to the Ministry recommending legislative changes to the government.

Appendix 1: Stakeholder Submissions Received

8Twelve Mortgage Corporation
Aeon&T Group Incorporated
Appraisal Institute of Canada
AUM Law
Batcher, Wasserman
Canadian Life and Health Insurance Association
Canadian Mortgage Brokers Association Ontario
Capital Direct Lending Corporation
Central 1 Credit Union
CIR Mortgage Corporation
Cirrius Finance Corporation
CMLS Financial
Firm Capital Corporation
First Source Financial Management
Foremost Financial Corporation
G.M.S. Mortgage Investment Corporation
Gurpreet Chung
Law Society of Ontario
Marshall Zehr
Mortgage Alliance Company of Canada
Mortgage and Title Insurance Industry Association of Canada
Mortgage Centre
Mortgage Professionals Canada
Ontario Bar Association
Ontario Real Estate Association
PMC Funding
Rate Spy / Intelli Mortgage
Real Estate and Mortgage Institute of Canada
Real Mortgage Associates Incorporated
REALPAC
Serenity Mortgage
Sun Life Financial
Toronto Real Estate Board
The Trust Companies Association of Canada
Vector Financial

Appendix 2: Stakeholder Roundtable Attendees

8Twelve Mortgage Corporation
Aeon&T Group Incorporated
Appraisal Institute of Canada
Capital Direct Lending Corporation
Central 1 Credit Union
CIR Mortgage Corporation
CMLS Financial
Central 1 Credit Union
Firm Capital Corporation
First Source Financial Management
Foremost Financial Corporation
HollisWealth
Law Society of Ontario
Marshall Zehr
Mortgage Alliance Company of Canada
Mortgage Professionals Canada
Ontario Bar Association
PMC Funding
Real Estate and Mortgage Institute of Canada, Incorporated
Real Mortgage Associates Incorporated
REALPAC
Serenity Mortgage
Sun Life Financial
Toronto Real Estate Board
Vector Financial