

**PROCEEDINGS AT HEARING  
OF  
FEBRUARY 16, 2021**

**COMMISSIONER AUSTIN F. CULLEN**

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**February 16, 2021**

**(Via Videoconference)**

**(PROCEEDINGS COMMENCED AT 9:30 A.M.)**

THE REGISTRAR: Good morning. The hearing is now resumed. Mr. Commissioner.

THE COMMISSIONER: Thank you, Madam Registrar.

Yes, Ms. Patel.

MS. PATEL: Thank you, Mr. Commissioner. Today we're commencing four weeks of hearings on the real estate sector, starting today with a panel of BC regulators, but first before I introduce the witnesses as a matter of housekeeping we're entering a number of overview reports. Five overview reports on the real estate sector. Madam Registrar, do you have that list?

There's an overview report on literature and money laundering and real estate and response from real estate industry, one on the Lower Mainland housing prices, one on legislative and regulatory structure of real estate in British Columbia, and one on registrar of mortgage brokers and disciplinary decisions and orders, and the final one on the *Mortgage Brokers Act* consultation. And, Madam Registrar, is the next exhibit number 600?

1 THE REGISTRAR: 601.

2 MS. PATEL: 601. If they could be marked  
3 sequentially 601 through 606, please.

4 THE COMMISSIONER: Very well.

5 **EXHIBIT 601: Overview Report: Literature on**  
6 **Money Laundering and Real Estate & Response from**  
7 **Real Estate Industry**

8 **EXHIBIT 602: Overview Report: Lower Mainland**  
9 **Housing Prices**

10 **EXHIBIT 603: Overview Report: Legislative and**  
11 **Regulatory Structure of Real Estate in British**  
12 **Columbia**

13 **EXHIBIT 604: Registrar of Mortgage Brokers**  
14 **Discipline Orders Overview Report**

15 **EXHIBIT 605: Overview Report: Mortgage Brokers**  
16 **Act Consultation**

17 MS. PATEL: Thank you, Madam Registrar.

18 THE COMMISSIONER: Wouldn't that go to 605?

19 THE REGISTRAR: 605.

20 MS. PATEL: That's correct.

21 THE COMMISSIONER: All right. Thank you.

22 MS. PATEL: Just a note, Mr. Commissioner, that there  
23 are two more overview reports that are in the  
24 process of final review and we're looking to  
25 have them entered I think sometime next week.

1 THE COMMISSIONER: All right. Thank you.

2 MS. PATEL: Here today with us are three witnesses  
3 from the BC real estate regulatory environment.  
4 Chris Carter is the Deputy Registrar of Mortgage  
5 Brokers with the BC Financial Services  
6 Authority. Blair Morrison is the CEO of the BC  
7 Financial Services Authority and the Registrar  
8 of Mortgage Brokers and Micheal Noseworthy is  
9 the Superintendent of Real Estate, Office of the  
10 Superintendent of Real Estate. And I believe  
11 they have all chosen to affirm this morning.

12 THE COMMISSIONER: Thank you.

13 THE REGISTRAR: Witnesses, please unmute yourselves.  
14 Would each of you please state your full names  
15 and spell your first and last name for the  
16 record. Let's start with Mr. Carter.

17 THE WITNESS: (CC) Certainly, Chris Carter. That's  
18 C-h-r-i-s C-a-r-t-e-r.

19 THE REGISTRAR: Thank you. Mr. Morrison.

20 THE WITNESS: (BM) Blair Morrison. B-l-a-i-r  
21 M-o-r-r-i-s-o-n.

22 THE REGISTRAR: Thank you. And Mr. Noseworthy.

23 THE WITNESS: (MN) Micheal Noseworthy. M-i-c-h-e-a-l  
24 N-o-s-e-w-o-r-t-h-y.

25 THE REGISTRAR: Thank you.

1 CHRIS CARTER, a witness  
2 for the commission,  
3 affirmed.  
4 BLAIR MORRISON, a  
5 witness for the  
6 commission, affirmed.  
7 MICHEAL NOSEWORTHY, a  
8 witness for the  
9 commission, affirmed.

10 THE REGISTRAR: Thank you. Ms. Patel.

11 MS. PATEL: Thank you, Madam Registrar. I'm going to  
12 start by giving a brief introduction to each of  
13 the witnesses and then we'll move into a bit of  
14 an overview of the function of the BC Financial  
15 Services Authority and the Office of the  
16 Superintendent of Real Estate.

17 **EXAMINATION BY MS. PATEL:**

18 Q Mr. Morrison, I'll start with you. You are the  
19 CEO of the BC Financial Services Authority; is  
20 that right?

21 A (BM) That's correct.

22 Q Okay. And you've held that position since the  
23 inception of the agency in November of 2019; is  
24 that right? Or in fact I think you actually  
25 began in July of 2019.

1           A       I joined FICOM and BCFSA in July of 2019. I was  
2                    employee number one of BCFSA.

3           Q       Okay. And the BCFSA existed prior to  
4                    November 2019 as an entity, but it was on  
5                    November 1st of 2019 that it assumed the  
6                    responsibilities of FICOM; is that correct?

7           A       (BM) That's correct. FICOM was part of the  
8                    Ministry of Finance for approximately 30 years.  
9                    On November 1st, 2019, FICOM's accountabilities  
10                   were transferred, transitioned to the BCFSA.

11          Q       In your capacity as Chief Executive Officer of  
12                    the BCFSA you are the Superintendent of  
13                    Financial Institutions, the Superintendent of  
14                    Pensions, the Registrar of Mortgage Brokers and  
15                    the Chief Executive Officer of the Credit Union  
16                    Deposit Insurance Corporation. Have I left  
17                    anything out?

18          A       (BM) That is correct.

19          Q       Okay. You come to -- you came to FICOM and to  
20                    BCFSA with 20 years of experience in senior  
21                    executive positions in industry, most recently  
22                    with the Bank of Montreal where you held  
23                    positions with enterprise-wide accountability in  
24                    procurement as Chief Procurement Officer,  
25                    Compliance which included the Bank of Montreal's



1 anti-money laundering framework as I understand,  
2 and as Chief Compliance Officer you were also  
3 Deputy General Counsel and Corporate Secretary  
4 of BMO; is that correct?

5 A (BM) That's correct.

6 Q Prior to that you were with TMX Group, Nortel  
7 Networks Corporation and Torys LLP?

8 A That is correct.

9 Q And I understand that you hold a bachelor of  
10 commerce from Queens University and a bachelor  
11 of laws from the University of Western Ontario?

12 A (BM) That is correct.

13 Q Okay. Mr. Carter. Mr. Carter, you are the  
14 Deputy Registrar of Mortgage Brokers and in your  
15 role you are responsible for the market conduct  
16 of mortgage brokers, insurance companies, credit  
17 unions and trust companies doing business in  
18 British Columbia. Is that an accurate  
19 description of your responsibilities?

20 A (CC) That's correct.

21 Q You have been with first FICOM and then the  
22 BCFSA since 2012; is that right?

23 A (CC) Yes.

24 Q And you were a principal advisor to the  
25 independent advisory group 2016 review of

1                   conduct and practices in the real estate  
2                   industry; is that right?

3           A       (CC) Yes, that's correct. The review is  
4                   undertaken by the then superintendent of real  
5                   estate.

6           Q       And before coming to the BC Financial Services  
7                   Authority and its predecessor FICOM, you held a  
8                   high profile trade and investment development  
9                   initiatives with the BC Ministry of Jobs,  
10                  Tourism and Innovation; is that right?

11          A       (CC) Yes, that's correct. The ministry went  
12                  through multiple name changes but fundamentally  
13                  is the Ministry of Trade and Investment in  
14                  British Columbia.

15          Q       Okay. And before that you had a post for the  
16                  government of Australia?

17          A       (CC) That's correct.

18          Q       Okay. And you also hold a Bachelor of Laws and  
19                  a Bachelor of Commerce degree?

20          A       (CC) Yes, that's correct, from Murdoch  
21                  University in Western Australia.

22          Q       Thank you. Mr. Noseworthy, you are the  
23                  Superintendent of Real Estate for  
24                  British Columbia?

25          A       (MN) That's correct.

1 Q And how long have you held that post?

2 A (MN) Since late 2016.

3 Q And just briefly the office of the  
4 superintendent has the responsibility for making  
5 rules governing the conduct of real estate  
6 licensees investigating and disciplining  
7 unlicensed real estate activity, providing  
8 regulatory oversight of the operations and  
9 activities of the Real Estate Council of BC and  
10 ensure developers provide full information and  
11 deposit protection to consumers when marketing  
12 multi-unit residential developments. Is that an  
13 accurate summary of the responsibilities of your  
14 office?

15 A (MN) Yes, it is.

16 Q You have extensive experience as a regulator and  
17 public sector leader prior to coming to the  
18 Office of the Superintendent of Real Estate.  
19 And going forward if it's acceptable to you I'll  
20 just refer to it as OSRE and we'll be on the  
21 same page; okay?

22 A (MN) Yes, absolutely. Thank you.

23 Q Okay. And before you took on this role you most  
24 recently served as at Yukon Superintendent of  
25 Real Estate, Superintendent of Insurance,

1 Registrar of Lotteries and Registrar of Medical  
2 Practitioners?

3 A (MN) That's correct, yes.

4 Q And prior to that you served as the Yukon's  
5 Director of Residential Tenancies and Employment  
6 Standards?

7 A (MN) That's correct.

8 Q And you are also a lawyer by profession?

9 A (MN) Yes.

10 Q Thank you. My first set of questions are  
11 directed toward Mr. Morrison, but I would invite  
12 either of the other panel members to step in if  
13 they have further information that they think  
14 would helpfully supplement his answers.

15 Mr. Morrison, I'm going to start by asking you a  
16 few questions about the BCFSA. As a sort of  
17 general background we've covered it's the  
18 successor to another organization FICOM. It  
19 took over FICOM's responsibilities in  
20 November of 2019?

21 A (BM) That's correct.

22 Q Okay. And can you briefly -- today we're here  
23 to talk about BCFSA's jurisdiction over actors  
24 in the real estate industry, its current  
25 jurisdiction and also its anticipated

1 jurisdiction, but can you briefly address more  
2 broadly what BCFSA's areas of responsibility are  
3 by reference to the -- perhaps the easiest way  
4 is by reference to the provincial enactments  
5 that it has responsibility over.

6 A (BM) BCFSA broadly has accountabilities for  
7 regulating the financial services sector in  
8 British Columbia. And that includes financial  
9 institutions in that we include credit unions,  
10 trust companies, insurance companies that do  
11 business here. We also have oversight over  
12 pensions, mortgage brokers and as you mentioned  
13 earlier the deposit regime in the province which  
14 is governed by CUDIC. We administer CUDIC's  
15 operation. BCFSA is mentioned and is granted  
16 that power through a number of different  
17 statutes across the whole gambit. When BCFSA  
18 was created it was subject to its own statute in  
19 terms of creation. Pursuant to those statutes,  
20 accountability for regulation is invested partly  
21 in the superintendent. My role and also  
22 matters, some matters are left with the board of  
23 directors for consideration.

24 Q The BCFSA currently does not have responsibility  
25 for administering the *Real Estate Services Act*

1                   or the *Real Estate Development and Marketing*  
2                   *Act*; is that right?

3           A       (BM) That's correct.

4           Q       And those are under the authority of the Office  
5                   of the Superintendent of Real Estate?

6           A       (BM) That is correct.

7           Q       But it was announced -- soon after the creation  
8                   of BCFSA in November 2019 it was announced by  
9                   the BC government that the Office of the  
10                  Superintendent of Real Estate and the Real  
11                  Estate Council of BC would be amalgamated and  
12                  brought under the umbrella of the BCFSA; is that  
13                  right?

14          A       (BM) That's correct. The timeline is roughly in  
15                  the fall of 2018 the Minister of Finance  
16                  announced the transition from FICOM out of core  
17                  government into a separate Crown agency, and as  
18                  we've said before that occurred and was  
19                  completed on November 1st of 2019. 11 days  
20                  later the minister announced the intention to  
21                  combine OSRE and the Real Estate Council of  
22                  British Columbia, RECBC, with BCFSA as part of a  
23                  single regulator for the financial services  
24                  sector including real estate.

25          Q       And that announcement arose from recommendations



1                   continue to have -- see confidence in that  
2                   sector.

3           Q       Does bringing -- actually first of all maybe  
4                   I'll back up and I'll say with respect to the  
5                   real estate actors in the real estate industry  
6                   who will once this amalgamation takes place be  
7                   under the authority of the BCFSA, who are those  
8                   actors who are currently under the authority of  
9                   the BCFSA and who is going to be brought in once  
10                  the amalgamation happens?

11          A       (BM) So our engagement in the real estate space  
12                   currently is through the mortgage brokers space  
13                   and my colleague Chris Carter is here to speak  
14                   to that. So we have a view into the real estate  
15                   sector through the mortgage brokers. Obviously  
16                   credit unions in terms of their lending  
17                   practices, we have a view into the real estate  
18                   sector through that as well. When we complete  
19                   the amalgamation, when the amalgamation is  
20                   completed, RECBC I think generally you could  
21                   view them as regulating the approximately 26,000  
22                   real estate professional real estate agents that  
23                   are in the province. We also would combine that  
24                   with Micheal Noseworthy's team which deals with  
25                   the non-licensed aspect of it and also various



1 components of development and disclosure in  
2 terms of those context. So I think once you  
3 have that, other than some of the land titles  
4 aspects which remain separate, we'll pretty much  
5 have the oversight of the regulatory structure  
6 sector in British Columbia from a real estate  
7 perspective.

8 Q Okay. And is it fair to say that this bringing  
9 all of these real estate industry actors under  
10 one roof reflects a change in approach to the  
11 regulation of the real estate industry in  
12 British Columbia?

13 A (BM) Yeah. There's obviously a history here  
14 from back in 2016 when OSRE and RECBC were  
15 created in their current forms. Real estate was  
16 part of FICOM prior to that date, so it is in  
17 once sense bringing these entities together.  
18 There is a history of real estate regulation  
19 within FICOM/BCFSA, but I think your statement  
20 is accurate in that this is a new approach, a  
21 holistic integrated regulator that is looking at  
22 the sector and overseeing its major components.

23 Q And we'll -- I'm going to be asking  
24 Mr. Noseworthy if he can give us a very brief  
25 history, a recent history of the Office of the

1 Superintendent of Real Estate in a moment, but  
2 just following this line for a moment does the  
3 move to bring realtors under realtors, mortgage  
4 brokers unlicensed real estate actors under the  
5 roof of FICOM -- BCFSA, excuse me, does it  
6 reflect a move away from or rather more fairly a  
7 move away from solely regulating in from the  
8 perspective of consumer protection to something  
9 a little bit broader?

10 A (BM) In terms of the obligations or the approach  
11 of a regulator, I'll answer your question  
12 broadly and then we can drill down a little bit  
13 from. I view the role of the regulator as I  
14 said earlier is to help instill confidence in  
15 the sector, confidence that bad actors aren't  
16 being able to operate, confidence that  
17 professionals that are providing services to the  
18 public are properly licensed and registered,  
19 ensuring that from a competitive perspective  
20 that the industry is allowed to grow and  
21 innovate because the pressures that are on this  
22 financial service sector are many and they are  
23 being driven by outside competitors, technology  
24 and the like. What I would say as a regulator  
25 we would have that safety and soundness

1           prudential aspect, so when we looked at a credit  
2           union we're looking to make sure that from a  
3           prudential supervision perspective that they are  
4           safe and sound and operating properly. But the  
5           market conduct aspect of it, whether or not it's  
6           through mortgage brokers or the unlicensed  
7           activities or licensed activities will certainly  
8           be a key part. Protecting the public is a core  
9           part of what we do so we are -- we will be a  
10          little of a unique regulator in that we'll have  
11          prudential supervision but we'll also have a  
12          focus on the public, market conduct, and as I've  
13          said, unlike the current situation where you  
14          have unlicensed and licensed separated, you have  
15          mortgage brokers and real estate agents  
16          regulated by different regulators, this will be  
17          an integrated financial service sector regulator  
18          with a clear focus on the real estate sector.

19          Q     It was a recommendation of Dan Perrin's 2018  
20                 report that real estate regulation should  
21                 move beyond the regulation of individual  
22                 transactions from a consumer protection point of  
23                 view to broader market conduct of the type that  
24                 you're just recommending; is that right?

25          A     (BM) That's correct.

1           Q     Okay.  And this isn't in evidence yet, so I'm  
2                   going to ask, Madam Registrar, if you could pull  
3                   up the 2018 real estate regulatory review by  
4                   Mr. Perrin.  And all right.  So, Mr. Morrison,  
5                   you recognize as the report that we were just  
6                   referring to?

7           A     (BM) I do.

8           MS. PATEL:  Okay.  And Madam Registrar, if you could  
9                   please move to page 21 of this document.  
10                  Page 21 in the green numbers.  And just scroll  
11                  down, please.  You can stop.  Thank you.  
12                  Actually scroll down, I think I'm on the wrong  
13                  page.  All right.  I'm in the wrong place but  
14                  that's fine.  I think that we can go to page 35  
15                  and I'll find what I need.  And if you could  
16                  scroll down a bit more.  We can stop right  
17                  there.

18          Q     What I wanted just to point to to give a  
19                  reference to that recommendation from Mr. Perrin  
20                  was 4(b).  At 4 one of his recommendations was  
21                  that there be a policy review of real estate  
22                  regulatory requirements undertaken including and  
23                  (b):

24                         "A review of the best way to move beyond  
25                         the regulation of those currently required

1                   to be licensed to more fully regulate  
2                   market conduct in the public interest to  
3                   prevent market manipulation and abuse,  
4                   including but not limited to considering  
5                   whether each of the different groups  
6                   currently exempt from licensure should be  
7                   regulated and if so, how."

8                   And that's a reference to Mr. Perrin's  
9                   recommendation about regulation of market  
10                  conduct. And I'll -- Madam Registrar, you can  
11                  take that down, later if I can find the other  
12                  pinpoint that I was looking for, Mr. Morrison,  
13                  we'll go back there.

14                  I'm going to ask -- move to Mr. Noseworthy  
15                  in a moment and ask about the Office of the  
16                  Superintendent of Real Estate, but first I'd  
17                  like to bring up another document with respect  
18                  to the BCFSA, and that's FSA0005, Madam  
19                  Registrar, the organizational chart. If you  
20                  could go to page 3 of this PDF, please.

21                  Mr. Morrison, do you recognize as being the  
22                  organizational chart of the BCFSA?

23                  A       (BM) Yes. As of the date it was published.

24                  There's one addition. We have added a senior  
25                  position for sector liaison so there is a Vice

1           President Sector Liaison, but that is the  
2           current structure, yes.

3           Q     Okay. So on this chart there would be an  
4           additional branch at the bottom?

5           A     (BM) That's correct. A Vice President Sector  
6           Liaison box, direct report into the CEO, CSO.

7           MS. PATEL: Thank you very much. Mr. Commissioner,  
8           if we could please have this marked as the next  
9           exhibit?

10          THE COMMISSIONER: 607.

11          THE REGISTRAR: Sorry, Mr. Commissioner, you were  
12          right earlier, so this is 606. Sorry.

13          THE COMMISSIONER: I thought I was right, but I  
14          didn't want to get into an argument. Thank you,  
15          606.

16                   **EXHIBIT 606: BC Financial Services Authority**  
17                   **Organizational Chart - November 30, 2019**

18          MS. PATEL: We're a room full of lawyers today, not  
19          accountants, so I think we're safe. And  
20          actually, I neglected to mark it, but I had  
21          intended to mark. Madam Registrar you can take  
22          this down. Thank you. Mr. Commissioner, I had  
23          intended to mark the Perrin report, the real  
24          estate regulatory review, as an exhibit as well  
25          and if we could just do that now.

1 THE COMMISSIONER: All right. Very well. That will  
2 be the next exhibit.

3 THE REGISTRAR: 607.

4 **EXHIBIT 607: Real Estate Regulatory Structure**  
5 **Review prepared by Dan Perrin**

6 MS. PATEL:

7 Q And finally, just still on the broad strokes of  
8 what the BC Financial Service Authority does and  
9 how it operates. There's a kind of a starter  
10 question which I had meant to lead with which is  
11 how is it -- it has all the responsibilities of  
12 FICOM. How is it structurally, legally,  
13 operationally different from FICOM and what --  
14 how do those differences manifest in your  
15 operations and your ability to fulfill your  
16 mandate?

17 A So I'll refer to the analogy of a journey which  
18 we are on from the FICOM days to where we need  
19 to be and want to be as BCFSA. So I would say  
20 that you know, over the past year, for example,  
21 year and a bit, the changes that have occurred  
22 in FICOM/BCFSA in terms of how we're organized,  
23 how we operate, how we get engaged are real.  
24 And I'll group sort of into three buckets to  
25 give you a sense and the commission a sense of

1           the changes, the evolution of this regulator.  
2           The first bucket would be stability. So in a  
3           year of unstable societal and economic change  
4           brought forward by the pandemic, BCFSA focused  
5           on staffing numbers. FICOM's challenges were  
6           well documented and public from expert reports  
7           to the auditor general in terms of its challenge  
8           with retaining the number of staff. We had  
9           vacancy rates astronomically high over the last  
10          three to five years, as high in the 30s. We  
11          began the year high teens and through a real  
12          focus on hiring and our processes, you know, I'm  
13          very pleased to say that our vacancy right now  
14          is approximately 8 percent. So very much in  
15          line with where you would want to be. Obviously  
16          there's ongoing churn and change in an  
17          organization. People leave for different  
18          reasons. But in terms of the organizational  
19          stability, you know, we've been able to go to  
20          the market, hire what we think are skilled  
21          individuals. We've moved, improved internal  
22          promotions and the like, so I think, you know,  
23          the first point I would say is a distinction  
24          between where FICOM was and where BCFSA is from  
25          a stability perspective, staffing levels much



1 better placed and therefore by definition able  
2 to better serve the people of British Columbia  
3 and deliver on the mandate.

4 The second part I would want to reference in  
5 term of a change of approach between FICOM and  
6 BCFSA is the amount of transparency and  
7 engagement with our sector. Certainly one of  
8 the commentaries, criticisms, observations that  
9 came when the minister was consulting and  
10 thinking about the transferring of FICOM out of  
11 core government was from the sector that said we  
12 need this regulator to be more engaged, more  
13 communicative. And I think over the past year  
14 we have done that. We have better adjusted the  
15 way we supervise our credit unions, for example,  
16 from more of a once every three years to more of  
17 a continuous engagement risk-based supervision,  
18 which I believe you heard from my colleague, our  
19 colleague Chris Elgar. We have released our  
20 very first regulatory roadmap, which gives the  
21 sector a sense of where we want to go from a  
22 regulatory perspective. And as we've become a  
23 more modern, efficient, effective regulator, one  
24 of the legislative changes was the BCFSA, unlike  
25 FICOM, will be able to make rules, and that came

1                   in into effect, you know, latter part of last  
2                   year and we look forward to 2021 in engaging in  
3                   the process and making our very first rule.

4                   And then at the end of the day, the third, I  
5                   would say FICOM is -- was very much a, you know,  
6                   a very short-term focused institution. BCFSA is  
7                   looking towards the future, what does this  
8                   regulator need to be effective now and what do  
9                   we need to be effective in three, in five, in  
10                  ten years. And we've made a concerted effort  
11                  with the support of the board and the ministry  
12                  to start making long-term investments in  
13                  technology, not for the sake of technology alone  
14                  but for the ability to change the way we work.  
15                  Make it easier for the sector to deal with us.  
16                  Less data entry, more data capture and analysis.  
17                  The sense across BCFSA and even as you bring in  
18                  the two real estate regulators there's a lot of  
19                  similarities in what we do. We all license. We  
20                  all register. We all have cases that we  
21                  investigate. There's market conduct. We all do  
22                  supervision. We all make operational policy.  
23                  So the focus on BCFSA going forward and as  
24                  technology is the similarities of what we do and  
25                  I think that will drive an increased amount of

1 efficiency. So we are on a multiyear  
2 multimillion dollar investment in BCFSA in our  
3 people to better serve and to better satisfy our  
4 mandate, and again this is -- it's not  
5 leading-edge technology. We're talking about  
6 solid case management. We're talking about  
7 solid data management. We're talking about how  
8 sector participants can provide information to  
9 us so that it's captured once and we don't waste  
10 their time or our time in terms of recasting  
11 information.

12 So as I said, I would say the three things  
13 of giving you a taste of the journey we're on,  
14 is it's a more stable organization, it's an  
15 organization that is more transparent and more  
16 engaging with the sector. We've said to the  
17 sector you know, we will always have the  
18 conversation; there will be times when we  
19 disagree, but we will always promise you the  
20 conversation. And lastly, it's a group, a  
21 regulator that is interested investing itself  
22 for now and in the future to better serve and  
23 deliver on its mandate.

24 Q I was going to pick up on two things that you  
25 said in there. One was about the retention of

1                   staff and how you've made improvements there.

2                   What is it about the current, the new structure  
3                   of the BCFSA or the way that you're set up that  
4                   allows you to retain staff to do a better job at  
5                   that than FICOM?

6           A       (BM) I would say, you know, FICOM clearly had  
7                   its challenges. Before I joined the CEO and the  
8                   statutory roles were split and they were split  
9                   for approximately two years. The organization  
10                  really didn't have -- it was in the position of  
11                  transition, moving out of core government. As I  
12                  said, that transaction took -- you know, was  
13                  announced and took almost over a year to  
14                  complete. Again, you know, it was an  
15                  organization in flux. So I would say the  
16                  stability, the establishment of the board, the  
17                  moving forward and the ability for us to start  
18                  talking about what we mean as a regulator. We  
19                  attract people who have a passion for public  
20                  service. We respect that and I think they can  
21                  see the future that BCFSA has to be part of an  
22                  organization that is going through a lot of  
23                  change but with a change that focuses on a  
24                  positive future and where they can really have  
25                  an impact on British Columbia in a positive way

1                   and the people of British Columbia. So I think  
2                   there's stability. We put one transaction  
3                   behind us. And we're starting to show the  
4                   investment, the investment in technology, the  
5                   investment in learning, the investment in our  
6                   people and I think that's recognizing it. We're  
7                   attacking all aspects of what we do, whether or  
8                   not it's performance management, leadership,  
9                   culture, engagement, communications, and I think  
10                  people are really seeing a difference, and when  
11                  you get your employees engaged and excited about  
12                  the change, it's contagious. And I think we're  
13                  at that cusp at this stage.

14                Q     Is there a difference in how BCFSA is funded and  
15                    how FICOM was funded?

16                A     (BM) Both FICOM and BCFSA are funded by the  
17                    industry. So at the end of the day industry  
18                    participants, sector participants pay fees, some  
19                    annual, some transaction oriented, and that is  
20                    our funding of our organization. The  
21                    fundamental difference, though, coming out of  
22                    that is as part of core government, any  
23                    surpluses that we had were rolled back into the  
24                    larger government accounts. As an independent  
25                    Crown, to the extent that we manage our affairs

1                   and create surpluses to invest in our future,  
2                   those surpluses can stay with us. FICOM is a  
3                   Crown agency. Its financial statements are  
4                   public. So I would say the other aspect of it  
5                   is there's much more transparency in terms of  
6                   the operations of BCFSA than there would be of  
7                   FICOM. But the fundamental question is --  
8                   fundamental answer to your question is both  
9                   BCFSA and FICOM are funded by the industry.

10            Q     Okay. But BCFSA has the ability to reinvest any  
11                   surpluses into its operations, into hiring,  
12                   those kinds of matters?

13            A     (BM) That is correct. We have the ability to  
14                   run surpluses, retain those and use those as  
15                   appropriate.

16            Q     The other thing I wanted to pick up on was you  
17                   mentioned the ability to make rules, which came  
18                   into effect at the -- towards the end of last  
19                   year, I think you said. And why -- first does  
20                   that rule-making ability, will it extend to real  
21                   estate actors, which I guess currently that  
22                   would be mortgage brokers, and will it extend, I  
23                   don't know if you can say, to realtors and other  
24                   real estate actors who will come in with RECBC  
25                   and OSRE?

1           A       (BM) So with respect to the larger question of  
2                    the real estate transaction, I can't comment on  
3                    that. That is something that the government  
4                    will consider as part of its policy and deal  
5                    with in whatever legislation it deems to go  
6                    forward. When you speak to my colleague Chris  
7                    Carter and talk about mortgage brokers, one  
8                    thing he will highlight is the *Mortgage Brokers*  
9                    *Act* has been in existence since early 1970s, so  
10                   as we amend that legislation we will be clear in  
11                   terms of mimicking or replicating what we have  
12                   in the *Financial Institutions Act* and allowing  
13                   rulemaking, or we would hope that the government  
14                   would consider granting rulemaking in the area  
15                   of mortgage brokers.

16           Q       So it doesn't currently apply to mortgage  
17                    brokers?

18           A       It does not.

19           Q       Okay. And sorry, so this might seem obvious to  
20                    you, but what is the advantage from the  
21                    regulator's point of view of being able to  
22                    create rules?

23           A       (BM) The ability from a regulator to create  
24                    rules is a power that's found in most Crown  
25                    agency-type regulators, and, you know, it

1 involves consultation obviously with the sector.  
2 It involves ultimate approval by the board and  
3 the minister, but it allows the regulator to be  
4 more agile, to be more reflective, to, you know,  
5 take legislation and better address the current  
6 issues of the day. So rulemaking is actually a  
7 fairly -- can be a fairly drawn out process, but  
8 it can be quicker and allow the regulator to be  
9 more agile in responding to market conditions.

10 Q Thank you. I'm actually going to ask  
11 Mr. Carter, actually, if you could address the  
12 responsibilities of the office of the registrar  
13 of mortgage brokers and maybe I'll do that by  
14 asking, Madam Registrar, if you could pull up  
15 FSA0005 again, the organizational chart. I'm  
16 sorry I've forgotten already what exhibit number  
17 we've given that.

18 THE REGISTRAR: This is exhibit 606.

19 MS. PATEL: Thank you, Madam Registrar. If you could  
20 go to page 11 of the PDF.

21 Q Mr. Carter, I thought it might be helpful on  
22 this page to see the structure of your office  
23 and your responsibilities in explaining how it  
24 is the registrar of mortgage brokers functions,  
25 what its responsibilities are. So if you could



1                   in broad strokes, can you outline the  
2                   responsibilities of the office of the deputy  
3                   superintendent -- sorry the Deputy Registrar of  
4                   Mortgage Brokers?

5           A       (CC) Certainly. So the office administers the  
6                   *Mortgage Brokers Act* 1972. In terms of  
7                   structure those accountabilities are managed  
8                   through the left-hand side of the org chart that  
9                   you see here, he under the Director of Mortgage  
10                  Brokers team, that team is dedicated to  
11                  administering the *Mortgage Brokers Act*. In  
12                  terms of the structure, the structure actually  
13                  neatly aligns with the requirements of the act  
14                  as it pertains to mortgage brokers in  
15                  British Columbia. First of all, far left  
16                  there's a registrations function. So if  
17                  individuals are performing particular activities  
18                  as it relates to mortgage brokering in  
19                  British Columbia, they must be registered with  
20                  the registrar. Once they are registered with  
21                  the registrar, that triggers certain obligations  
22                  and responsibilities under the legislation and  
23                  essentially the office oversees whether or not  
24                  those requirements and expectations are being  
25                  complied with. Think of that as the compliance

1                   and examination function, which is the middle  
2                   function under the director. And then thirdly  
3                   in the event that those requirements and  
4                   expectations are not being complied with, then  
5                   there are certain enforcement provisions and  
6                   sanctions that can be applied to mortgage  
7                   brokers under the legislation, and that  
8                   represents that far right function underneath  
9                   the directors accountabilities in terms of the  
10                  investigative function.

11                Q     Does the -- are there -- does this organization  
12                   chart accurately reflect the number of  
13                   investigators that are currently employed by the  
14                   director of mortgage brokers? Are there -- I  
15                   see five boxes here. Is that the current count?

16                A     (CC) Yes, that's correct.

17                MS. PATEL: Okay. Thank you, Madam Registrar, we can  
18                   take this down now.

19                THE WITNESS: (CC) Actually, sorry, can I just --  
20                   this org chart is somewhat dated, but in  
21                   totality what the Director of Mortgage Brokers'  
22                   function looks like, this is accurate, and  
23                   there's a head count of 14, and I believe we've  
24                   added an investigator, an additional  
25                   investigator, a senior investigator role to the

1 investigations function since this org chart was  
2 shared with the commission.

3 MS. PATEL:

4 Q Okay. And I'll just note of course your  
5 position is you're not simply the Deputy  
6 Registrar of Mortgage Brokers. You're also the  
7 Deputy Superintendent of Financial Institutions,  
8 Market Conduct, and my question arising from  
9 that is what percentage of your time do you  
10 spend on Deputy Registrar of Mortgage Brokers  
11 duties and what percentage of your time is spent  
12 on Deputy Superintendent of Financial  
13 Institutions, Market Conduct duties?

14 A (CC) Certainly I would say roughly 50/50.

15 Q And so is it the Director of Mortgage Brokers  
16 who has the day-to-day responsibility for  
17 running that office?

18 A (CC) That's correct.

19 Q All right. Thank you, Madam Registrar, we can  
20 take this down now.

21 It might not be intuitive. Can you explain  
22 what -- or who is required to be registered as a  
23 mortgage broker under the act?

24 A (CC) Ms. Patel, would it be helpful if I kind of  
25 spoke about licensing categories and activities

1                   that are captured by the legislation more  
2                   broadly?

3           Q       Yes, I think -- yeah, I think that would be a  
4                   good way to get that.

5           A       (CC) Okay. So firstly what I would point out  
6                   and Mr. Morrison mentioned this in his opening  
7                   remarks, where the *Mortgage Brokers Act* is  
8                   fundamentally about half a century old, so it is  
9                   a piece of legislation that hasn't really kept  
10                  up to date with developments in the industry and  
11                  also modern regulatory standards and  
12                  expectations that one might have in a piece of  
13                  legislation that manages intermediaries and  
14                  market conduct registrants. So maybe starting  
15                  from there, essentially there are two categories  
16                  of licensing under the -- or registration under  
17                  the legislation. So think the registration of a  
18                  mortgage broker, this is the individual who a  
19                  consumer will work with. And under the  
20                  legislation that is called a submortgage broker.  
21                  The legislation also requires a registration for  
22                  a brokerage, think a body where you have  
23                  mortgage brokers amalgamated and doing business  
24                  under that umbrella. Under the legislation a  
25                  brokerage is called a mortgage broker. So there

1                   are two categories of licensing requirements  
2                   under the legislation.

3                   Just a point of reference here, generally  
4                   what a piece of legislation of this nature will  
5                   contain is also a licensing category for what we  
6                   refer to as a managing broker or a locus of  
7                   accountability for oversight and regulatory  
8                   compliance within a brokerage, so overseeing  
9                   activities of individual brokers.

10                  I would like to make the point that the  
11                  *Mortgage Brokers Act* does not include that as a  
12                  licensing category, which we would regard as a  
13                  gap in the legislation.

14                  More broadly to your question about the  
15                  types of activities that are captured, I'll kind  
16                  of break that into two larger buckets. Firstly  
17                  the act captures activities that one would  
18                  normally expect to be associated with a mortgage  
19                  broker, so namely -- and we call that a  
20                  origination -- namely a borrower goes to a  
21                  mortgage broker, a mortgage broker then fans  
22                  that business out to multiple lenders and  
23                  ultimately comes back to the borrower with  
24                  advice in terms of where their mortgage is best  
25                  placed or which mortgage is most suitable for

1                   them. So again, origination in intermediation,  
2                   that type of activity that you normally  
3                   associate with a mortgage broker is captured by  
4                   the legislation. The act also requires that you  
5                   be registered as a mortgage broker if you're  
6                   carrying on the business of lending secured by  
7                   mortgages. So there is a cluster of activity  
8                   that is captured by the legislation as it  
9                   relates to lending on the security of mortgages.  
10                  So the act captures origination, things you  
11                  would traditionally think of as activities  
12                  undertaken by a mortgage broker. It also  
13                  captures certain mortgage lending activities as  
14                  well.

15                Q     In terms of the act, does the act differentiate  
16                  in terms of registration between those two types  
17                  of activities, origination and lending secured  
18                  by mortgages? And I think what I mean is are  
19                  there two different types of registration that  
20                  you can obtain?

21                A     (CC) The short answer is no. So when it comes  
22                  to the origination activity there is no explicit  
23                  and specific set of conduct expectations that  
24                  are activated by the legislation that applies to  
25                  you by virtue of being within that particular

1 line of business. Likewise on the lending side  
2 there are no specific and particular  
3 qualification requirements, licensing  
4 obligations that flow by virtue of you being  
5 engaged in that particular activity.

6 Q And are there different educational requirements  
7 for both categories?

8 A No. So the education requirements are pretty  
9 much standard within the legislative framework,  
10 so to become registered as a mortgage broker  
11 there are certain baseline education standards  
12 that you must comply with. What we do undertake  
13 is what we call suitability reviews. So in  
14 terms of qualifying to be a mortgage broker and  
15 being registered with the registrar's office  
16 there are baseline education requirements. We  
17 will then undertake a deeper suitability review  
18 if the file calls for that in order to take a  
19 closer look at whether or not an individual is  
20 not otherwise objectionable to be registered as  
21 a mortgage broker.

22 Q Are the suitability reviews different depending  
23 on the type of activity the applicant for  
24 registration is engaged in, whether it's  
25 origination or lending?

1           A       (CC) Yes, we do tend to apply more focus to  
2                    lending activities and in fact all brokerages,  
3                    but we do take a closer look at lending  
4                    activities. So for example, do lenders have a  
5                    regulatory history with either ourselves or  
6                    other organizations, other regulators, I should  
7                    say. Are there outstanding court judgments or  
8                    civil litigation that is in place in relation to  
9                    the directors, and the owners of the brokerages,  
10                   and also the lenders. So there is a more  
11                   detailed suitability review of lenders and  
12                   brokerages to look for and pick up on red flags  
13                   that might make them objectionable for  
14                   registration under the legislation.

15           Q       What are the types of red flags that would make  
16                    an individual applying for a mortgage broker --  
17                    sorry, applying for registration in the  
18                    origination category, what are the red flags  
19                    that would indicate they're not suitable for  
20                    registration?

21           A       (CC) That might include reasons for departure  
22                    from previous employer. That might include  
23                    outstanding judgments, for example bankruptcies.  
24                    That might include a regulatory history with  
25                    another regulator that gives rise to some



1                   suitability issues that we would want to look a  
2                   bit further into.

3           Q        Okay.  And we'll be speaking to members of your  
4                   office later in these hearings and this question  
5                   might be better directed to them, but I'll try  
6                   you and if we need to defer it to them we can,  
7                   but do you know what information and what data  
8                   sources the office has access to when making or  
9                   doing a review for suitability?

10          A        (CC) Certainly, so I'm happy to answer at a high  
11                   level and I'm sure the team would be more than  
12                   happy to provide further particulars.  It's wide  
13                   and varied.  So, for example, we might look at  
14                   open sources.  We might look at again complaints  
15                   history.  We often reach out to our regulatory  
16                   colleagues in other spaces to see whether  
17                   there's regulatory history.  A criminal record  
18                   check.  You know, our intelligence gathering  
19                   efforts more generally within industry might  
20                   raise some red flags.  So we do look to a wide  
21                   variety of different sources as I mentioned  
22                   before, civil litigation or judgments.  We look  
23                   to a wide variety of information sources to  
24                   determine suitability.

25          Q        Okay.  Off the top of your head are you able to

1 identify any information sources that your team  
2 could usefully have access to but does not in  
3 conducting suitability reviews?

4 A (CC) It's a great question. It would be nice to  
5 able to interrogate the land titles registry a  
6 little bit more readily. It would also be nice  
7 to be able to interrogate court services a  
8 little bit more readily, so the searchability of  
9 those databases would be helpful. There are  
10 certain limitations involved with the structure  
11 of the information and the ability to  
12 interrogate those information sources that  
13 perhaps other parties are better placed to speak  
14 to, but we would certainly welcome that  
15 capacity.

16 Q Okay. And you've hinted that might be for  
17 somebody else to speak to, but I'll pursue this.  
18 Is that an issue with the fact that those  
19 resources are paywalled, or is it an issue just  
20 with how that data is stored and how its  
21 searchable in their databases?

22 A (CC) The latter. We have ready access to the  
23 information sources. It's more the  
24 searchability. For the purposes of proactively  
25 identifying risks and potentially problematic

1 actors out there.

2 Q In your experience does the definition of what's  
3 encompassed by mortgage broker activity cause  
4 confusion amongst those who are require to be  
5 regulated in that a person might not readily  
6 understand whether they need to be registered  
7 under the act?

8 A (CC) Thank you for the question. I would refer  
9 back to the fact that again *Mortgage Brokers Act*  
10 1972, we would very much welcome an updating of  
11 the legislative regime to respond to, again,  
12 respond to developments in the industry and also  
13 more modern regulatory standards. So to your  
14 question more specifically, and I don't want to  
15 get too technical here, but the act defines  
16 mortgage brokers in a number of different ways,  
17 and the definitions can be challenging to  
18 administer, and I'll give you just one example  
19 of that and it relates to private lending. So  
20 there is one section that says essentially you  
21 qualify for registration if you are carrying on  
22 the business of lending money secured by  
23 mortgages. There's then another section in the  
24 same section of the legislation that talks about  
25 being required to be registered if you in any

1                   given year lend on the security of more than ten  
2                   mortgages. What that creates is a bit of an  
3                   interpretation challenge, and what I mean by  
4                   that is it's conceivable that you're in the  
5                   business of lending money on the secured on less  
6                   than ten mortgages. Carrying on a business  
7                   depends on a whole range of different legal  
8                   indicia, and the two requirements, the two  
9                   triggers, the two aspects of the definition are  
10                  not helpful when it comes to administering the  
11                  legislation. So again, there's some archaic,  
12                  there's some out of date requirements and  
13                  legislation that welcome a refresh of what  
14                  activities qualify and ought to require  
15                  registration.

16                Q     And as you mentioned, the *Mortgage Brokers Act*  
17                    is undergoing a review and consultation at the  
18                    moment and that's being led by your office?

19                A     (CC) The short answer is no. So the mortgage  
20                    broker legislative review is being led by the  
21                    Ministry of Finance. It's being -- it's a  
22                    government legislative review and, again,  
23                    questions on the review more specifically are  
24                    probably best put to government. But there was  
25                    a consultation that was issued earlier last

1                   year, if not late 2019, that spoke to a refresh  
2                   and an updating of the *Mortgage Brokers Act*.

3           Q        Okay. And I don't want to go through the  
4                   entirety of that review but just a couple of  
5                   highlights. I mean, can you speak to some of  
6                   the more pressing issues that are identified in  
7                   the consultation as needing modernization in the  
8                   *Mortgage Brokers Act*?

9           A        (CC) Certainly. Thank you for the question. I  
10                   have already spoken to the definitional  
11                   challenges in relation to what qualifies for  
12                   mortgage brokering activity. And maybe if I  
13                   could just maybe pause there and pick up on your  
14                   previous question. You had asked whether it's  
15                   intuitive to stakeholders out there that they  
16                   might require registration under the *Mortgage*  
17                   *Brokers Act* and I would just like to pick up on  
18                   that and note that I think when the public  
19                   generally thinks of a mortgage broker they are  
20                   thinking of an originator, they are thinking of  
21                   a facilitator of connections to lenders. I  
22                   don't think the public intuitively thinks and  
23                   neither I would suggest do lenders themselves  
24                   necessarily intuitively think that they require  
25                   registration as a mortgage broker. So I would

1           just -- I just wanted to make that point.  
2           Pivoting back to your question about the  
3           legislation, I've made reference to some of the  
4           challenges with the licensing regime, the fact  
5           that there's no managing broker, there's no  
6           managing broker licensing requirement that  
7           particular types of activities that require  
8           legislation are clearly defined and those  
9           activities then don't have specific dedicated  
10          qualification requirements nor regulatory  
11          conduct, behaviours that attach to them through  
12          the legislation.

13                    In terms of those conduct expectations, in  
14                    legislation of this sort you would generally see  
15                    some reference to a duty to act in the best  
16                    interest of a client, that you need to provide  
17                    best advice, duty to execute with regard to care  
18                    and reasonable skill. You would also -- it's  
19                    not unusual to see a know your client type  
20                    requirement within the legislative scheme as  
21                    well. Those are aspects that can be welcome in  
22                    a new legislative scheme is clarifying what  
23                    those obligations to consumers are. At the  
24                    moment we rely heavily on this concept of  
25                    conduct prejudicial to the public interest, but

1                   we would welcome much greater definition in  
2                   terms of conduct expectations of brokers  
3                   depending on the activities that they're engaged  
4                   with.

5                   Lastly, I would just like to -- you spoke  
6                   about systemic issues before. There's no annual  
7                   information return reporting requirement that  
8                   brokerages have to the registrar. That does  
9                   exist in other jurisdictions. Enforcement, you  
10                  know, we would welcome a review of the sanctions  
11                  that are available to the registrar's office to  
12                  achieve specific and general deterrents of  
13                  misconduct. When one looks at \$50,000 which is  
14                  the administrative penalty we can leverage under  
15                  the legislation and one considers that one might  
16                  be earning about \$5,000 commission on a  
17                  particular deal, you can see how that kind of  
18                  taps out pretty quickly in terms of a deterrent.  
19                  So there's some examples of aspects of the  
20                  legislation that we would welcome a review of.

21                  Q     Thank you. Mr. Noseworthy, I'm going to turn  
22                  now to you and ask you some questions about the  
23                  responsibilities of the office of the  
24                  superintendent. Can you just review those at a  
25                  high level for the Commissioner.

1           A       (MN) Sure. So we are a consumer protection  
2                   agency largely with responsibility under two  
3                   pieces of legislation, *the Real Estate Services*  
4                   *Act* and the *Real Estate Development Marketing*  
5                   *Act*. Under the latter, under the *Real Estate*  
6                   *Development Marketing Act* or REDMA, that  
7                   legislation establishes requirements for real  
8                   estate developers when they're marketing  
9                   residential development properties in BC. And  
10                  there are requirements under that legislation  
11                  that protect consumers ensuring that developers  
12                  meet approval requirements on things related to  
13                  title disclosure and the proper handling of  
14                  deposits.

15                         And then under the *Real Estate Services Act*  
16                         the Office of the Superintendent of Real Estate  
17                         is responsible for regulating and taking action  
18                         against unlicensed real estate activity. As  
19                         well we're responsible for creating rules that  
20                         apply to the real estate industry, and we also  
21                         have an oversight function as you mentioned  
22                         earlier in the introduction with respect to  
23                         overseeing the activities of the Real Estate  
24                         Council of BC.

25           Q       And the real estate council is responsible for



1                   overseeing the licensed real estate realtors  
2                   engaged in trading services?

3           A       (MN) That's correct, yes.

4           Q       Now, you mentioned you came into this role in  
5                   late 2016. And perhaps just without going back  
6                   too far into too great detail, but if you could  
7                   just give us a reminder of the history of the  
8                   Office of the Superintendent of Real Estate and  
9                   in relation to the real estate council since  
10                  2016.

11          A       (MN) So in 2016 the change that happened was  
12                  that on those oversight accountabilities that I  
13                  mentioned were granted to the superintendent and  
14                  as well the rulemaking authority and there was a  
15                  decision to facilitate that by creating a  
16                  stand-alone Office of the Superintendent of Real  
17                  Estate and for that function to move out of  
18                  FICOM and be within a standalone office within  
19                  the Ministry of Finance. So since 2016 on day  
20                  one we had about I think three employees that  
21                  transferred over from FICOM, largely folks who  
22                  were working on that REDMA piece, the real  
23                  estate development piece that I mentioned. And  
24                  the first order of business was to build an org  
25                  chart and fill the positions necessary to

1 deliver on the new mandate. So that was the  
2 immediate focus.

3 And then as well working with building  
4 relationships with stakeholders, building  
5 relationships with other regulators and  
6 fulfilling that oversight function with respect  
7 to the real estate council have been the  
8 priorities of the office since that time.

9 MS. PATEL: Madam Registrar, I'm going to ask you to  
10 pull up a document which is OSRE0015. And,  
11 Commissioner, while Madam Registrar does that  
12 I've been reminded that participants apparently  
13 did not have notice that this document would be  
14 referred to in the hearings and so I would  
15 respectfully seek leave to -- well, I've pulled  
16 up the document, but seek leave to refer to this  
17 document in the hearing and have it marked as an  
18 exhibit.

19 THE COMMISSIONER: All right. Are there any  
20 objections to that? Ms. Harlingten, I see you  
21 popped on your screen.

22 MS. HARLINGTEN: No objections, Mr. Commissioner.  
23 Thank you.

24 THE COMMISSIONER: All right. Thank you. Hearing  
25 none other, I grant that leave, Ms. Patel.

1 MS. PATEL: Thank you, Mr. Commissioner.

2 Q Mr. Noseworthy, you recognize this as an  
3 organizational chart of OSRE?

4 A (MN) Yes, I do.

5 Q And it's dated November 1st, 2019, but is it --  
6 does it remain accurate?

7 A (MN) Relatively. There have been some small  
8 changes but generally in terms of an overall  
9 structure, yes.

10 Q If you could just briefly address the structure  
11 of the office and the different responsibilities  
12 of those different branches that we see there.

13 A (MN) Sorry, just one moment.

14 MS. HUGHES: Mr. Commissioner, it's Ms. Hughes. I'm  
15 located with the witness, and we've identified  
16 an issue with this document. It should have  
17 been some redactions taken for privacy reasons  
18 and so we'd ask that it not be shown on the live  
19 stream until those redactions can be dealt with.

20 THE COMMISSIONER: All right. In keeping with my  
21 earlier directions I'll make that direction  
22 here.

23 MS. PATEL: And, Madam Registrar, we can take this  
24 document down. And maybe I can ask

25 Mr. Noseworthy to address the question without

1 the benefits of the document in front of him.

2 THE WITNESS: (MN) Sure. Okay. Thank you. So yes,

3 I can confirm that the structure of the office

4 is generally that there's a corporate services

5 unit and that would include things like

6 administrative support, direct support to the

7 superintendent as well as communications both

8 internal and external function. There's also an

9 investigations unit and there's also a policy

10 and oversight unit and then there's also what we

11 call a regulation or consumer disclosures unit

12 largely responsible for that REDMA function that

13 I just mentioned.

14 MS. PATEL: All right. Thank you. I'm sorry. I

15 lost track of whether we managed to mark that

16 last document as an exhibit.

17 THE REGISTRAR: Not yet.

18 MS. PATEL: If we could do that now,

19 Mr. Commissioner.

20 THE COMMISSIONER: Yes, very well.

21 THE REGISTRAR: Exhibit 608, Mr. Commissioner.

22 **EXHIBIT 608: Organizational chart - Office of**

23 **the Superintendent of Real Estate - November 1,**

24 **2019**

25 MS. PATEL:

1           Q     Mr. Morrison, question for you, it's the BCFSA  
2                   does not have an express anti-money laundering  
3                   mandate; is that right?

4           A     (BM) That is correct.

5           Q     And are you aware that it was a recommendation  
6                   of the expert report of Professor Somerville,  
7                   Maloney and Unger in their report "Combatting  
8                   Money Laundering in BC Real Estate" that the  
9                   BC government should specifically add anti-money  
10                  laundering to the mandates of relevant  
11                  BC regulators, including -- well, at the time it  
12                  was FICOM?

13          A     (BM) I am aware.

14          Q     Okay. And the authors of that report stated  
15                  that providing such a mandate would provide a  
16                  solid basis for these regulators to use the  
17                  regulatory authority to fight money laundering  
18                  when they encounter it and to share information  
19                  collected with others involved in anti-money  
20                  laundering efforts. Do you agree with that  
21                  statement?

22          A     (BM) I think a clarity of a mandate enables a  
23                  lot of the challenges or at least some of the  
24                  challenges that the commission has heard to date  
25                  to be addressed with. A clear mandate allows

1                   you to define your space on where you regulate.  
2                   It allows you to be clear on what you need from  
3                   others and what others need to provide to you,  
4                   and in addressing any issue in particular and in  
5                   this case AML, money laundering, I mean, having  
6                   a clear mandate is an important step.

7           Q       And, Mr. Noseworthy, the office of  
8                   superintendent of real estate does not have an  
9                   express AML mandate, does it?

10          A       (MN) You are correct in that it does not.

11          MS. PATEL: Madam Registrar, if you can you pull up  
12                   another document, the mandate letter 2020, 2021  
13                   for the BCFSA.

14          Q       Mr. Morrison, do you recognize this as the  
15                   mandate letter from the Ministry of Finance to  
16                   the BC Financial Services Authority?

17          A       (BM) I do.

18          MS. PATEL: And Madam Registrar, if you could go down  
19                   to page 3, please.

20          Q       I've reviewed this letter. I think that the  
21                   only reference to anti-money laundering is that  
22                   final point there in the middle of page 3:

23                   "Anti-money laundering. Work  
24                   collaboratively with government as it  
25                   improves the effectiveness of BC's

1 anti-money laundering regime."

2 Do you agree that that is the only reference in  
3 this letter to an anti-money laundering mandate  
4 for the BCFSA?

5 A (BM) Yes, directly, absolutely.

6 MS. PATEL: Okay. Madam Registrar, if we could take  
7 that down and, Mr. Commissioner, I'd like to  
8 mark this as the next exhibit.

9 THE COMMISSIONER: Very well, that will be the next  
10 exhibit, thank you.

11 THE REGISTRAR: Exhibit 609.

12 **EXHIBIT 609: Mandate letter from Carol James to**  
13 **Dr. Stanley Hamilton - January 14, 2020**

14 MS. PATEL:

15 Q And, Mr. Morrison, my next question for you is  
16 how has the BCFSA responded to this direction to  
17 work collaboratively with government as it  
18 improves the effectiveness of BC's anti-money  
19 laundering regime?

20 A (BM) So as a Crown agency BCFSA received its  
21 first mandate letter, which you just referenced  
22 and turned into evidence as an exhibit. We are  
23 responsible for providing a service plan and  
24 reporting on that service plan to the government  
25 at the end of the fiscal year. In terms of our

1 conversation with both the government and our  
2 board of directors, we identified our commitment  
3 to do that and also over the course of the year  
4 to identify this year ten initiative that we  
5 would report on to the government and our board  
6 and ultimately the public as these service plan  
7 become a public document after they have been  
8 received by the government. So we're not there  
9 at this stage. We're in the process of  
10 finalizing that and getting it ready to be  
11 received by the government. But in terms of  
12 some of the colour, if I may, in terms of some  
13 of those initiatives, you've heard earlier we  
14 are an active participant in various working  
15 committees, provincial, federal, task force or  
16 engagements, and certainly one of our  
17 commitments in support of improving working with  
18 the government to improve BC's anti-money  
19 laundering regime was to continue to do that  
20 work. I believe you heard from Chris Elgar, our  
21 head of supervision, earlier on and one of his  
22 issues that he has identified is we have worked  
23 into the overall supervision work that we're  
24 doing, are working in a focus on AML from an  
25 operational risk perspective. We don't want to



1 do or provide overlap or duplication of any  
2 other regulators, but in the context of how we  
3 supervise and oversee credit unions, for  
4 example, and other financial institutions, AML  
5 is obviously a key part of operational risk. So  
6 ultimately when you see the report, you are  
7 going to see items like that in terms of the  
8 flavour of the ten issues that we've identified  
9 and that, as I said, will become public in the  
10 next couple of months.

11 Q Okay. Are you in a position to identify any of  
12 those ten issues now?

13 A (BM) At a high level I've given you a colour of  
14 two of them. So along that line it will be  
15 involving, you know, our dialogue with the  
16 sector, specific work in terms of, you know,  
17 trying to adjust some of our practices, whether  
18 or not it's the credit union space or mortgage  
19 brokers, but I would say it needs to get  
20 presented to the government, considered by the  
21 government, and then it becomes public and at  
22 that time we can address some specifically.

23 Q I'm going to turn now to a couple of documents  
24 that I hope will provide some context to the  
25 discussion of money laundering and anti-money

1           laundering efforts in -- money laundering risks  
2           and anti-money laundering efforts in the real  
3           estate industry. And the first document I'm  
4           going to refer to, and I'll ask Madam Registrar  
5           to bring it up, is FSA0001, "Vulnerabilities in  
6           Mortgage Lending." Thank you, Madam Registrar.

7                     Mr. Carter, I understand that you authored  
8           this document; is that right?

9           A       (CC) No, that's not correct. I didn't author  
10          this document.

11          Q       Sorry. Was this authored by somebody in your  
12          office?

13          A       (CC) Yes, it was authored by somebody in my  
14          office.

15          Q       Okay. And are you familiar with its contents?

16          A       (CC) Yes, I'm familiar with its contents. Maybe  
17          to elaborate, I reviewed this document on the  
18          6th of May, 2019. Mr. Morrison referred to  
19          various federal/provincial working group  
20          engagements and there was a federal/provincial  
21          ad hoc working group on real estate that was  
22          convened in I'm going to say early 2019. As a  
23          result of that working group, there were various  
24          work streams that were set up in order to  
25          explore issues, undertake some further analysis

1                   and look to come up with some -- potentially  
2                   some recommendations for improving the BC AML  
3                   system. In the spirit of that engagement, this  
4                   was a document that we contributed that  
5                   highlighted what we perceive to be some  
6                   vulnerabilities in the mortgage broker space.  
7                   Again just wanting to reinforce and affirm that  
8                   it's somewhat unfiltered input into a much  
9                   larger policy dialogue and conversation with  
10                  stakeholders. But back to your question, yes,  
11                  this is a document that I'm familiar with and it  
12                  was a contribution to some of the work stream  
13                  conversations about regulatory gaps flowing from  
14                  the federal/provincial working group that was  
15                  initiated in early 2019.

16                  Q     If we scroll down to page 2 of the document  
17                        there is a heading -- there we are.

18                                Madam Registrar, if you could scroll down  
19                                just a little bit more. Thanks. Yeah, that's  
20                                perfect.

21                                        "False documentation used to obtain  
22                                        mortgage." Can you describe what is being  
23                                        described -- just what is being described here?  
24                                        What is the purpose of this next section of this  
25                                        document?



1 enforcement actions up on our website that  
2 describe this particular phenomena, is we will  
3 obtain documents from the borrower that will,  
4 you know, for example, describe, you know, I'm  
5 employed as X and I make Y salary every year.  
6 When those documents make their ways into the  
7 hands of the lender, it might be a different  
8 employment and a different salary invariably  
9 higher than the individual actually makes. So  
10 this -- in totality this section here is  
11 referring to that authentic documentation  
12 comparison with documentation that is submitted  
13 to lenders to support mortgage loans, and it  
14 refers more broadly I believe also to the fact  
15 that when it comes to that manipulation, it's  
16 not often that we see the documents being  
17 manipulated by the borrower themselves. It's  
18 more broadly different parties that we see  
19 involved in that document manipulation process.

20 Q I'm just going to pause for a minute just to  
21 back up. So what you're describing here is  
22 conduct that your office has observed and sees  
23 as a vulnerability in the mortgage brokering  
24 trade. Is that a fair characterization?

25 A (CC) That's fair.

1           Q     Okay.  And the particular issue that you're  
2                    addressing here when you're talking about  
3                    falsification of documents is I understand it's  
4                    the task of the mortgage broker to collect  
5                    documents from a borrower, or a potential  
6                    borrower, that indicates what their income is,  
7                    what their assets are; is that right?

8           A     (CC) Yes.

9           Q     And the problem you're identifying here is where  
10                   those source documents that establish income and  
11                   assets are manipulated to misstate somebody's  
12                   ability to service a debt or to pay to secure a  
13                   loan.  Is that correct?

14          A     (CC) Yes, that's correct.

15          Q     Okay.  And the result being that a person could  
16                   receive a loan that they simply don't qualify  
17                   for?

18          A     (CC) That's correct.  The way that we like to  
19                   describe it and the way that we do describe it  
20                   in the public domain and in our orders is that  
21                   when you're manipulating the information that  
22                   flows between borrowers and lenders it increases  
23                   the risk that the borrower is going to be placed  
24                   in a mortgage that they can't afford, and it  
25                   increases the risk that a lender is making a

1                    loan that they might not otherwise have made if  
2                    they had authentic information at their  
3                    disposal.

4                    Q     Okay. And you said that this is conduct that  
5                    your office observes not infrequently; is that  
6                    fair?

7                    A     (CC) I'm not sure that -- sorry, I'm wrapping my  
8                    mind around this idea of not infrequently.  
9                    Certainly this features prominently in the  
10                   enforcement actions that are up on our website.  
11                   I don't mean that to imply that this is a  
12                   current practice across industry more generally.  
13                   I really can't speak to the scope and scale in  
14                   the context of the real estate market and  
15                   mortgage broker industry practices more  
16                   generally. But it is true to say that this type  
17                   of activity does make up the vast majority --  
18                   maybe not the vast majority, a significant  
19                   amount of our investigative work, a significant  
20                   number of our enforcement actions, and frankly  
21                   it is concerning.

22                   Q     And to be fair, I think I phrased my question  
23                   poorly, but that's what I meant, not that it's a  
24                   behaviour that is seen frequently amongst  
25                   mortgage brokers but it's something that arises

1                   in the disciplinary enforcement context.

2           A       (CC) Yes.

3           Q       And I think that the point about document  
4                   verification is important, so I want to make  
5                   sure that that's clear. The second-to-last  
6                   bullet point on this screen says that it's easy  
7                   to create and alter documents with digital  
8                   technology. You obtain originals, OCR imaging,  
9                   change numbers, create a new PDF. So you're  
10                  basically describing the process of how somebody  
11                  might alter supporting documents on a loan. Why  
12                  is it that that's not easily detected by the  
13                  lender who receives the application package?

14          A       (CC) I prefer not to speak to the lender  
15                  practices and validation practices that they may  
16                  or may not have when it comes to this  
17                  documentation. Different lenders have different  
18                  practices and there's a variety of different  
19                  types of lenders out there. So I prefer not to  
20                  generalize in my comments other than to say I  
21                  think the point here is that it's much easier to  
22                  do this nowadays with the technology tools that  
23                  we have available in common are more commonly  
24                  available than it has been in the past. I think  
25                  that that's the sentiment that the board is



1                   trying to get at.

2           Q       Okay.  And just under the first bullet point it  
3                   says about CRA documents, the middle of that  
4                   paragraph says "CRA documents are hard to  
5                   validate."  Are you aware if the CRA offers  
6                   confirmation of notice of assessment information  
7                   to either mortgage brokers or to lenders?

8           A       (CC) I don't believe that they do.

9           Q       Okay.  And similarly so how would the  
10                   falsification of documents supporting a loan  
11                   application even come to the attention of the  
12                   registrar of mortgage brokers?

13          A       (CC) It might be complaints.  It might be  
14                   proactive examinations.  So, for example, if we  
15                   have are concerned or have a regulatory history  
16                   with certain individual, with certain  
17                   brokerages, we might go out there and  
18                   proactively look for certain documents.  It  
19                   might be referrals from other regulators.  It  
20                   might be media coverage of particular stories.  
21                   It's a wide variety of different information  
22                   sources that we use to identify the risk and  
23                   then to go in and to validate.

24                   I think the key point here is that -- and  
25                   complaints, of course.  I may have omitted to

1                    mention that. I think the key point here is  
2                    that we do of course receive complaints, but we  
3                    are also very much out there actively on the  
4                    front foot looking for problems and looking to  
5                    root out these practices where they might exist,  
6                    and we have been singularly consistent in our  
7                    expectation of industry that they report  
8                    misconduct and that where this type of activity  
9                    is being encountered that that is reported to  
10                   the office of the registrar so we can do our  
11                   job.

12                Q    Is there any regulatory or legislative  
13                   obligation on mortgage brokers to report  
14                   misconduct that they encounter?

15                A    (CC) There is not.

16                Q    Thank you. When you talk about proactive  
17                   audits, is there anything on the face of a  
18                   falsified document, say if the registrar of  
19                   mortgage brokers was to conduct an audit of a  
20                   brokerage or of a sub-broker, is there anything  
21                   on the face of an altered document that would  
22                   cause suspicion without any outside verification  
23                   that would -- anything on the face of a document  
24                   that would cause suspicion on the part of an  
25                   investigator from the registrar's office?

1           A       (CC) The short answer is yes. I mean, we have  
2                    very highly trained and experienced  
3                    investigators who are able to identify problems  
4                    and there might be certain indicators. It's  
5                    very context specific. It's very file specific.  
6                    You know, some problematic issues might be  
7                    obvious on the face. Others might require a  
8                    little bit more digging and a little bit more  
9                    validation, but we do have highly skilled  
10                  investigators who are able to pick up on and  
11                  explore where there are red flags with  
12                  documentation.

13          Q       But the investigators don't have access  
14                    necessarily to the original documents; is that  
15                    correct?

16          A       (CC) We do obtain original documents from  
17                    borrowers so, yes, they do have access to the  
18                    information that borrowers receive from  
19                    authorities.

20          Q       So an investigator can seek the original  
21                    document from a borrower and you can use your  
22                    statutory powers of compulsion to obtain that?

23          A       (CC) That's correct.

24          Q       But there's no channel of information to confirm  
25                    with, for example, the CRA or other taxation

1 authorities, information that's been provided and  
2 that forms part of an application, a borrower's  
3 application?

4 A (CC) Not to my knowledge. I would want to  
5 confirm that but not to my knowledge. There's  
6 no clearing -- there's no central clearing house  
7 for authentication of documents.

8 Q Okay. It we could scroll down. Sorry, I've had  
9 this document up for some time, but I do want to  
10 go to the next heading, which is "Origination  
11 Networks of Fraud." And if you could address  
12 what's being explained here.

13 A (CC) Certainly. So what this speaks to is what  
14 we call fronting of unregistered activity. So  
15 think of it in this way. As I mentioned before  
16 there are certain activities that require you be  
17 registered as a mortgage broker. Think of  
18 fronting as individuals, parties out there that  
19 are doing all of the things that you would  
20 expect a mortgage broker to do. So, for  
21 example, receiving documents, advising in terms  
22 of best lending options, you're receiving  
23 confidential information. The unregistered  
24 individuals will package that information  
25 together, provide it to a registered mortgage

1 broker who will then submit the materials and  
2 the details to the lender. So in essence, the  
3 registered mortgage broker fronts for the  
4 unregistered party.

5 We've -- as I mentioned before, there's  
6 no -- on the face of legislation there's no  
7 prohibition against facilitating of unregistered  
8 mortgage brokering activity, but we regard that  
9 as conduct prejudicial to the public interest.  
10 It places consumers at risk. It undermines the  
11 credibility of industry, and so we have again a  
12 long list of enforcement actions on our website  
13 where we've taken action in relation to this  
14 activity of fronting for unregistered parties.

15 Q Would it be helpful to the registrar of mortgage  
16 brokers if an amended or a new *Mortgage Brokers*  
17 *Act* specifically prohibited that kind of  
18 activity?

19 A (CC) Ms. Patel, a new *Mortgage Brokers Act* would  
20 be useful on any number of different fronts,  
21 including this one.

22 MS. PATEL: Mr. Commissioner, I note the time.

23 Perhaps it's a good moment to take a ten-minute  
24 break.

25 THE COMMISSIONER: All right. Fine, Ms. Patel, we

Chris Carter (for the commission)  
Blair Morrison (for the commission)  
Micheal Noseworthy (for the commission)  
Exam by Ms. Patel

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1 will do that. We'll take ten minutes.

2 THE REGISTRAR: The hearing is adjourned for a  
3 ten-minute recess until 11:12 a.m. Please mute  
4 your mic and turn off your video. Thank you.

5 **(WITNESSES STOOD DOWN)**

6 **(PROCEEDINGS ADJOURNED AT 11:02 A.M.)**

7 **(PROCEEDINGS RECONVENED AT 11:11 A.M.)**

8 CHRIS CARTER, for the  
9 commission, recalled.

10 BLAIR MORRISON, for the  
11 commission, recalled.

12 MICHEAL NOSEWORTHY, for  
13 the commission,  
14 recalled.

15 THE REGISTRAR: Thank you for waiting. The hearing  
16 is resumed. Mr. Commissioner.

17 THE COMMISSIONER: Thank you, Madam Registrar. Yes,  
18 Ms. Patel.

19 **EXAMINATION BY MS. PATEL (continuing):**

20 Q Mr. Carter, we're still looking -- Madam  
21 Registrar, if you could bring up this document  
22 FSA0001 again, please. And still on the third  
23 page there under the heading "Origination  
24 Networks of Fraud." There's a note there that  
25 brokers -- the last bullet point under that

1 heading:

2 "Brokers involved in the fraud may have a  
3 network of real estate agents directing  
4 borrowers to them; access an appraiser  
5 willing to manipulate appraisals to  
6 inflate property valuation."

7 And again is this fact pattern of a network of  
8 real estate agents directing borrowers to a  
9 broker involved in a fraud or a broker involved  
10 in fronting, is this a fact pattern that the  
11 registrars observed?

12 A (CC) We have encountered this before. Again I  
13 would point back to the context of the  
14 enforcement action and not to imply or suggest  
15 that it's kind of a larger practice within the  
16 real estate community, but the reality is that,  
17 again, among mortgage brokers and real estate  
18 agents do operate within their particular  
19 networks, and we have encountered this in the  
20 context of some of their enforcement actions.

21 Q Okay. And not -- this was a presentation, I  
22 understand, or a document prepared in connection  
23 with the federal/provincial working group on  
24 fraud and money laundering in real estate; is  
25 that right?

1           A       (CC) Yes. I believe the working group has gone  
2                    through kind of numerous name iteration changes  
3                    but yes, it is the federal/provincial working  
4                    group convened by the ministries of finance to  
5                    have a deeper exploration of issues in the real  
6                    estate sector.

7           Q       Okay. And are you able to draw the -- connect  
8                    the dots for us and explain how these networks  
9                    of fraud or falsification of loan documentation  
10                   could facilitate money laundering?

11          A       (CC) Is there maybe another way you could  
12                    rephrase the question? I'm struggling a bit  
13                    with --

14          Q       Yeah, I'm just connecting the dots to our  
15                    mandate here. The practice of falsifying  
16                    borrower documents to qualify them for loans  
17                    that they wouldn't otherwise qualify for, I  
18                    mean, you can understand from the -- it could be  
19                    dangerous for the borrower because they could --  
20                    if they don't know that this is happening they  
21                    could be getting into a mortgage that they can't  
22                    afford. For the lender there's risks because  
23                    they are giving a loan to somebody who is not on  
24                    paper qualified to receive it. And so they are  
25                    putting themselves at a business risk. I'm



1                   wondering if there's a money laundering  
2                   vulnerability here that can be drawn, a  
3                   connection can be drawn to?

4                   A       (CC) Yes. No, certainly thank you for that  
5                   clarification. I'll come at it maybe from a  
6                   slightly different angle, but in terms of the  
7                   facilitation of unregistered, and again these  
8                   files are in the public domain, the -- and what  
9                   I'm tying this back to is you were previously  
10                  asking about systemic issues. You are asking  
11                  about systemic risk and we certainly have  
12                  encountered files where the magnitude of this  
13                  type of conduct has kind of resulted in loans  
14                  being funded to the tune of half a billion  
15                  dollars. So this isn't exclusively small  
16                  activity. It can be much larger in size and  
17                  scale and can have larger and wider systemic  
18                  impacts.

19                 Q       Is it fair to say that a person who obtains a  
20                   mortgage loan on the basis of fraudulent  
21                   documents then has an opportunity to put funds  
22                   that they shouldn't have on paper, at least  
23                   according to their licit tax or banking  
24                   documents, they have an opportunity to put funds  
25                   into the financial system through an investment



1                   scenario is always indicative of money  
2                   laundering because we simply don't have that  
3                   data or that information to be able to suggest  
4                   that or to comment on that.

5           Q        Certainly.  But you wouldn't disagree that it  
6                   presents vulnerability to money laundering?

7           A        (CC) Absolutely.

8           Q        One more vulnerability I want to look at before  
9                   we put this document away, at the bottom of  
10                  page 5 there is a bullet point "private/subprime  
11                  lenders."  And if you could scroll up just a  
12                  bit, Madam Registrar, please.  It straddles a  
13                  page so up a little bit more.  There we're.  
14                  Thank you, that's good.  Can you explain what  
15                  you mean by private -- or meant is meant by the  
16                  author of this document by private and subprime  
17                  lenders and then if you can could describe the  
18                  risk that arises.

19          A        (CC) Certainly.  So there are a number of  
20                  lending activities that as I mentioned are  
21                  captured by the *Mortgage Brokers Act*, and this  
22                  particular section here refers to mortgage  
23                  investment corporations, it refers to syndicated  
24                  mortgages.  It also refers to private lenders,  
25                  which is more of a one-on-one transaction, more

1                   of an individual transaction. I think at the  
2                   end of the day when one is looking at this type  
3                   of lending activity, it is fair to say that the  
4                   lending tends to be more equity based. Namely,  
5                   it's lending that takes place on the basis of  
6                   the value of the property and whether or not the  
7                   lender is comfortable ultimately with owning the  
8                   property.

9                   The underwriting, the due diligence, the  
10                  qualification of the loan does not to the same  
11                  degree rely on qualification of the borrower.  
12                  So there's not the same know-your-client type  
13                  arrangements in place in private lending, and  
14                  I've mentioned previously the legislative  
15                  framework that we're managing has not kept pace  
16                  with developments in industry. But that in  
17                  terms of the qualification of the borrower and  
18                  lending on the quality of the borrower, again,  
19                  it is the case that there's not the same  
20                  emphasis on that foray lender as there may be  
21                  say, for example, in banks and credit unions and  
22                  mainstream lenders.

23                  Q    So there's neither a requirement nor necessarily  
24                  a business imperative for doing a careful due  
25                  diligence, know your client, as you call it, on

1 a borrower?

2 A (CC) I wouldn't say there's no business  
3 imperative. And I would say that there is no  
4 requirement in the *Mortgage Brokers Act*, but  
5 business imperative there certainly would be in  
6 some circumstances a need to qualify the  
7 borrower. My point is more when it comes to the  
8 private lending space writ large, the emphasis  
9 is on the -- is more on the value of the  
10 property as opposed to the qualification or the  
11 quality of the borrower which from a  
12 know-your-client perspective and then from a  
13 money laundering perspective might represent an  
14 amplified vulnerability.

15 MS. PATEL: Mr. Commissioner, if we could mark this  
16 document as the next exhibit, please.

17 THE COMMISSIONER: Very well, next exhibit.

18 THE REGISTRAR: 610, Mr. Commissioner.

19 **EXHIBIT 610: Vulnerabilities in mortgage**  
20 **lending (FICOM, CMHC)**

21 MS. PATEL:

22 Q I intend next, Mr. Carter, to talk about the  
23 gaps in the legislation that might allow for or  
24 fail to prevent these kinds of activities and  
25 that was up again at page 3 and we'll have a

1                    look at that. I'm happy to keep this document  
2                    up under gaps and vulnerabilities or just simply  
3                    proceed with the discussion without it if you  
4                    don't need it in front of you.

5            A        (CC) I personally don't need it in front of me.

6            Q        Okay. I think we can take it down, then, Madam  
7                    Registrar. And, Mr. Carter, if you could speak  
8                    to -- we've spoken to a number of weaknesses in  
9                    the act but specifically in reference to the  
10                   kinds of schemes or conduct that we've just  
11                   discussed, what are the vulnerabilities in the  
12                   act, the gaps in the act that either fail to  
13                   prevent this or allow it to happen?

14           A        (CC) Certainly. So I've touched on some of the  
15                   gaps and opportunities to strengthen the  
16                   legislative regime previously. So there's the  
17                   entire activities that require licensing is in  
18                   my view something that can be streamlined and  
19                   made a bit clearer. The addition of different  
20                   licensing categories depending on the activity  
21                   that you're undertaking and then having those  
22                   activities and that licensing category attached  
23                   to specific qualification requirements, attached  
24                   to specific conduct requirements that pertain to  
25                   the activity would be extraordinarily -- would

1                   be helpful and be reflective of modern  
2                   regulatory statutes in this particular space.

3                   I've also touched upon more generally the  
4                   absence of the types of obligations and conduct  
5                   requirements that one would generally expect in  
6                   this type of legislation. So that's the absence  
7                   of duties to provide best advice to clients, for  
8                   example, duties to exercise due skill and  
9                   reasonable care, that kind of bucket of  
10                  expectations. Know your client. Know your  
11                  product is another type of expectation that is  
12                  fairly standard in these types of legislation,  
13                  that's absent in the *Mortgage Brokers Act*. An  
14                  obligation to report suspected misconduct to the  
15                  regulatory is another opportunity. I've touched  
16                  upon the idea of an annual information return  
17                  that exists in other jurisdictions that might,  
18                  that could equip the regulatory with a bit more  
19                  of that, and you've mentioned it, a bit of a  
20                  systemic window into risks within the system and  
21                  in the sector. I've also made reference to the  
22                  enforcement provisions and when one is looking  
23                  at the more serious end of the spectrum when it  
24                  comes to conduct, the question is does the  
25                  current legislative framework represent a

1                   specific and/or general deterrent to those types  
2                   of activities. And I'd suggest that there's an  
3                   opportunity to strengthen the sanctions and the  
4                   options available to the registrar when it does  
5                   encounter misconduct, particularly at the more  
6                   serious end of the spectrum.

7           Q       What's the largest penalty that the registrar  
8                   can request under the legislation?

9           A       (CC) \$50,000 in relation to administrative  
10                   penalties that the registrar can implement.

11          Q       And I think you mentioned before that each of  
12                   these transactions could result in commissions  
13                   of several thousand dollars to a mortgage  
14                   broker; is that right?

15          A       (CC) That's correct.

16          Q       And I'm not sure that this is within your area  
17                   of expertise, but generally can you say how  
18                   mortgage brokers obtain -- how they get paid.

19          A       (CC) They get paid by the lender.

20          Q       Okay.

21          A       (CC) So there's a commission and they get paid  
22                   by the lender.

23          Q       So would that typically be as a percentage of  
24                   the total amount that's loaned?

25          A       (CC) Yes, I believe that is an element of how



1                   they're compensated, yes.

2           Q       Can you speak to the ability of the office of  
3                   the registrar to coordinate with law enforcement  
4                   or to seek the prosecution of provincial  
5                   offences under the act?

6           A       (CC) Certainly. So first of all, I guess what  
7                   I'd like to do is commend the RCMP for the  
8                   initiation of the Counter Illicit Finance  
9                   Alliance, BC, which is an initiative to bring  
10                  together regulators, law enforcement and also  
11                  certain private sector actors to really look at  
12                  how we can better exchange information, how we  
13                  can better understand whose involvement plays a  
14                  role in the larger AML system and to put the  
15                  appropriate mechanisms in place to enable that  
16                  information exchange. Mr. Morrison mentioned  
17                  previously in his testimony in terms of the AML  
18                  system, you know, we all have information to  
19                  share and we all have information that we would  
20                  like shared with us. And so that  
21                  CIFA-BC initiative really is a positive step in  
22                  the right direction in terms of putting that  
23                  larger architecture in place.

24                               More specifically to your question about the  
25                               interface with law enforcement, so when we

1           encounter things that we believe might be of  
2           interest on our files of law enforcement, we do  
3           as a matter of course share. It's not always  
4           100 percent clear what becomes of that  
5           information in terms of law enforcement's  
6           management of the files, and so I would regard  
7           that kind of handover as a little bit  
8           potentially uneven from time to time, is  
9           understanding what part of the law enforcement  
10          system might be interested in specific files and  
11          then appropriately funneling that information  
12          through to the right part of the organization  
13          can be from time to time a bit of a challenge,  
14          which kind of brings me back to again the  
15          CIFA-BC, Counter Illicit Finance Alliance  
16          BC initiative, which I think is a very positive  
17          move in the direction of providing that clarity  
18          and clearer information handover points between  
19          the various stakeholders in this space.

20          Q     Have you successfully, the registrar, has it  
21          successfully experienced referral of matters of  
22          the type that we've -- misconduct of the type  
23          we've seen in this document that we just looked  
24          at, some of which would appear to describe just  
25          straight-up fraud, fraudulent alteration of

1 documents? Have you experienced successful  
2 referrals to law enforcement in that the  
3 registrar is seeing action taken by law  
4 enforcement resulting in a prosecution?

5 A (CC) In the public domain, no.

6 Q Now, we've discussed some of the shortcomings in  
7 the act, and again it's under review and  
8 appreciating that there's a consultation going  
9 on. Specific reference to the issue of  
10 fronting, I mean, fronting requires a registered  
11 mortgage broker to knowingly process  
12 applications for somebody who is unregistered,  
13 and that's not prohibited under the act, but is  
14 that conduct that any registered mortgage broker  
15 ought to know or is informed is not permissible?

16 A (CC) We think crystal clear that the conduct  
17 would not be tolerated. We send out regular  
18 notices to industry that updates them on the  
19 enforcement actions that we've taken and where  
20 we've held mortgage brokers accountable.  
21 Mortgage brokers have lost their licence for  
22 facilitating unregistered activity and we  
23 reinforce the point in all of our engagements  
24 with the industry and remarks in to events or in  
25 more specific engagements with industry. So

1                   we've been crystal clear and frankly we've also  
2                   seen some media pickup of the issue as well,  
3                   which is always kind of helpful in terms of  
4                   raising awareness. What we have also been  
5                   crystal clear about is our expectation and  
6                   request that industry report misconduct to the  
7                   regulator. So where there are unregistered  
8                   parties out there, we want to know about that  
9                   and we have been again crystal clear in terms of  
10                  our expectation that the information is provided  
11                  to us.

12                 Q    The kinds of scenarios that we've discussed that  
13                   were raised in that document suggest networks of  
14                   people who work together either by providing the  
15                   fronting services to an unregistered person or  
16                   by referring business to an unregistered person.  
17                   And I believe that there was a mention there of  
18                   networks of real estate agents might be seen to  
19                   be part of the problem; is that correct?

20                 A    (CC) Again, we've encountered these networks on  
21                   files in the past, so yes, we do see something  
22                   that resembles a network.

23                 Q    And I'm not sure the extent to which you're able  
24                   to speak to this, but it seems that this might  
25                   speak to a cultural problem in the industry with

1                   respect to compliance and ethical obligations.

2                   Do you think that that's a fair observation?

3           A       (CC) It's an interesting question. Thank you  
4                   for it. I would point back to the fact that we  
5                   have a regulatory regime that dates back to the  
6                   early 70s. I would point back to the fact that  
7                   we have an industry that again, you know, has  
8                   kind of gone from being a bit of a fringe player  
9                   to being mainstream, a mainstream provider of  
10                  financial services to the public and having a  
11                  systemic role and impact. And we have a  
12                  legislative regime that just hasn't kept pace in  
13                  terms of those obligations in terms of modern  
14                  expectations of intermediaries and regulated  
15                  individuals and entities.

16                         Your point there about culture is an  
17                         interesting one. I do observe that there is a  
18                         bit of a sales culture within industry. Again  
19                         that has built up in the absence of a kind of  
20                         modern-type regulatory regime and, you know, to  
21                         your -- to the larger point about facilitation  
22                         of unregistered activity, our expectation is  
23                         that the registrants manage the relationship  
24                         with the borrower, that they're receiving the  
25                         borrower's confidential and private information,



1 observation?

2 A (CC) It's a commission-based business, yes, and  
3 a deal closes people get paid, yes. I wouldn't  
4 want to comment on practices in other industries  
5 that I'm not accountable for and I don't  
6 regulate, but I think that that is a general  
7 observation regarding the commission-based  
8 culture when the deal closes. I think that's  
9 reasonable and fair.

10 You know, but again, just to maybe amplify  
11 that, I mean, we've been speaking about mortgage  
12 brokers; we've been speaking about appraisers.  
13 You know, there's a much larger system that --  
14 sorry, we've been speaking about real estate  
15 professionals. There's a much large system that  
16 sits around that as well, appraisers, lawyers,  
17 notaries, lawyers, et cetera.

18 Q If there's a cultural issue in the industry,  
19 what's the role of the registrar of mortgage  
20 brokers in addressing it and how can it do so?

21 A (CC) I would point back to the legislative tools  
22 that we have at our disposal and I think that  
23 that would be a refresh or renewal of the  
24 *Mortgage Brokers Act* would be a really important  
25 first step in terms of very clear conduct

1                    expectations, and this is obviously through  
2                    government and through the legislature that  
3                    responds to the public's expectations. I'd say  
4                    would be an extraordinary -- a very, very  
5                    helpful first step.

6                    Q    I have a related question, but it's actually for  
7                    Mr. Noseworthy. I'm wondering if you're able to  
8                    tell me, Mr. Noseworthy, are there rules that  
9                    apply to a real estate licensee, a real estate  
10                   licensee's referral of a client to a mortgage  
11                   broker? And specifically I'm wondering is there  
12                   any rule that requires a real estate licensee to  
13                   confirm that a person is a registered mortgage  
14                   broker before making a referral to them?

15                   A    (MN) So the answer to that is it's a bit  
16                   nuanced. I guess the answer is it depends on --  
17                   and I'll elaborate on that and say the reason is  
18                   that -- and, you know, I want to be a bit  
19                   careful here and not ever, you know, presuppose  
20                   an outcome of a potential discipline case or do  
21                   anything that veers into that statutory role,  
22                   but just in a general sense, there are rules  
23                   that real estate professionals have to follow in  
24                   terms of things like acting in the best interest  
25                   of their client, acting with reasonable care and



1 skill, so, you know, taking action that could  
2 potentially put a client at risk especially when  
3 there are tools potentially available to them to  
4 confirm or deny the situation that you just  
5 described could potentially be found to be in  
6 breach of those rules. But, you know, it's a  
7 bit nuanced and would depend on the exact facts  
8 and circumstances of that case and also what  
9 tools are available, as I said, in terms of  
10 what's publicly available for -- from the  
11 regulatory of mortgage brokers that could be  
12 seen to be something that the real estate  
13 professional in that case could or could not  
14 have availed themselves of.

15 Q Mr. Carter, maybe I'll give you an opportunity  
16 for a PSA here. Is information about the  
17 registered status of submortgage brokers and  
18 mortgage brokers available easily to the public?

19 A (CC) Yes, it's available on our website. I'm  
20 not sure what a PSA is.

21 Q Public service announcement.

22 A (CC) Got it. Thank you.

23 Q So that information is available on the public  
24 facing website?

25 A (CC) That's correct. It's available on BCFSA's

1 website.

2 Q I'd like to, before I turn to Mr. Noseworthy and  
3 the conduct of real estate -- of the different  
4 real estate actors, I just want to ask you a  
5 little bit about information that the registrar  
6 of mortgage brokers has available to it about  
7 market conduct. What data sources does the  
8 registrar of mortgage brokers have about the  
9 activities of the registrants?

10 A Certainly.

11 Q The business activities.

12 A (CC) Certainly. So as I mentioned before, you  
13 know, we receive information from a whole range  
14 of different sources. That might be complaints;  
15 that might be our networks; that might be  
16 commentary in the media; it might be court  
17 cases. There's a whole range of activities that  
18 we have insight into and receive information on  
19 that informs where we target our efforts and  
20 where we target our reviews. Your last point  
21 there about industry activity is an interesting  
22 one. What that causes me to reflect on is the  
23 obligation that mortgage brokers have in some  
24 jurisdictions to file what's called an annual  
25 information return which speaks a bit more to,

1                   you know, for example volume, types of lending,  
2                   types of origination that's taking place. That  
3                   requirement and that information isn't provided  
4                   to the registrar under the *Mortgage Brokers Act*  
5                   at the moment, which then kind of brings me back  
6                   to the opportunity to strengthen the legislative  
7                   framework by putting that type of requirement in  
8                   place and also ties me back to your remarks  
9                   previously about having a better sense of  
10                  systemic issues in addition to consumer  
11                  protection specific and transaction-specific  
12                  issues.

13                Q     If you're looking at a particular mortgage  
14                   broker and you'd like to see a history of the  
15                   transactions they've been involved in, how do  
16                   you get that information?

17                A     (CC) We can summons it.

18                Q     From the brokerage?

19                A     (CC) We would obtain that from the brokerage.  
20                   That's correct. The brokerages have  
21                   recordkeeping obligations under the *Mortgage*  
22                   *Brokers Act*, and so we have taken enforcement  
23                   action where those recordkeeping obligations  
24                   haven't been complied with in the past, but  
25                   bottom line we can access that information from

1                   the brokerage.

2           Q       And you have limited ability, I understand, to  
3                   access that information from lenders themselves?

4           A       (CC) It depends on the lender. There are  
5                   challenges in relation to information gathering  
6                   from banks, for example. With lenders that we  
7                   have direct jurisdiction over then it tends to  
8                   be a bit easier. So, yeah, it's I'd say there  
9                   are limitations in terms of the information we  
10                  can obtain from certain lenders under the  
11                  legislation.

12          Q       And I think that the document we're just looking  
13                   at that FSA0001 mentioned difficulties in  
14                   obtaining information from federally regulated  
15                   banks. Is that the case?

16          A       (CC) I'll provide maybe an example there. When  
17                   a mortgage broker -- I mentioned before that we  
18                   look at employment record, for example, when  
19                   we're conducting a suitability review of a  
20                   mortgage broker and the fact is there are a  
21                   number of mortgage brokers that join us from  
22                   financial institutions, including banks, and it  
23                   can be often difficult to obtain a record of  
24                   employment and more particularly what sits  
25                   underneath that. So, for example, was the

1                   determination of succession of employment with  
2                   the previous employer due to some type of  
3                   misconduct that might otherwise make one  
4                   unsuitable to be registered as a mortgage  
5                   broker. So that type of information sharing,  
6                   the ability to gain that information would be  
7                   helpful in terms of our suitability reviews for  
8                   prospective mortgage brokers.

9                   Q     And there's no obligation to, and in fact I  
10                   don't think that there's a field in which you  
11                   could record information about uninvolved  
12                   mortgage broker on LTSA forms. Is that correct?  
13                   Sorry, let me make that an easier question. Are  
14                   you aware of any ability to obtain information  
15                   about mortgage brokers involved in a transaction  
16                   from LTSA documents?

17                   A     (CC) We get to the mortgage broker through the  
18                   lender. If the lender is registered with us, we  
19                   will have that information on the face of the  
20                   land titles documentation. If the lender is not  
21                   registered with us then we would make inquiries  
22                   with the lender and try to understand the  
23                   mortgage broker that facilitated the transaction  
24                   through that avenue.

25                   Q     But it's not possible to go to the LTSA website,

1                   for example, and search for transactions that a  
2                   particular mortgage broker is involved in?

3           A       (CC) That's correct.

4           Q       Okay. Would that be helpful to you?

5           A       (CC) That would be helpful to me.

6           Q       Thank you. I'm going to ask some questions now  
7                   of Mr. Noseworthy and I'd like to ask them in  
8                   reference to the document OSRE0007. Madam  
9                   Registrar, if you could bring that up.

10           A       (MN) Sure. So this is information that we  
11                   Mr. Noseworthy, can you identify this document  
12                   for us and tell us what the purpose of it was.

13           A       (MN) Sure. So this is information that we  
14                   provided to the expert panel on money laundering  
15                   chaired by Professor Maloney.

16           Q       Okay. And this was authored by your office?

17           A       (MN) Yes, it was.

18           Q       Okay. And I would like to -- just a moment.  
19                   Just trying to find my place here. On page 10  
20                   of this PDF, Madam Registrar. Page 10 of the  
21                   PDF there's a PowerPoint slide that's titled  
22                   Systemic Challenges In Addressing Money  
23                   Laundering in Real Estate." And some of these  
24                   are issues we've encountered already in the  
25                   course of our hearings. You mentioned -- if you  
                 can scroll down a bit, Madam Registrar,

1                   underneath this PowerPoint slide, you mention  
2                   the fact that lawyers are not covered by  
3                   anti-money laundering provisions of *Proceeds of*  
4                   *Crime (Money Laundering) and Terrorist Financing*  
5                   *Act*, that real estate purchase moneys are  
6                   commonly placed through lawyers' trust accounts.  
7                   And then of course there's a note about  
8                   historically no requirement to identify  
9                   beneficial owners of real estate. I'd like you  
10                  to scroll down to the next slide where you  
11                  address market misconduct related to unlicensed  
12                  real estate services being an increased risk for  
13                  money laundering.

14                  Madam Registrar, if you could scroll down a  
15                  little bit on this page. There we are. That's  
16                  a good place to stop. Thank you.

17                  If you could address what the risks are with  
18                  respect to unlicensed real estate activity as it  
19                  pertains to money laundering that you outline  
20                  here.

21                  A       (MN) So it sounds like kind of an obvious  
22                  statement, but the risk is that it's not  
23                  regulated and I know that sounds sort of  
24                  obvious, but the reason it's a risk is because  
25                  it's a space that we don't have insight into.

1           You know, we hear anecdotal reports of things  
2           that are happening or not happening there that  
3           put the system at risk, but the real bottom line  
4           is that there's no oversight, and so there's no  
5           real way to take action on preventing things  
6           that may be happening there. And there's also a  
7           gap in terms of knowledge and information.  
8           Again, you know, we hear things anecdotally, but  
9           without having clear regulatory authority over  
10          those spaces it's an unknown and that's a big  
11          part of the problem.

12          Q       So here you identify, you say for example,  
13          unregulated activity is vulnerable to money  
14          laundering and other market abuses can involve  
15          high value cash transactions with no FINTRAC  
16          reporting requirements. You say the unregulated  
17          rental market may be vulnerable to the money  
18          laundering. But I think the overarching point  
19          that you just made is that you don't have any  
20          insight as the regulator into what's happening  
21          and into whether that risk is materializing; is  
22          that right?

23          A       (MN) Other than again hearing anecdotal reports  
24          or finding out about instances because we're  
25          investigating things that we do have clear



1 authority over and just so happen to find out  
2 about them that way, but that's exactly why it's  
3 a challenge and why it's a gap.

4 Q Okay. So this slide addresses in those bullet  
5 points unlicensed subleasing. And the next  
6 slide, Madam Registrar, I think if you can  
7 scroll right down to the notes that are below  
8 the PowerPoint slide, you identify other  
9 consider areas, unlicensed areas of  
10 vulnerability. And if you could just address  
11 those two, the commercial developments and  
12 capital-raising activity?

13 A (MN) So the *Real Estate Development Marketing*  
14 *Act* applies to residential developments of over  
15 five units. So everything outside of the scope  
16 of that as identified on this slide is not  
17 captured by REDMA requirements. And that is  
18 what that refers to, it outlines there.

19 Q And the development capital-raising activity?

20 A (MN) Yes, so this veers into other spheres of  
21 regulation, but, you know, the reason it's on  
22 this slide, the reason it's identified is again  
23 tying back to the fact that it's a gap and it's  
24 a space we have, this anecdotal insight into but  
25 don't have any clear authority over, and you'll

1                   see there reference to unregulated lending and  
2                   foreign capital and there's also a piece about  
3                   exempt lending in there. So again, you know, we  
4                   hear about things anecdotally, identify it as a  
5                   risk because it's unknown and it's a gap.

6           Q       And what's the potential role of the Office of  
7                   the Superintendent of Real Estate as it is now  
8                   or as it might be reconstituted under the BCFSA  
9                   to address these gaps?

10                               And, Madam Registrar, we can take down this  
11                   document, thank you.

12           A       (MN) So I think overall and to take it to an  
13                   even higher level, this is really a conversation  
14                   about approaches to regulation going back to  
15                   your point earlier about the distinction between  
16                   a sort of straight transaction regulator and  
17                   then more of a market conduct regulator. And so  
18                   you'll see throughout that document and some  
19                   other documents I know you have before you,  
20                   we've been alive to this as both a potential gap  
21                   and a potential solution going forward in terms  
22                   of getting access to data that we don't have  
23                   right now and potentially using that to regulate  
24                   in a different way going forward, you know, to  
25                   look at things on a more systemic basis instead

1                   of on a more transaction-by-transaction basis,  
2                   and again that ties into the data piece and  
3                   having the ability to look at things on a more  
4                   trend-wide or systemic-wide basis instead of a  
5                   more complaint driven per transaction basis.

6                   MS. PATEL: Madam Registrar, I think I forgot to mark  
7                   that. Mr. Commissioner, if we could mark  
8                   OSRE0007 as the next exhibit, please.

9                   THE COMMISSIONER: Very well, 611.

10                  THE REGISTRAR: Yes. Exhibit 611.

11                   **EXHIBIT 611: OSRE Presentation to the**  
12                   **Province's Expert Panel on Money Laundering -**  
13                   **January 23, 2019**

14                  MS. PATEL:

15                  Q     And following up on what you've just mentioned,  
16                   Mr. Noseworthy, if we could pull up OSRE0012.  
17                   This is a document produced by your office  
18                   that's an email attaching a memo from Jonathan  
19                   Vandall to yourself among others,  
20                   Mr. Noseworthy. Did you receive this email?

21                  A     Yes, yes, I recognize it.

22                  Q     Okay. And in scrolling down to the next  
23                   page there's the memo that is attached to it  
24                   that's called the "Regulating Market Conduct"  
25                   and addressing the very issues that you've just

1           discussed. What I thought was perhaps helpful  
2           about this document, if we could scroll down to  
3           page 3. One thing I wanted to highlight. In  
4           that middle paragraph where it's starting with  
5           "though [sic] the Maloney report" it references  
6           a 2008 -- that paragraph references a 2008  
7           report by the Canadian Council of Insurance  
8           Regulators that helpfully provides a definition  
9           of risk-based market conduct, and so I just  
10          wanted to highlight that first of all. It says  
11          -- and that's the last two sentences of that  
12          paragraph starting:

13                 "The report defines risk-based market  
14                 conduct regulation as 'directing  
15                 regulatory efforts to the most significant  
16                 issued that either have the greatest  
17                 potential for consumer harm or that could  
18                 weaken public confidence if left  
19                 unchecked. In a risk-based approach,  
20                 regulators prioritize issues based on the  
21                 potential impact (risk) to the achievement  
22                 of desired regulatory outcomes.'"

23          Do you agree with that definition? Do you think  
24          it's helpful one in understanding what  
25          risk-based market conduct regulation is?

1           A       (MN) Yes, much more eloquent than I could have  
2                    put it myself.

3           Q       And much, much more than I could do, too. So  
4                    very helpful. Now, Mr. Vandall goes on in this  
5                    memo to discuss problems with data collection  
6                    and data analysis and the regulation of market  
7                    conduct.

8                    Madam Registrar, if you could just scroll  
9                    down there. That sections starts at the next --  
10                   at the bottom of this page.

11                   And without -- I mean, we don't need to  
12                   repeat everything that Mr. Vandall says in this  
13                   memo, but is it fair to say that the conclusion  
14                   that he draws is that OSRE has inadequate access  
15                   to data and data analytic capacity in order to  
16                   measure and understand trends for regulating  
17                   market conduct risk?

18           A       (MN) Yes, yeah. I mean, I think it's fair to  
19                   say. It's a generalization or a high-level  
20                   statement, but it's fair to say, I think, that  
21                   the current regulatory regime for real estate in  
22                   BC is more limited than is, you know -- the  
23                   definition that you just gave, for example, it  
24                   mostly focuses on individual real estate  
25                   transactions, as I mentioned, as opposed to

1 taking a more broader trend-based approach and  
2 it also tends to address market conduct concerns  
3 in a more reactive way. We're a complaint  
4 driven office and we rely on complaints about  
5 things that in most cases happened after the  
6 fact to initiate an investigation and then get  
7 to a complaint. I mean, our current system  
8 doesn't regulate market conduct really outside  
9 of the scope of what I just described in the way  
10 that that definition that you described does,  
11 and if we were going to get to that and get to  
12 that place then we would need more and different  
13 data to facilitate us doing that for sure. I  
14 think that's a fair statement to make.

15 MS. PATEL: I'd like to pursue that, but first of  
16 all, Mr. Commissioner, if we could mark this as  
17 the next exhibit, please.

18 THE COMMISSIONER: Very well, that's 612.

19 THE REGISTRAR: Exhibit 612.

20 **EXHIBIT 612: Email from Jonathan Vandall re**  
21 **2019-08-20 Discussion Paper re Regulating Market**  
22 **Conduct v2 - August 29, 2019 (with attachment)**

23 MS. PATEL: We can take that down now, Madam  
24 Registrar.

25 Q So going back to the point about more and better

1 data, what are the data sources that OSRE has  
2 access to now about the real estate market and  
3 the actors in it?

4 A (MN) Well, sure. A lot of the data that we have  
5 comes again from complaints and so depends on  
6 what the source of the complaint is. We also  
7 have access to data from our colleagues at the  
8 real estate council. There's I think -- the  
9 data that we do have again is tied into that  
10 definition that I just gave of how we regulate  
11 in a more sort of reactive or case-by-case way.  
12 There's a gap in terms of data tools in terms of  
13 a more realtime access to data and, again, a  
14 more trend-based as opposed to single  
15 transaction, single complaint based way of  
16 looking at things, and that's not the data that  
17 we have right now.

18 Q Are there industry actors who have -- who hold  
19 that kind of data that you would like to have?

20 A (MN) A lot of -- yes. A lot of the data that  
21 I'm thinking of and that's being described is  
22 accessed on the MLS system, the multiple listing  
23 service system, and that data is held by local  
24 real estate boards in the province. And then as  
25 those boards are members of the BC Real Estate

1 Association and the BC Real Estate Association  
2 is a member of CREA, the Canadian Real Estate  
3 Association, and it's CREA that holds the  
4 realtor trademark and flowing up from the board  
5 level that ultimately owns that data.

6 Q And has OSRE engaged in discussions with the  
7 boards or the BCREA about getting access to MLS  
8 data for its own regulatory purposes?

9 A (MN) There's one specific example where that's  
10 happened and to be -- to tell the whole picture,  
11 it was not a conversation about an ongoing  
12 broader overall market regulation access to that  
13 data in the way that we're describing it here  
14 right now. It was specific to a particular set  
15 of facts, set of data or instance. It came  
16 about after we made a rule to end the practise  
17 of dual agency or dual representation where one  
18 party represents both sides to a real estate  
19 transaction. So that practice is ended by way  
20 of a rule and then we started hearing anecdotal  
21 feedback about some potential unintended  
22 consequences of that, and as a result of that  
23 feedback we went out to the local boards and  
24 asked them for some data that came from that  
25 source but again particularly related to this



1 issue. Some boards did respond and did provide  
2 us with the data. All did not, and the data  
3 that did come back was, you know, different from  
4 board to board so it was difficult to compare in  
5 some cases, and again, it was just a snapshot of  
6 a particular time. It was not continual access,  
7 but again to be fair and totally transparent, we  
8 did not ask for that.

9 Q Okay. Absent being able to dip into the data  
10 that's held by real estate boards through the  
11 MLS systems what are the options for OSRE to  
12 collect data that is needed for market conduct  
13 regulation of the industry?

14 A (MN) In terms of how to access that or similar  
15 data? Is that what you're ...

16 Q That's correct. What are your options for going  
17 out and getting that data from the market?

18 A (MN) Well, I mean, you know, asking again or  
19 being granted explicit access or authority sort  
20 of through the process that I just described but  
21 again on a more long-term, continual, ongoing  
22 basis, or beyond that I think a legislative  
23 change that would expand the regulatory scope to  
24 regulate those entities and then give us access  
25 to data that way or some other legislative tool

1 to allow access to that data. Those are the  
2 things that immediately come to mind.

3 Q The real estate boards are not regulated by OSRE  
4 or by the council?

5 A (MN) No, not insofar as regulating the actual  
6 entities themselves. The name "board" can be  
7 somewhat confusing. The real estate boards are  
8 essentially local industry associations so they  
9 are not regulators in the sense that we're  
10 describing today.

11 Q I'd like to refer to one more document that  
12 touches on this issue and that's OSRE0017. This  
13 is a briefing document that was prepared for you  
14 in October 24th, 2019. Did you receive this?

15 A (MN) Yes.

16 Q All right. And it's on a slightly -- the issue  
17 identified is "filling regulatory data and  
18 information gaps" and it's in the context of an  
19 ongoing review of the role of managing brokers  
20 in the industry; is that right?

21 A (MN) Yes, that's correct.

22 Q All right. And I'm wondering if you are able  
23 with reference to this document to identify --  
24 to discuss the information gap that this  
25 discusses with respect to managing brokers?

1           A       (MN) So, I mean, I don't want to sound like I'm  
2                    oversimplifying things, but really on this front  
3                    as is the case with the last discussion, I mean,  
4                    as a regulator, I think just in general the more  
5                    data the better; right? It would give us a  
6                    better understanding of what's actually  
7                    happening in the sectors that we regulate. It  
8                    would help us better serve the public. It would  
9                    help us stay more up to date and be more aware  
10                   about changes that are happening. And so  
11                   it's -- you know, I'll sound like a bit of a  
12                   broken record, but it's intentional because on  
13                   this set of data as is the case with the last  
14                   set of data we were talking about it's really  
15                   just about helping us have access to a better  
16                   understanding of the sector that we're  
17                   regulating. So when it comes to the managing  
18                   broker project, we set out to consult on  
19                   potentially making some changes to how managing  
20                   brokers are regulated in the real estate sector  
21                   in BC. Managing brokers fulfill a supervisory  
22                   function in terms of real estate regulation in  
23                   the province, and after hearing feedback from  
24                   industry about problems and potential gaps in a  
25                   situation where really it was felt that the

1 regulatory regime had not kept up with realities  
2 on the ground, we set out to gather more  
3 information and try to come up with solutions to  
4 this problem. And we heard a lot of evidence  
5 and anecdotal information about demographic  
6 challenges with managing brokers and it really  
7 sparked a conversation about how we can better  
8 understand the risks and not just things like,  
9 you know, age but things like the period  
10 during -- the length period of each licensee,  
11 when the person was first registered and, you  
12 know, variables about having a better  
13 understanding about the individuals that we're  
14 talking about regulating.

15 Q And so you don't have that data to do that  
16 analysis?

17 A (MN) No, not the data we would want. Not enough  
18 of it, not in the robust manner we would like.  
19 We did get some data on that, our colleagues at  
20 the real estate council have from their  
21 licensing role, and we did get a lot of data on  
22 self-reported from folks in industry which is  
23 really, really helpful and useful and I don't  
24 want to minimize that in any way and it's really  
25 a good thing as a regulator when you get that

1 type of information from the sectors that you're  
2 regulating. But it's a challenge because for  
3 every group or individual who chooses to  
4 self-report information there are of course  
5 those that don't.

6 Q I just want to scroll down to the very bottom of  
7 this document, the bottom of page 3 of this  
8 document. There's an appendix.

9 Thank you. Madam Registrar, that's good.  
10 The paragraph at the bottom that starts:  
11 "A number of ancillary benefits could also  
12 arise from improved data collection and  
13 analytics, including enabling regulators  
14 to publish independent statistics on real  
15 estate market conditions, improving  
16 broader market conduct regulation --"

17 I'll skip the brackets.

18 "-- and collaborating with other  
19 regulatory and enforcement agencies (e.g.  
20 RCMP and FINTRAC) to support joint  
21 enforcement action in the real estate  
22 sector, including on AML enforcement."

23 Do you agree with that statement?

24 A (MN) Yes.

25 MS. PATEL: Mr. Commissioner, if we could mark this

1 as the next exhibit, please.

2 THE COMMISSIONER: Yes, very well.

3 THE REGISTRAR: 613, Mr. Commissioner.

4 THE COMMISSIONER: Thank you.

5 **EXHIBIT 613: OSRE Briefing Document re Filing**  
6 **regulatory data and information gaps -**  
7 **October 24, 2019**

8 MS. PATEL:

9 Q Mr. Noseworthy, just the Maloney report, the  
10 expert panel combatting money laundering in  
11 British Columbia real estate -- Madam Registrar,  
12 we can take this down now, thank you --  
13 recommended that the Ministry of Finance should  
14 take the steps necessary to require that real  
15 estate developers be licensed under a regulatory  
16 regime for that segment of the real estate  
17 industry, eliminate the exemption for  
18 salespeople who are employees of developers, and  
19 consider whether appraisers and home inspectors  
20 should be licensed under the *Real Estate*  
21 *Services Act*. And I understand you've spoken to  
22 the primary issue that arises with the lack of  
23 regulation or licensing of those persons is not  
24 just that vulnerabilities arise but that there's  
25 no insight, there's no -- as the regulator you

1 don't have any insight into what's actually  
2 happening in the industry and what the risks  
3 are; is that correct?

4 A (MN) Yes.

5 Q And just my followup question to this  
6 recommendation of the expert panel, is OSRE  
7 having any role in considering the licensing of  
8 these currently unlicensed individuals? And if  
9 you can let us know any work that's being done  
10 in that regard.

11 A (MN) So I think there's two aspects to the  
12 licensing question and you mentioned both of  
13 them, but I just want to make sure I'm clear  
14 about which I'm referring to. So the  
15 salesperson exception piece, so the exception  
16 for a developer salespeople to be licensed is  
17 something that has gotten quite a bit of  
18 attention and sparked quite a bit of discussion.  
19 I would hope that we would be part of the  
20 discussions about looking at options to do that.  
21 And we're certainly alive to it and I think in a  
22 good position to provide ideas and have that  
23 discussion. The other aspect, the sort of  
24 developer licensing in general or this kind of  
25 idea to create a licensing regime for developers

1 is something that I've heard a little less  
2 discussion on. I think it's maybe not quite as  
3 developed. I know it's something that's gotten  
4 quite a bit of attention since the  
5 recommendation went out there, but it's not  
6 something that I'm aware of is being actively  
7 worked on right now. It's again, it's something  
8 that I in my office would welcome being asked to  
9 provide input on. I think we would want to work  
10 closely with the sector to get their feedback  
11 and make recommendations about what it would  
12 look like going forward, but it's not something  
13 that we're explicitly working on right now.

14 Q And one further followup question,  
15 recommendations from the independent advisory  
16 group of 2016 and the Perrin report from 2018  
17 which is the development of a code of ethics and  
18 professional conduct for licensees. And am I  
19 correct in my understanding, so that was a  
20 recommendation that was made both by the panel  
21 in 2016 and the Perrin report; is that right?  
22 That a professional code of conduct be developed  
23 for licensees?

24 A (MN) I know that that was a recommendation  
25 coming out of the IAG. I have to apologize and



1                   say off the top of my head I'm not sure if that  
2                   was explicitly echoed by Mr. Perrin's report.

3           Q       We don't need to go there, but I can give a  
4                   reference at page 30 of his report. And sorry,  
5                   it's not a quiz. At page 30 of his report he  
6                   does repeat that call, and my question just is  
7                   does OSRE have any role in developing such a  
8                   code of ethics and is one being developed?

9           A       (MN) So the -- it's ... this will have a long  
10                   sort of multifaceted answer, so please just  
11                   interrupt me if I'm going off track here. The  
12                   very first consultation action that my office  
13                   launched after it was formed in 2016 was to go  
14                   out and publicly consult on the -- this idea  
15                   that I referenced earlier about ending dual  
16                   agency in BC. And the way that we did that was  
17                   to go out and meet with all the local real  
18                   estate boards and then formulate a public  
19                   consultation about not just ending that practice  
20                   but we also had a conversation about the  
21                   possibility of a code of ethics at the same  
22                   time. And the reason for that is that largely I  
23                   think the recommendation to end the practice of  
24                   dual agency was borne out of an idea around  
25                   having a better understanding of conflict and

1           fiduciary duty in terms of how real estate is  
2           regulated, of course which ties very closely in  
3           with code of ethics. So we went out and had  
4           conversations about all of those things at the  
5           same time. A lot of the feedback that we heard  
6           was about a broader understanding of agency or  
7           fiduciary duty in the real estate space and what  
8           that would mean for a code of ethics. We also  
9           heard a lot of feedback about how the real  
10          estate sector is a little unique, I think, in  
11          terms of comparing to other regulated  
12          professions in that it has a code of ethics that  
13          is national but it's at an industry level, so it  
14          doesn't come from the regulator, it comes from  
15          the Canadian Real Estate Association and it's  
16          tied in with licensees who are able to use the  
17          realtor trademark, which CREA also owns. So we  
18          heard a lot of feedback about a desire to not  
19          have duplication, the potential for problems if  
20          there is a provincial code of ethics to deal  
21          with people coming from other jurisdictions, and  
22          we again heard a lot of feedback about how that  
23          tied in about our understanding of the agency  
24          and fiduciary duty. So because of all of that,  
25          we made a decision to go out with just the rule

1 change on agency and we also went out with some  
2 rule changes about increased disclosures that  
3 were mandated and disclosure to unrepresented  
4 parties in real estate transactions and  
5 disclosures of remuneration.

6 So it didn't mean that we were shelving the  
7 idea of a code of ethics. It just meant that we  
8 made a decision to go forward on those actions  
9 because we thought that they would hopefully  
10 address some of the concerns that led to the  
11 recommendation to develop a code of ethics. So  
12 we sort of wanted to take a, you know, let's do  
13 this first approach and see what would happen.

14 The real estate council also -- and I don't  
15 want to speak for them or misstate anything  
16 because I know you're speaking with them later  
17 as well, but they also borne out of this process  
18 and later instituted a mandatory ethics training  
19 course. So there -- again apologies for the  
20 long answer, but there have been I think several  
21 things that, while they're not officially called  
22 code of ethics, go to the heart of where that  
23 recommendation came from, and a lot of the rule  
24 consultations that we've done, including these  
25 conversations about managing brokers that you

1 reference, are tied into this idea of fiduciary  
2 responsibility, ethical obligations and that  
3 sort of understanding. So I would describe it  
4 as ongoing work. I think as we keep moving  
5 forward with these changes, if there ends up  
6 still being a need for an overarching  
7 stand-alone provincial code of ethics, then that  
8 would be done in light of the fact that we've  
9 already put all of these other measures in  
10 place. So it's not something that the door is  
11 closed to. It's just something that we wanted  
12 to sort of try some of these other measures  
13 first because we saw them as really critical to  
14 move on.

15 Q I've got a couple of wrap-up questions for the  
16 whole panel. I'd like to address this to each  
17 of you. The first question is if you in your  
18 respective agencies were to receive an AML  
19 mandate, and appreciating that the shape of that  
20 mandate would have to be fleshed out, what are  
21 the tools that you would require in your areas  
22 of responsibility to effectively implement such  
23 a mandate with respect to real estate? And  
24 maybe I'll start with Mr. Morrison.

25 A (BM) So I think your question on mandate is a

1                   good one. I would give you three parameters and  
2                   then I will try to drill down to your answer. I  
3                   think having a mandate on real estate from an  
4                   AML perspective is beneficial. It's clear. It  
5                   allows us to properly play in our sandbox. It  
6                   requires us to be clear in what we need from  
7                   others and what others need from us. I think  
8                   information sharing as the context of a clear  
9                   mandate is really important. We know  
10                  information can be shared across regulators, but  
11                  the bottom line is it's much more complicated;  
12                  there's specific requirements. All appropriate,  
13                  but it is hard. So in terms of the engagement  
14                  of individuals -- and I'd also say back to your  
15                  point about the funding of a BCFSA, it is  
16                  industry funded and it's not like we have  
17                  additional resources that we can immediately  
18                  contribute. That being said, the decision on a  
19                  mandate going forward, we would certainly look  
20                  to be part of the solution and make sure that we  
21                  properly fund that. I would say three  
22                  parameters to that mandate -- or a couple of  
23                  parameters to the mandate, I would see any  
24                  mandate that BCFSA has as being complementary to  
25                  our existing regulatory and supervision

1 activities. We don't want to be another  
2 FINTRAC, another police official. We don't want  
3 to have that overlap. We know there's actually  
4 too much overlap and grey space. So we see a  
5 mandate that would be focused on our regulatory  
6 and supervision side but would be complement to  
7 FINTRAC and other regulators in this piece. I  
8 think you heard a little earlier on about the  
9 vision of BCFSa which is a sector-wide approach.  
10 So I think we can provide a lens that I would  
11 say could cross the financial service sector and  
12 particularly real estate activities in that that  
13 other regulators don't have. We're literally on  
14 the frontlines whether or not it's where OSRE or  
15 RECBC are now or where Chris Carter and his team  
16 are with -- mortgage brokers are, we're  
17 literally on the frontline so we have that  
18 perspective.

19 I think the point that you raised earlier  
20 with both Micheal and Chris on data is so key  
21 and I would say that becoming more of a  
22 knowledge-based, data-driven regulator is  
23 certainly something that we want to be become  
24 and it is part of our investment that we have  
25 now. So I see a regulator, a mandate

1                   potentially for BCFSa that has that enhanced  
2                   data collection information generated and  
3                   intelligence generated, and I give an example to  
4                   you and the commission in terms of our work last  
5                   year on strata insurance where we were directed  
6                   by the government to go investigate. We used  
7                   some of our powers to get data that we would  
8                   otherwise not have, and we provided a report  
9                   that you know, summarized the situation,  
10                  provided some perspectives, addressed some  
11                  things and allowed government to take away and  
12                  consider next step.

13                         So I do see it in those three lens. It's a  
14                         complementary mandate. It's a mandate that is  
15                         probably focused -- not probably, focused on the  
16                         sector and it's a mandate that would be driven  
17                         by enhanced data collection and information  
18                         sharing. I do see a very huge benefit for that.  
19                         In terms of what would need, we need a clear  
20                         mandate. We need a clear direction from  
21                         government, from policy. We would need some  
22                         resources in terms of understanding what that  
23                         would look like and cost, and again we are  
24                         funded by the sector. And I think clear  
25                         direction on where we start and where we stop in

1 terms of giving information and receiving  
2 information. I don't know if Chris or Micheal  
3 want to add to that.

4 (MN) Sure, I can jump in. I'll absolutely  
5 echo everything that Mr. Morrison said. When I  
6 think about this possibility or when I started  
7 to think about this possibility, since 2016 we  
8 have really built up our investigative capacity  
9 and I'm extremely proud of the team that we  
10 built, you know, a great group of people who  
11 come to work every day dedicated to protecting  
12 the public. I think about all of the things  
13 that we've learned and seen since that time.  
14 And, you know, obviously the conversation,  
15 especially lately has turned to anti-money  
16 laundering. And as I said at the beginning of  
17 all of this, we do not have an anti-money  
18 laundering mandate currently, but we do have a  
19 consumer protection mandate and several of the  
20 staff in my office have taken anti-money  
21 laundering training, fraud detection training.  
22 We went through a process where investigators  
23 are appointed as special constables under the  
24 legislation. We provided, especially given our  
25 size, I would say pretty significant staff and



1 resource time to Dr. German's two reports or  
2 investigations and as well as the expert panel.  
3 So I think there's a real potential in terms of  
4 just a general overall kind of fit for an AML  
5 mandate. But again to Mr. Morrison's point, I  
6 think we absolutely need clarity around what  
7 that mandate would look like. I think it would  
8 be a really useful tool. It would become a  
9 discipline, investigative educational tool but  
10 only if it was clear and we knew exactly, as  
11 Mr. Morrison, said where we started and where we  
12 stopped. And I think to everything that we  
13 talked about on the data front both in terms of  
14 the gaps and the unknowns and the potentials for  
15 taking that more modern market conduct approach  
16 to regulation, I think the data piece has to  
17 come along with it if it's going to be  
18 effective. And also absolutely echo the point  
19 on resources. You know, my point about talking  
20 about the team and the capacity that we built  
21 does not in any way mean that we've got a bunch  
22 of people sitting around with nothing to do on  
23 the sides of their desks. Everyone is very busy  
24 doing investigations and dealing with complaints  
25 under our existing mandate, so as much of a

1                   logical natural fit I think could come with an  
2                   AML mandate, we would need resources to come  
3                   along with it to back that up.

4                   Mr. Carter, I'm not sure if you want to jump  
5                   in there.

6                   (CC) Clear mandate, appropriate resources,  
7                   and it would be remiss of me to not put another  
8                   plug in for a new *Mortgage Brokers Act*.

9                   Q     I think we heard that. My last question is  
10                   whether in the view of the panelists the BCFSA  
11                   or OSRE, soon to be part of BCFSA, can be  
12                   equipped to deal thoroughly with the question of  
13                   money laundering in real estate, or is there a  
14                   requirement of a change in approach at the law  
15                   enforcement level?

16                   A     (BM) I think we can certainly be part of the  
17                   overall solution. When you think of what we do  
18                   as regulators right now, we have data collection  
19                   and analysis, we do thematic reviews, we do  
20                   investigation, we evaluate controls, we provide  
21                   guidance, in Micheal's case issue rules. So all  
22                   of that core competencies exist through the  
23                   organization in different aspects. So I do  
24                   believe there is a skill set here that is  
25                   directly applicable to the next level in terms

1           of if an AML mandate was to come our way, but  
2           again I echo the comments I made earlier. I  
3           don't think we fix AML by ourselves; we are part  
4           of a larger ecosystem. And as I said I think  
5           there's a skill set. We understand our  
6           industries, we're close to them and we certainly  
7           see a role that we could play complementary with  
8           other regulators and improve the effectiveness  
9           of the regime, is the bottom line.

10          Q     Mr. Noseworthy or Mr. Carter, anything to add to  
11           that?

12          A     (MN) No, I think I'd echo that, and other than  
13           that I think I've said everything.

14          MS. PATEL: Mr. Commissioner --

15          Q     Oh, sorry.

16          A     (CC) No, I was just going to say from my  
17           perspective again just to call out the CIFA-BC  
18           initiative, which I think is a very positive  
19           initiative, and you know, when it comes to kind  
20           of technical expertise, mortgage transactions,  
21           what we're seeing on our front, then again we're  
22           happy to be a resource there to support law  
23           enforcement as it gets engaged in some of these  
24           subject matters where we have particular  
25           expertise that we can contribute.

1 MS. PATEL: Thank you. Mr. Commissioner, those are  
2 my questions for these witnesses.

3 THE COMMISSIONER: Thank you, Ms. Patel. I'll now  
4 call on Mr. Usher on behalf of the Society of  
5 Notaries Public of British Columbia, who has  
6 been allocated ten minutes.

7 MS. HARLINGTON: Mr. Commissioner, apologies for  
8 interrupting. I wonder if the witnesses might  
9 just have a five-minute break before the  
10 cross-examinations commence.

11 THE COMMISSIONER: Yes, of course.

12 MS. HARLINGTON: Thank you, Mr. Commissioner.

13 THE REGISTRAR: This hearing is adjourned for a  
14 five-minute recess until 12:37 p.m. Please mute  
15 your mic and turn off your video.

16 **(WITNESSES STOOD DOWN)**

17 **(PROCEEDINGS ADJOURNED AT 12:33 P.M.)**

18 **(PROCEEDINGS RECONVENED AT 12:37 P.M.)**

19 **CHRIS CARTER, for the**  
20 **commission, recalled.**

21 **BLAIR MORRISON, for the**  
22 **commission, recalled.**

23 **MICHEAL NOSEWORTHY, for**  
24 **the commission,**  
25 **recalled.**

1 THE REGISTRAR: Thank you for waiting. The hearing  
2 is now resumed. Mr. Commissioner.

3 THE COMMISSIONER: Thank you, Madam Registrar. Yes,  
4 Mr. Usher.

5 **EXAMINATION BY MR. USHER:**

6 Q Good afternoon. I'm Ron Usher. Counsel for the  
7 Society of Notaries Public. Mr. Carter, I'll  
8 direct my question to you. Just a few brief  
9 things to kind of follow up on your comments and  
10 your evidence about reporting matters to the  
11 police. I take it it's your experience that  
12 matters referred to the police have not resulted  
13 in criminal cases as far as you know.

14 A (CC) Yes, that's correct, not that I've seen in  
15 the public domain.

16 Q Okay. And are you aware of any civil forfeiture  
17 actions that resulted from those referrals  
18 you've made?

19 A (CC) Not aware of any specific civil forfeiture  
20 files. When we do encounter a civil forfeiture  
21 file we conduct a review to determine whether  
22 there are any mortgage brokers that were  
23 involved in the file more broadly and whether we  
24 might have a conduct file to pursue. But to  
25 your question more specifically no, I'm not

1                   aware of any civil forfeiture outcomes from  
2                   those file referrals.

3           Q       Right. And I take it the criminal matters you  
4                   find or the potential criminal matters relate to  
5                   things like both forgery, which is section 366  
6                   of the code, or the use of forged documents,  
7                   which is section 368. Is that kind of the  
8                   category of matters you -- have resulted in  
9                   complaints to the police about or referrals to  
10                  the police?

11          A       (CC) More broadly criminal fraud involving both  
12                   those aspects that you mentioned.

13          Q       Right. Has there been any difficulty your  
14                   agency has had in sharing that information with  
15                   the police? Have they complained to you, for  
16                   example?

17          A       (CC) Sorry. Do you mean difficulties we have  
18                   had sharing that information with police?

19          Q       Yeah, that's correct.

20          A       (CC) No, no difficulties.

21          Q       Has it happened that your agency has refused to  
22                   answer inquiries from the police?

23          A       (CC) Sorry, just to clarify the question, when  
24                   you say "difficulties" do you mean any  
25                   difficulties with the sharing of the

1 information, the receipt of the information, the  
2 interface?

3 Q Yeah.

4 A (CC) Curious whether you might be able to be a  
5 bit more specific in terms of the question.

6 Q I'm trying to see is there some -- have the  
7 police expressed, for example, they would go  
8 ahead but they can't get information from you?

9 A (CC) It's an interesting question and thank you  
10 for it. I think that there are aspects to the  
11 relationship between regulators and law  
12 enforcement when it comes to evidence-gathering  
13 processes when it comes to standard of proof,  
14 when it comes to a whole range of issues like  
15 that which are very real when it comes to being  
16 able to facilitate that information exchange.  
17 So acknowledging those, we -- I, my office has  
18 never had a difficulty with sharing that  
19 information nor with receiving that. We're  
20 empowered to share and receive information from  
21 law enforcement under the general  
22 information-sharing standards that apply to  
23 legislation that we administer, and that  
24 includes being able to share information for  
25 basically law enforcement purposes.

1           Q     But I take it is it the case that there's no  
2                    statutory barrier to your agency responding to  
3                    police inquiries about crime?

4           A     (CC) No, and in fact we do and we would.  So if  
5                    we received information from law enforcement,  
6                    for example, about conduct that a mortgage  
7                    broker is engaged with, we would conduct a  
8                    review and investigation and take whatever  
9                    action we needed to take.

10          Q     Okay.  So given that, do you have a sense of  
11                    what the problem is, then, what is it that when  
12                    you -- your agency through to your duty, your  
13                    diligence and inquiries has uncovered fraud and  
14                    forgery and related offences, do you have a  
15                    sense of why nothing happened?

16          A     (CC) I prefer not to comment or opine on law  
17                    enforcement's management of files, how they  
18                    receive them, how they manage them.  I would  
19                    point back to the Counter Illicit Finance  
20                    Alliance with BC initiative which is all about  
21                    building that understanding, building that  
22                    awareness of, you know who does what and how we  
23                    all ought to be interfacing with each other to  
24                    enable all of our collective success.  I would  
25                    point to that as an important initiative for



1 building that transparency between all the  
2 bodies with a role to play in AML and  
3 streamlining some of those interactions and  
4 information sharing that we undertake.

5 Q So what I'm trying to get at here, would you  
6 agree that criminal prosecution would be a  
7 substantial deterrence to fraud in the whole  
8 area of mortgage lending?

9 A (CC) Thank you for that question, Mr. Usher.  
10 What I would say is, and I commented in my  
11 previous testimony, I do believe that  
12 particularly in relation to the current  
13 legislative scheme, when you're looking at the  
14 more serious elements of misconduct that we run  
15 into that might look a bit more akin to white  
16 collar crime, one has to ask the question of  
17 whether the regulatory framework is enough of a  
18 disincentive in terms of the general and  
19 specific deterrence when it comes to the level  
20 of our fines and what we can pursue. So there's  
21 a point where the regulatory programs I'll say  
22 get to and then there's a point where law  
23 enforcement gets to, and that bit in the middle  
24 can be a bit of a challenge in terms of  
25 actioning those files that sit at that interface

1                   between law enforcement and regulators, which  
2                   brings me full circle back to having more  
3                   compelling tools under the *Mortgage Brokers Act*  
4                   and an updated piece of legislation where we can  
5                   continue to get at the more serious aspects of  
6                   misconduct that we run into.

7           Q        So I take it your in your current regime there's  
8                   no, for example, provision for jail? It's not  
9                   an optional punishment for you?

10          A        (CC) That's not something that we can pursue as  
11                   the regulator as the registrar of mortgage  
12                   brokers under the current legislative framework.  
13                   There is imprisonment as a potential outcome of  
14                   a pursuit of an offence which is managed through  
15                   the Crown counsel process.

16          MR. USHER: Thank you. That's all my questions.

17          THE COMMISSIONER: Thank you, Mr. Usher. Now,  
18                   Mr. Rauch-Davis for Transparency International  
19                   Coalition, who has also been allocated  
20                   ten minutes.

21          MR. RAUCH-DAVIS: Thank you.

22          **EXAMINATION BY MR. RAUCH-DAVIS:**

23          Q        Mr. Noseworthy, my questions will be more or  
24                   less for you and I intend to be brief.

25                   Exhibit 611 for the record, I don't need it

1                   pulled up, Madam Clerk, but that's the  
2                   presentation to the province that was entered as  
3                   an exhibit. On the page 11 under OSRE's current  
4                   role in supporting AML and real estate there is  
5                   a note about collaboration with property  
6                   taxation branch on the proposed *Land Owner*  
7                   *Transparency Act* and CSAIR. I'm wondering,  
8                   Mr. Noseworthy, first of all, I'm wondering if  
9                   you could elaborate on what that looks like.

10                A     (MN) Sorry, I'm just taking a look at this and,  
11                   you know, it's been some time now since this  
12                   happened.

13                MR. RAUCH-DAVIS: Maybe it would be of benefit, Madam  
14                   Registrar, if we could pull up exhibit 611. And  
15                   I have it at page 11. Down to the bottom of the  
16                   page. It's 11 on the PowerPoint.

17                Q     There, that last point, Mr. Noseworthy. So this  
18                   is OSRE supports AML activities through  
19                   engagement with the broader law enforcement and  
20                   policy community, and for example its  
21                   collaboration of property taxation branch on the  
22                   proposed *Land Owner Transparency Act* and CSAIR.  
23                   Do you see that?

24                A     (MN) Yes, I do. Yes, thank you. So I  
25                   believe -- sorry, go ahead.

1           Q     Pardon me. I didn't mean to interrupt you. I  
2                   was going to ask if you could expand on that  
3                   point and explain to the Commissioner what that  
4                   point means.

5           A     (MN) Sure. Thank you. So I believe what this  
6                   refers to is policy development work and sort of  
7                   subject matter expertise that we provided to the  
8                   ministry in developing those programs. The one  
9                   that's sort of a little closer to us, especially  
10                  now, because of the result is the condo strata  
11                  and integrity register and that's because after  
12                  this work was done the registry was launched to  
13                  attract strata assignments. So while the  
14                  property taxation branch is the administrator of  
15                  the program, we play a role in ensuring that  
16                  developers comply with their responsibilities  
17                  under the legislation, including those CSAIR  
18                  provisions. We also issued a policy statement  
19                  that set out requirements for REDMA disclosure  
20                  with respect to that registry, and staff in the  
21                  Office of the Superintendent of Real Estate  
22                  monitor that registry to ensure developer  
23                  compliance and can then take action to make  
24                  corrections from that. But I do -- all of that  
25                  being said, I do believe that what that wording

1                   refers to is us working with policy staff in the  
2                   ministry to provide information about our  
3                   current programs and to sort of hopefully be  
4                   useful subject matter expertise in developing  
5                   those tools.

6           Q       And part of developing those tools, that was you  
7                   proposed or collaborated says with the property  
8                   taxation branch for the *Land Owner Transparency*  
9                   *Act*, and that's the act that creates the  
10                  incoming transparency registry; right?

11          A       Yes, the LOTA registry I believe is the acronym,  
12                  yes.

13          Q       LOTA, yes. And so were you involved in creating  
14                  the mechanics of the LOTA registry, or did you  
15                  have a position on the mechanics of that  
16                  registry?

17          A       (MN) I was not myself, no.

18          Q       And are you very familiar with LOTA or that  
19                  registry on what it's going to look like when it  
20                  comes into effect?

21          A       (MN) Not yet, no. Not myself.

22          MR. RAUCH-DAVIS: Okay. Thank you, Mr. Commissioner,  
23                  those are my questions for this panel.

24          THE COMMISSIONER: Thank you, Mr. Rauch-Davis. Now,  
25                  Ms. Harlingten for the province, who has been

1 allocated 15 minutes.

2 MS. HARLINGTON: Yes, thank you, Mr. Commissioner.

3 Having heard the testimony of the witnesses this  
4 morning, I have no questions.

5 THE COMMISSIONER: Thank you. Anything arising,  
6 Mr. Usher, from Mr. Rauch-Davis's examination?  
7 Hearing none I will --

8 MR. USHER: None, Mr. Commissioner.

9 THE COMMISSIONER: Thank you, Mr. Usher. Ms. Patel?

10 MS. PATEL: No, nothing from me, Mr. Commissioner.

11 THE COMMISSIONER: All right. Well, I'd like to  
12 thank the three panelists for the time they've  
13 taken to explain the various areas under their  
14 jurisdiction and providing us with some valuable  
15 insights into those areas. You are excused from  
16 further testimony and thank you again.

17 Now, Ms. Patel, I think we have another  
18 panel set to proceed; is that correct?

19 MS. PATEL: Yes, that's correct, Mr. Commissioner.

20 Ms. Rose has conduct of that panel and I leave  
21 it -- I think that we require at least a  
22 technical break to change the cast, so  
23 perhaps --

24 THE COMMISSIONER: I think what we'll do is take  
25 ten minutes then. Thank you.

1 MS. ROSE: Sorry, Mr. Commissioner, if I might, I  
2 think that we might need to have additional time  
3 with the witnesses given the time right now and  
4 so I was wondering if it might be a convenient  
5 time to inquire with participants and with  
6 yourself, Mr. Commissioner, if there's any issue  
7 with us sitting late today.

8 THE COMMISSIONER: There is no issue with me.

9 MS. ROSE: I might propose that we sit until 2:30  
10 today if there are no concerns with other  
11 participants.

12 THE COMMISSIONER: All right. Well, let's take a  
13 ten-minute break. If any participant wants to  
14 raise an issue about sitting late when we come  
15 back then it can be raised at that point, but I  
16 have heard nothing so far. So we'll take  
17 ten minutes to bring on the next panel. Thank  
18 you.

19 THE REGISTRAR: The hearing is stood down until  
20 1:01 p.m. Please mute your mic and turn off  
21 your video. Thank you.

22 **(WITNESSES EXCUSED)**

23 **(PROCEEDINGS ADJOURNED AT 12:51 P.M.)**

24 **(PROCEEDINGS RECONVENED AT 1:01 P.M.)**

25 THE REGISTRAR: Thank you for waiting. The hearing

1 is resumed. Mr. Commissioner.

2 THE COMMISSIONER: Thank you, Madam Registrar.

3 Yes, Ms. Rose.

4 MS. ROSE: Mr. Commissioner, further to my flagging  
5 before the break I just wanted to give room to  
6 participants to let us know if there are any  
7 concerns with sitting until 2:30 today?

8 MR. RAUCH-DAVIS: Mr. Commissioner, I have no  
9 concerns sitting until 2:30. Perhaps my friend  
10 can advise when she expects to be done her  
11 examination in chief. I see on the schedule  
12 that we were expected to go to tomorrow in any  
13 event, but that would be helpful for my  
14 purposes.

15 MS. ROSE: Yes, Mr. Rauch-Davis, thank you for  
16 flagging that. I do expect we will continue  
17 with the direct examination of these witnesses  
18 into tomorrow.

19 THE COMMISSIONER: All right. Thank you. I think  
20 having heard no objections we will just carry on  
21 in the expectation that we'll sit virtually  
22 until 2:30.

23 MS. ROSE: Thank you, Mr. Commissioner.

24 THE COMMISSIONER: Go ahead. Thank you.

25 MS. ROSE: So, Mr. Commissioner I will be examining



1 two witnesses from the Real Estate Council of  
2 BC today. This is Ms. Erin Seeley and Mr. David  
3 Avren. I turn the floor over to Madam Registrar  
4 to swear in these witnesses.

5 THE REGISTRAR: Witness, please unmute yourselves.  
6 Thank you.

7 **ERIN SEELEY, a witness**  
8 **for the commission,**  
9 **affirmed.**

10 THE REGISTRAR: Please state your full name and spell  
11 your first name and last name for the record.

12 THE WITNESS: Erin Seeley. E-r-i-n, last name  
13 S-e-e-l-e-y.

14 **DAVID AVREN, a witness**  
15 **for the commission,**  
16 **sworn.**

17 THE REGISTRAR: Please state your full name and spell  
18 your first name and last name for the record.

19 THE WITNESS: My full name is Jonathan David Stanton  
20 Avren. I go by my second name David, and my  
21 last name is spelled A-v-r-e-n.

22 MS. ROSE: Thank you, Madam Registrar.

23 Mr. Commissioner, I also wanted to flag for our  
24 team today that we don't expect to have any  
25 concerns with any of the documents being shared

1                   publicly on the webcast or being entered as  
2                   public exhibits today.

3                   THE COMMISSIONER: Thank you.

4                   **EXAMINATION BY MS. ROSE:**

5                   Q     So I would propose to walk through the  
6                   background of each of these witnesses beginning  
7                   with Ms. Seeley. Ms. Seeley, you are the CEO of  
8                   the Real Estate Council of BC?

9                   A     (ES) That's correct.

10                  Q     You earned a Bachelor of Arts from the  
11                  University of Victoria?

12                  A     (ES) I did, yes.

13                  Q     And the Masters of International Studies from  
14                  Simon Fraser University?

15                  A     (ES) Correct.

16                  Q     And after graduating you worked as a manager of  
17                  international business for MacDonald, Dettwiler  
18                  & Associates in Richmond?

19                  A     (ES) Yes.

20                  Q     And following that you joined the BC government  
21                  in 2006?

22                  A     (ES) Correct.

23                  Q     And in what role was that?

24                  A     (ES) Initially I was an advisor in the economic  
25                  immigration programs, business immigration,

1 entrepreneur investment attraction.

2 Q And following that role you served as Executive  
3 Director for Finance for two different Crown  
4 corporations, the BC immigrant investment fund  
5 and the BC Renaissance capital fund; is that  
6 right?

7 A (ES) That's correct, yes.

8 Q You also served as Executive Director of the  
9 immigration programs branch in the Ministry of  
10 Jobs, Tourism and Skills Training?

11 A (ES) That's correct. It's had many iterations  
12 of ministry name, but yes, the program is  
13 correct.

14 Q And you joined the Real Estate Council of BC in  
15 2016?

16 A (ES) Yes, October 2016.

17 Q Was that as Chief Executive Officer?

18 A (ES) Initially it was Acting Executive Officer  
19 and then the title changed to Chief Executive  
20 Officer, yes.

21 Q Thank you. I'll turn to Mr. Avren. Mr. Avren,  
22 you are the Vice President of Legal and  
23 Compliance for the Real Estate Council of BC?

24 A (DA) Yes, I am.

25 Q And you earned a Bachelor of Commerce and a

1 Bachelors of Laws from the University of British  
2 Columbia?

3 A (DA) I did.

4 Q And a Masters of Law in the University of  
5 Auckland, New Zealand?

6 A (DA) Yes.

7 Q And you taught law as well at the University of  
8 Auckland?

9 A (DA) Yes, I taught torts.

10 Q Following that stint you practised criminal law  
11 and commercial litigation in Vancouver for some  
12 time?

13 A Yeah, those two straddled my time in  
14 New Zealand.

15 Q And after that joined BC Hydro as in-house  
16 counsel?

17 A (DA) Yes.

18 Q And then following that role you served as  
19 General Counsel and Corporate Secretary at Coast  
20 Capital Savings Credit Union?

21 A (DA) Yes. Prior to that I was head of legal,  
22 director of legal at BC Hydro.

23 Q Thank you. You joined the Real Estate Council  
24 of BC in 2018?

25 A (DA) September, yes.

1 Q And was that in your current role?

2 A (DA) That's essentially the same role but  
3 different title. Same as Erin. Titles were  
4 changed.

5 Q What was the original title?

6 A (DA) It's Director of Legal and Compliance. It  
7 became Vice President.

8 MS. ROSE: Thank you. Mr. Commissioner, I plan to  
9 dispense with reviewing the legislative  
10 authority for the Real Estate Council of BC and  
11 its mandate in detail as this is covered in the  
12 commission's overview report on the legislative  
13 and regulatory structure of real estate in  
14 British Columbia which has been entered as  
15 exhibit 603.

16 THE COMMISSIONER: All right. Thank you, that's  
17 helpful to know.

18 MS. ROSE: And I would flag that the section pertain  
19 together the Real Estate Council of BC is at  
20 page 9 of that exhibit. And I do plan to touch  
21 briefly on the structure of the real estate  
22 council and its basic functions.

23 Madam Registrar, I'd ask that document  
24 MOF000033 be presented on the screen.

25 Q Ms. Seeley, do you recognize this slide show?

1 A (ES) Yes, I do.

2 Q Were you involved in preparing this  
3 presentation?

4 A (ES) Yes, I was.

5 MS. ROSE: Mr. Commissioner, I'd ask that this be  
6 entered as the next exhibit, which I understand  
7 is 614.

8 THE COMMISSIONER: Very well, 614.

9 THE REGISTRAR: Exhibit 614.

10 **EXHIBIT 614: PowerPoint presentation - Overview**  
11 **of RECBC - January 2019**

12 MS. ROSE:

13 Q And if we turn to slide 7 of the slide show.  
14 Ms. Seeley, does this slide accurately reflect  
15 the basic organizational structure of the Real  
16 Estate Council of BC?

17 A (ES) It does, yes.

18 MS. ROSE: Okay. Madam Registrar, I think I'm  
19 finished with this document.

20 Q Ms. Seeley, I understand that the Real Estate  
21 Council of BC has entered into a memorandum of  
22 understanding with FINTRAC.

23 A (ES) That's correct, yes.

24 MS. ROSE: Madam Registrar, could we please have the  
25 memorandum of understanding with FINTRAC which

1 is document CAN000906 on screen, please.

2 Q Ms. Seeley, do you recognize this document?

3 A (ES) I do.

4 Q Can you confirm that this is the memorandum of  
5 understanding that the Real Estate Council of BC  
6 entered into with FINTRAC?

7 A (ES) Yes, it is.

8 MS. ROSE: Mr. Commissioner, I would ask that this  
9 document be entered as exhibit 615.

10 THE COMMISSIONER: Very well, thank you.

11 THE REGISTRAR: Exhibit 615.

12 **EXHIBIT 615: RECBC Memorandum of Understanding**  
13 **with FINTRAC - March 2019**

14 MS. ROSE: Madam Registrar, I am finished with this  
15 document.

16 Q Ms. Seeley, I also understand that RECBC, as the  
17 Real Estate Council of BC is formally known, has  
18 entered into an information-sharing agreement  
19 with the Registrar of Mortgage Brokers, part of  
20 the BCFSA that we heard from this morning.

21 A (ES) That is correct. It is relevant back to  
22 2005, I believe, so it was formerly the  
23 financial institution's commission, now the  
24 BCFSA, but yes.

25 Q Understood, and thank you for that

1 clarification.

2 Madam Registrar, could we please have this  
3 information-sharing agreement with the Registrar  
4 of Mortgage Brokers on the screen.

5 Ms. Seeley, is that the information-sharing  
6 agreement?

7 A (ES) Yes, it is.

8 MS. ROSE: Mr. Commissioner, I'd ask that this be  
9 entered as exhibit 616.

10 THE COMMISSIONER: Very well.

11 THE REGISTRAR: Exhibit 616.

12 **EXHIBIT 616: Information Sharing Agreement**  
13 **between the Registrar of Mortgage Brokers and**  
14 **the Real Estate Council of BC - March 2005**

15 MS. ROSE: I think we are finished with this document  
16 for now, Madam Registrar.

17 Q Ms. Seeley, would you please describe the types  
18 of licenses available under the *Real Estate*  
19 *Services Act* which is the act that the Real  
20 Estate Council of BC regulates.

21 A (ES) Sure. So the real estate council has  
22 authority to regulate trading services, the  
23 purchase and sale of real estate, more commonly  
24 both commercial and residential, as well as  
25 strata property management and rental management



1 services. Within that there are four categories  
2 for licensure. There is the representative  
3 category, or licensee as we refer to it.  
4 There's the associate broker, which is a  
5 position in between the managing broker and the  
6 licensee may act as a managing broker from time  
7 to time. And then there's the brokerage itself,  
8 which is the partnership or corporation. And  
9 the licence specific for that entity as well.  
10 So four categories.

11 Q Could you just clarify the distinction between  
12 an associate broker and a managing broker one  
13 more time?

14 A (ES) A managing broker is essentially the  
15 compliance official tasked under the legislation  
16 with the oversight of the licensees. Licensees  
17 are supervised by the managing broker. Every  
18 brokerage must have a managing broker and  
19 associate brokers may take on some of the  
20 brokerage duties from time to time, but they are  
21 not the same level of authority as a managing  
22 broker and in most cases, if not all cases,  
23 associate brokers are active as representatives  
24 as well.

25 Q And what are the general requirements for each

1                   licence? Not in detail but perhaps a broad  
2                   overview if you would.

3           A       (ES) Sure. So generally the act sets out  
4                   requirements for licenses and renewal that  
5                   include good reputation and suitability  
6                   guidelines. Those are set by the council and  
7                   policy and updated time to time. Age is at  
8                   least 19 years of age. Education and experience  
9                   requirements must be met as set by the rules.  
10                  They must not have been refused licensure or  
11                  held a licence that was suspended or cancelled  
12                  in BC or in another jurisdiction. That includes  
13                  licensure, for example, in related sectors,  
14                  insurance, mortgage brokers, securities. Must  
15                  not have been disciplined by a professional body  
16                  or convicted of an offence for a reason that  
17                  would reveal them to be unfit. And then there  
18                  are additional requirements set by the rules  
19                  which respect to education, completion of  
20                  pre-licensing course, English language  
21                  proficiency, completion of an exam, as well as  
22                  additional applied practice training.  
23                  Authorization to work in Canada as well is a  
24                  requirement.

25           Q       And is it true that the associate broker and

1 managing broker have licensure requirements over  
2 and above those of real estate agents?

3 A (ES) They do, yes. Associate or managing  
4 brokers must complete an additional brokers  
5 licensing course. They must have been licensed  
6 for at least six months in BC and have  
7 experience as a licensee in at least two of the  
8 last five years above and beyond the licensee  
9 requirements.

10 Q And I understand that the real estate council  
11 has implemented an anti-money laundering course.  
12 Could you tell us a little about that.

13 A (ES) Sure, I certainly can. It was a mandatory  
14 course required as part of licence renewal. So  
15 licensees are required to renew on a two-year  
16 cycle, and as part of that renewal the council  
17 sets for requirements for continuing  
18 professional education. So in addition to the  
19 existing courses, the anti-money laundering  
20 course is introduced in January 2020 as a  
21 standalone opportunity to provide a deeper  
22 insight into the kinds of requirements required  
23 under federal legislation through FINTRAC and  
24 focusing not just on managing brokers who do  
25 carry out many of the compliance functions but

1 more broadly to the licensee population. There  
2 are almost 26,000 licensees in British Columbia.  
3 And the course responded in part to 2019  
4 reports, both the Maloney and German reports on  
5 anti-money laundering, as well as information  
6 that we had received from FINTRAC as part of  
7 that memorandum of understanding around some of  
8 the deficiencies in compliance in real estate  
9 reporting, specifically in suspicious  
10 transaction reporting.

11 So while the managing broker in the  
12 licensing regime is tasked with carrying out a  
13 lots of the compliance and audit functions for  
14 the federal legislation, it was important to  
15 broaden that culture of compliance and  
16 understanding and address some of those  
17 deficiencies. As a regulator we have the  
18 opportunity to do that both through  
19 investigations and through discipline if there's  
20 misconduct, but more proactively we focused on  
21 putting resources at the earlier stage of  
22 education and professional guidance so that we  
23 can inform licensees and ensure they can comply  
24 effectively not only with the provincial  
25 requirements set out in the *Real Estate Services*

1 Act but also federally with their FINTRAC  
2 requirements.

3 So the course runs over a two-year cycle.  
4 It's expected that by April 2022 all licensees  
5 will have completed the course. It became -- it  
6 was introduced in January 2020, but it became  
7 mandatory as of April 1st. So just to be clear  
8 there, it's an April to April two-year cycle.  
9 We expect all licensees will have completed it.  
10 It's self-paced; it's online. We tried to make  
11 it as attractive and low cost as we could. And  
12 we were really pleased with the uptake. I  
13 believe in our most recent numbers we've had  
14 more than 19,000 licensees complete the course,  
15 so that's a success we consider out of the  
16 26,000 or so licensed. It applies across rental  
17 and strata property as well as trading services,  
18 so it's mandatory for everyone, and again that  
19 is in part to help support that culture of  
20 compliance, the culture of identifying red flags  
21 that may lead to suspicious transaction  
22 reporting and to more of a focus on the  
23 know-your-client aspects of the relationship  
24 between the licensee and the client.

25 MS. ROSE: Madam Registrar, could we please have the

1                   RECBC AML course on the screen.

2                   THE WITNESS: (DA) While she's doing that I might add  
3                   there's been considerable interest outside RECBC  
4                   in that course. For example the Law Society BC,  
5                   notary society have had an opportunity to view  
6                   it.

7                   MS. ROSE:

8                   Q     And, Ms. Seeley, is this the course that you  
9                   were describing?

10                  A     (ES) I believe it is, yes. It was developed in  
11                  partnership with UBC Sauder School of Business,  
12                  so we share this responsibility with them in  
13                  terms of the development of the course and the  
14                  delivery of it is through UBC.

15                  MS. ROSE: And, Mr. Commissioner, I would ask that we  
16                  have this marked as the next exhibit. And I  
17                  think I may be losing track of number, but are  
18                  we at 617, Madam Registrar?

19                  THE REGISTRAR: That's correct.

20                  THE COMMISSIONER: Yes, very well. Thank you.

21                               **EXHIBIT 617: RECBC Anti-Money Laundering in**  
22                               **Real Estate online course materials**

23                  MS. ROSE:

24                  Q     And, Ms. Seeley, you said this is now mandatory.  
25                  And when did that take effect?

1           A     (ES) April 1st, 2020, it became mandatory.

2           Q     I expect that we will refer to this document  
3                   later on, but for now we can take it down, Madam  
4                   Registrar.

5                         Could you describe briefly how this course  
6                         is different than other anti-money laundering  
7                         courses available to real estate licensees in  
8                         BC and I'm thinking in particular of the BC Real  
9                         Estate Association's mastering compliance  
10                        course.

11          A     (ES) Sure. It is filling a gap. We believed  
12                   in, as I said, addressing issues that are  
13                   specific to licensee individual representative  
14                   obligations. Whereas a lot of the training in  
15                   the past, and there has been significant  
16                   training both through the Canadian Real Estate  
17                   Association and more recently through the  
18                   BC Real Estate Association, focused on  
19                   compliance, it has tended to be focused at the  
20                   managing broker level where that managing broker  
21                   individual does hold, as I mentioned, a lot of  
22                   the overall compliance audit program and policy  
23                   responsibilities. The opportunity came from  
24                   increase engagement with FINTRAC and in  
25                   part that was facilitated through the MOU to

1                   drill down more into practical tools that  
2                   licensees can use to help them in red flag  
3                   identification, and this also came from  
4                   understanding that there were concerns by the  
5                   federal government through FINTRAC of lack of  
6                   compliance, lower suspicious transactions  
7                   reporting potentially then had been expected  
8                   federally. So we really did this in  
9                   partnership.

10                   The course development was both with  
11                   expertise from lawyers who work in the field of  
12                   anti-money laundering as well as industry input,  
13                   so making sure that it did apply practically in  
14                   terms of the on the ground, day-to-day role that  
15                   a licensee plays, and it also was reviewed by  
16                   FINTRAC, so we worked very closely with them and  
17                   really appreciated their support for it. We are  
18                   the first regulator of real estate in Canada to  
19                   take this approach where we really extend the  
20                   education beyond just the regulatory framework  
21                   to the federal requirements, and as I mentioned  
22                   in part that was certainly because of the money  
23                   laundering reports published in 2019 and the  
24                   attention paid to the perhaps more expansive  
25                   characteristics in the BC real estate market



1                   that may lead to red flags.

2                   MS. ROSE: Madam Registrar, would you kindly pull up  
3                   the IAG report, the Independent Advisory Group  
4                   report.

5                   Q    Ms. Seeley, are you familiar with this report?

6                   A    (ES) I am, yes.

7                   Q    Can you tell us who the Independent Advisory  
8                   Group is?

9                   A    (ES) It was --

10                  Q    Or was, I should say.

11                  A    (ES) Sure. It was a group of professionals and  
12                  experts, including representatives from the  
13                  legal community from licensees, from notaries  
14                  public, from the credit union space, pulled  
15                  together on relatively short notice. This  
16                  preceded me, but it was initiated originally by  
17                  the real estate council and then it was overseen  
18                  by the superintendent who at that time was  
19                  within FICOM, the financial institutions  
20                  commission. And it was convened I believe in  
21                  April 2016 and took a three month period to  
22                  produce this report with recommendations  
23                  following significant public scrutiny, media  
24                  scrutiny and also at the height of a very active  
25                  real estate market in 2016. And it was intended

1           as an opportunity to reflect, but also we took  
2           it at that time when I joined RECBC in 2016 we  
3           very much took it as a blueprint for potential  
4           improvements that we could make in the  
5           regulatory framework and in our processes and  
6           operations.

7           MS. ROSE: And, Madam Registrar, I would just like to  
8           confirm that this has not already been marked as  
9           an exhibit through the last panel this morning.

10          THE REGISTRAR: No, it hasn't.

11          MS. ROSE: Then I'd like to mark this as the next  
12          exhibit, Mr. Commissioner.

13          THE COMMISSIONER: Very well. Thank you.

14          THE REGISTRAR: Exhibit 618, Mr. Commissioner.

15                   **EXHIBIT 618: Report of the Independent Advisory**  
16                   **Group - June 2016**

17          MS. ROSE:

18          Q       And I wonder if we could turn to page 40, Madam  
19          Registrar. And I'd like to zoom in on  
20          recommendation 10 which is at the bottom of  
21          page 40 there.

22                   So, Ms. Seeley, this report recommended that  
23          the real estate council apply more stringent  
24          suitability assessment criteria to prospective  
25          licensees. You see that there?

1           A       (ES) I do, yes.

2           Q       Can you tell me what efforts the real estate  
3                   council has made in response to that  
4                   recommendation.

5           A       (ES) Certainly.  Maybe if I may, Ms. Rose, I'll  
6                   also take a moment just to give some context to  
7                   this document that, as I mentioned, it preceded  
8                   me, being published in June 2018, but it also --  
9                   sorry, June 2016, but it also preceded  
10                  significant changes amendments to the *Real*  
11                  *Estate Services Act* that created a dedicated  
12                  Superintendent of Real Estate, my colleague,  
13                  Mr. Noseworthy who was on an earlier panel, and  
14                  really created a bifurcated regime where the  
15                  superintendent retained oversight of the real  
16                  estate council and the real estate regulatory  
17                  framework as well as policy and rulemaking  
18                  authorities being transferred from the purview  
19                  of the real estate council to the  
20                  superintendent.  In 2016 those amendments also  
21                  established real estate council as a Crown  
22                  agency and ended self-regulation.

23                         So some of the challenge in implementing  
24                         this report came from the fact that it didn't  
25                         anticipate these regulatory structure changes

1                   and so where different recommendations really  
2                   refer to the real estate council they may in  
3                   fact refer in the current structure now to the  
4                   superintendent's purview as a result of those  
5                   policy and rules. Just to the point here on  
6                   number 10, this recommendation does in fact have  
7                   a lot of control within the council because it's  
8                   set a lot in policy, and so I can specifically  
9                   give you a number of ways that we've applied  
10                  more stringent suitability assessment. One of  
11                  them was increasing the publication of  
12                  suitability hearing decisions. That was  
13                  something in June 2017 we did. So that we made  
14                  it more transparent, the process by which  
15                  individuals can have a hearing to be heard in  
16                  terms of their qualifications for licensure. We  
17                  had worked with the superintendent on new rules  
18                  for a higher standard of English language  
19                  proficiency, and those have since been  
20                  implemented, so that also put BC ahead in terms  
21                  of other jurisdictions in requiring demonstrated  
22                  proof, an exam of English language competency  
23                  prior to the completion of the pre-licensing  
24                  course. We've also really narrowed our  
25                  suitability process. So we used to have a

1                   prescreening process. We've really tried to  
2                   streamline that so that potential suitability  
3                   issues can be flagged early on. I would say  
4                   there's certainly more work to do there because  
5                   it is a complex area of investigation when you  
6                   are assessing suitability. And then most  
7                   recently just in November 2020 we have updated  
8                   the suitability guidelines and changed them more  
9                   to modernize them toward a fitness standard, a  
10                  fitness to practice standard and created some  
11                  more room, I think, as a regulator for  
12                  discretion in how we can assess criteria for  
13                  entrance to the profession. I'd be happy to  
14                  have Mr. Avren as well comment on some of the  
15                  detailed ways we worked in the discipline  
16                  department with legal counsel to review these.  
17                  But I would say that this really is work that is  
18                  never done. I don't think we get to a  
19                  completion. I think as a regulator you are  
20                  always looking to ensure that you are raising  
21                  the bar, and with respect to this I think  
22                  education is a key component. We spoke about  
23                  the anti-money laundering course, but in  
24                  addition to that we are continuing to look at  
25                  ways to both increase the pre-licensing course

1 material and look at elements in the applied  
2 practice course where licensees are really  
3 apprenticing almost in the profession, looking  
4 to make those more robust.

5 So there's a lot of ongoing work around this  
6 as well as the accomplishments that we've made  
7 since 2016.

8 Q Yes, and I do intend to have a few questions on  
9 this topic later on in the examination with  
10 respect to the complaints and discipline  
11 process. But, Mr. Avren, if you have anything  
12 to add with respect to the licensing of  
13 candidates and the suitability assessment that  
14 is conducted at that time, please, I invite you  
15 to contribute those now.

16 A (DA) The compliance group, which is our  
17 investigation group, does get involved of course  
18 in licence applications and licence renewals,  
19 and in the renewal context it's where something  
20 has come to light, particularly where something  
21 has come to light that indicates there might  
22 have been a failure to fully disclose at the  
23 initial application or something happening in  
24 the intervening two years in the licensing cycle  
25 that should be considered in terms of fitness or

1                   suitability for licensing. And that's handled  
2                   by the investigators who also undertake the  
3                   disciplinary -- strictly disciplinary-related  
4                   investigations.

5                   MS. ROSE: So, Mr. Commissioner, as I mentioned, much  
6                   of this area is covered in our overview reports  
7                   so I'll propose now I move on to a different  
8                   subject.

9                   Q    Ms. Seeley, I wonder if you can speak to the  
10                  difference between a managing broker under the  
11                  *Real Estate Services Act* and a compliance  
12                  officer under the *Proceeds of Crime (Money*  
13                  *Laundering) and Terrorist Financing Act.*

14                 A    (ES) Certainly. So the compliance officer  
15                  requirement does not specify that it must be a  
16                  managing broker, but in practical terms because  
17                  the managing broker essentially carries out the  
18                  regulatory requirements for oversight and  
19                  supervision of the day-to-day operations of the  
20                  brokerage and because many of the brokerages are  
21                  small in BC we see that managing brokers do  
22                  carry the compliance officer role in addition to  
23                  the regulatory functions. The compliance  
24                  officer role federally is very focused on  
25                  obviously the federal proceeds of crime and

1 money laundering legislation, focused on audit,  
2 on training and programs internally to the  
3 brokerage and policies with respect to money  
4 laundering, whereas the regulatory requirements  
5 under the *Real Estate Services Act* don't speak  
6 to specifically an AML mandate. So there is  
7 nothing currently in the structure of the real  
8 estate legislation, the regulation, the rules or  
9 the bylaws that is specific to requirements  
10 under anti-money laundering. Those do lie at  
11 the federal level with the federal legislation.  
12 So it does create essentially two reporting  
13 regimes for a managing broker. If you are  
14 wearing the same hat and you're carrying out  
15 compliance officer responsibilities you have  
16 your federal reporting requirements on one side  
17 that you have to integrate as well with your  
18 regulatory requirements under the provincial  
19 statute.

20 Q And I should have mentioned this earlier, but  
21 while I will do my best to direct the questions  
22 to a particular witness I do invite either of  
23 you if you have comments to add to simply state  
24 those as I may have directed it to the wrong  
25 person from time to time.





1                   probably fewer names in terms of real estate  
2                   brokerages and there were head offices and then  
3                   satellite offices. I would say you know, that  
4                   is not necessarily the case in the business  
5                   model now where there's a lot more flexibility  
6                   with technology. It's easier to have one head  
7                   office and not as essential to set up branch  
8                   offices. But we do still see it in the model  
9                   and it does still exist in the legislative  
10                  framework to enable it. So, you know, it is a  
11                  carryover and I'm not certain exactly the dates  
12                  of when that requirement would have been made,  
13                  but I would imagine it's been changing as it's  
14                  evolved from a paper-based everyone in the  
15                  office in seats to a much more virtual  
16                  environment.

17                Q     And I just realized that we've had this IAG  
18                    report up for quite some time. And I apologize,  
19                    Madam Registrar, if we could pull that down now.

20                                So, Ms. Seeley, or, Mr. Avren, could you  
21                    speak to some of the challenges that a managing  
22                    broker might face when they are managing a large  
23                    brokerage as compared to some of the challenges  
24                    that one might face in managing or supervising  
25                    one small brokerage or several small brokerages?

1           A       (ES) Sure. Maybe I'll start and then I'm happy  
2                    for Mr. Avren to jump in. I think what's  
3                    challenging about the business model in terms of  
4                    compliance and those oversight requirements in  
5                    the day-to-day operations is in a larger  
6                    brokerage what we find, and this comes through  
7                    in our audit findings, we do proactive trust  
8                    account audits and brokerage inspections, that  
9                    the larger brokerages often have more  
10                   sophisticated systems in place. So while there  
11                   may be hundreds of licensees attached to the  
12                   brokerage, there is through the use of  
13                   technology reporting automation an ability for  
14                   the broker to take a lens of oversight that can  
15                   be supported through technology. In the smaller  
16                   firms, the brokerage supervision may be much  
17                   more face to face. If may be also, though, less  
18                   sophisticated, and I think that is where it's  
19                   not easy to correlate as a regulator risk with  
20                   the size of the brokerage itself. It really  
21                   does come down to the types of policies and  
22                   processes, the training and the rigour in the  
23                   operations that the managing broker and the  
24                   brokerage carry out in terms of overall  
25                   protection of the public.

1                   I think the world of real estate as I  
2                   understand it has changed a lot in the last year  
3                   as all businesses have just with that virtual  
4                   world, and so again I would say the model has  
5                   changed a lot from the salesperson in an office  
6                   to independent contractors now engaged in the  
7                   brokerage versus employee/employer relationship.  
8                   I think these are all features that the  
9                   superintendent and his staff we've worked  
10                  together in collaboration, but he has been  
11                  leading a review of the role of the managing  
12                  broker and I think that's an important  
13                  consideration in this. Just the way that the  
14                  relation relationship as an operation as a  
15                  brokerage exists, it's not necessarily managing  
16                  employees anymore. It's managing contractors.  
17                  Managing contractors who in some cases also have  
18                  personal real estate corporations and are parts  
19                  of teams working with other licensees, so I  
20                  would say in that regard it's much more complex.  
21                  You may have a managing broker overseeing not  
22                  only individual licensees but really making sure  
23                  that with respect to teams there are advertising  
24                  rules that must be complied with and that all of  
25                  the agency responsibilities, the duties to

1 clients, et cetera, are owed and carried out in  
2 accordance with not only the regulatory regime  
3 but the brokerage policy.

4 So I think it's a much more sophisticated  
5 environment in many ways with the larger  
6 brokerages, and it's also important to  
7 distinguish in BC between the rural and the  
8 urban where you may have as I mentioned larger  
9 brokerages they may be commercial and  
10 residential. They may also have rental property  
11 management. Smaller brokerages may do more farm  
12 properties. They may dabble in rental  
13 management and have a few rental properties in  
14 addition to trading services. Really depends on  
15 the environment in each community as well that  
16 they're serving. So it's interesting we've got  
17 recent data that shows is that the median  
18 brokerage size is four in BC, so four licensees,  
19 which is a very small number, but there are some  
20 significant brokerages in the hundreds of  
21 licensees as well. So I think that's important  
22 context when you're looking at how that role of  
23 supervision and compliance has shifted.

24 Q I've muted myself. Anything to add to that  
25 Mr. Avren?

1           A       (DA) I think there's some statistical support  
2                    for the idea that it's the smaller brokerages  
3                    that generally struggle a little bit more in  
4                    terms of compliance and I think you can find  
5                    that in the first consultation paper released by  
6                    the Office of the Superintendent of Real Estate  
7                    in October 2019 where there's some statistical  
8                    analysis of that, and I suppose it's a little  
9                    impressionistic, but it's analogous to any  
10                   profession, the smaller law firms, for example,  
11                   typically are thought to have more issues  
12                   potentially than a larger law firm and it's just  
13                   the difficulty of trying to cover the waterfront  
14                   with your resources, as Ms. Seeley described.  
15                   But one of the interesting things to note in the  
16                   responsibilities of a managing broker is not  
17                   that they are required to actually personally  
18                   supervise everything. They're responsible for  
19                   ensuring an adequate level of supervision so  
20                   there are systems available and there is  
21                   delegation available to them to undertake the  
22                   responsibility. They retain ultimate  
23                   responsibility, of course, as most delegators  
24                   do, but there are alternative means and those  
25                   would be more plentiful in the larger situation,

1                   you could assume.

2           Q       With respect to teams I understand that there  
3                   would not be a managing broker per team within a  
4                   brokerage.  Would there be an associate broker  
5                   within a team, or would there be a delegation of  
6                   the managing broker's authority in some other  
7                   way to the team to ensure that there is  
8                   oversight within that team?

9           A       (ES) The team construct is something actually  
10                   the superintendent is actively reviewing and  
11                   there is a discussion paper published right now  
12                   on the concept of teams.  In terms of the  
13                   regulatory framework, the only requirements that  
14                   are in the rules currently are with respect to  
15                   advertising and being clear that a team is not a  
16                   brokerage.  And so in a transaction a client  
17                   would still go to the managing broker of the  
18                   brokerage where it had questions further to the  
19                   relationship with commissions or beyond the  
20                   questions that a licensee might answer.  So  
21                   there is no requirement that it be an associate  
22                   broker.  It often is an experienced licensee and  
23                   it may be an associate broker.  The team  
24                   construct has tended to work well when it's an  
25                   experienced broker who has got a brand of

1                    recognition as an individual and then can in  
2                    fact support training of newer licensees. And  
3                    we've seen a lot of success in that model where  
4                    there's new entrants coming into the business  
5                    needing to understand the ins and outs, but it  
6                    doesn't replace the brokerage. All of those  
7                    licensees must still be engaged by the brokerage  
8                    per the requirements of the statute and they all  
9                    must still be overseen, as Mr. Avren mentioned,  
10                   by the systems and policies of the brokerage and  
11                   the managing broker.

12                Q            And there is a duty to report, a duty on all  
13                   licensees to report misconduct to their managing  
14                   broker; isn't that right?

15                A            (ES) That's correct. And one of the areas of  
16                   the independent advisory group report also spoke  
17                   to consideration for a duty to report to the  
18                   regulator. There is a duty to report to the  
19                   managing broker, and there is a duty for the  
20                   managing broker to take reasonable steps to  
21                   resolve any complaints that it receives. But as  
22                   we've talked about in our proactive work as a  
23                   regulator, we've really emphasized at RECBC a  
24                   culture of if you see something, say something  
25                   and to be informing the regulator as well so



1                   that we can investigate and not only protect the  
2                   public but in that way also support the  
3                   reputation of the profession where there are  
4                   concerns about misconduct or, you know, even  
5                   within a brokerage concerns. And in fact we've  
6                   had cases where managing brokers will refer to  
7                   the regulator licensees and make complaints when  
8                   they do see misconduct that they believe puts  
9                   the public at risk or puts the brokerage itself  
10                  at risk.

11                 Q     Mr. Avren, anything to add to that?

12                 A     (DA) It might be important to note that that  
13                   duty to report only pertains to conduct --  
14                   misconduct, potential misconduct in the sphere  
15                   of that brokerage, not misconduct observed in  
16                   respect of licensees at other brokerages.

17                 Q     Right. And could either of you speak to the  
18                   tools at a managing broker's disposal to compel  
19                   compliance with the *Real Estate Services Act* and  
20                   as well the -- you'll have to help me -- there  
21                   are a set of rules and bylaws as well issued by  
22                   the real estate council and I understand that  
23                   managing brokers have a role in encouraging  
24                   compliance with those as well?

25                 A     (ES) David, maybe I'll start. Just with, you

1 know, I think there's a spectrum of actions that  
2 a managing broker has within its purview. I  
3 mentioned at the more extreme end we see  
4 complaints from the managing broker. We also  
5 see managing brokers turn in the licence of the  
6 licensee in cases where compliance has become  
7 such an issue. With respect to the legislation,  
8 it is about taking reasonable steps, and I think  
9 a lot of our work we have professional standards  
10 advisors who provide guidance and field hundreds  
11 of calls for managing brokers to support their  
12 work in overseeing an effective brokerage and  
13 compliance, and that means day to day ensuring  
14 that all of the transactions are carried out  
15 appropriately, that the reporting is done as  
16 required by the act either promptly or in a  
17 timely manner.

18 So I think there are a number of supportive  
19 tools managing brokers can use, but as I said  
20 there the spectrum all the way to reporting the  
21 licensee to the regulator or turning in the  
22 licence because without the engagement of the  
23 brokerage, the licensee cannot practise. There  
24 is no mechanism to be an individual licensee  
25 under the regulatory framework must be

1 associated with the brokerage.

2 (DA) Yeah, it's always it's important and  
3 beneficial in any compliance system where  
4 incentives line up well with the act of  
5 compliance. And in this case I would say there  
6 is certainly a disincentive for managing brokers  
7 not to handle very well the issues of  
8 non-compliances being reported to them. Of  
9 course it would depend on the seriousness of the  
10 thing. But that managing brokers can and are  
11 disciplined for failures to supervise adequately  
12 and certainly if something were to present an  
13 ongoing public risk or had -- was an instance of  
14 significant consumer harm or incompetence and  
15 the managing broker failed to I think report  
16 that to us that could be a very significant  
17 factor in whether they ended up being  
18 disciplined in respect of what was really a  
19 misconduct by a licensee in another sphere.

20 So they have risk and that will be a primary  
21 thought of theirs, I think, if they either don't  
22 report or don't handle well or both.

23 Q In that there is a sort of vicarious liability  
24 for managing brokers for the conduct of the  
25 those that they supervise?

1           A       (DA) Yes, it's a sort of vicarious liability,  
2                    but they have an independent additional  
3                    liability to supervise which engages.

4           Q       The IAG report -- and I don't need to turn to  
5                    this but please let knee know if you would like  
6                    to see the specific wording of it -- the IAG  
7                    report recommendation 22 suggested that the real  
8                    estate council strengthen requirements for  
9                    managing brokers to have active and direct  
10                   oversight over licensees. Are you familiar with  
11                   that recommendation?

12          A       (ES) Yes. Yes, I am.

13          Q       And, Mr. Avren, you mentioned that there are  
14                    penalties or there are structures in place to  
15                    encourage managing brokers to act on misconduct  
16                    that is reported to them. But what about  
17                    conduct that is not reported to them? How are  
18                    managing brokers able to find that conduct and  
19                    how can they be empowered to ensure that they  
20                    enforce compliance?

21          A       (DA) To some extent it's going to be a matter of  
22                    governance and structure and systems within  
23                    their brokerage, and we have limited immediate  
24                    reach into that. And there are the economic  
25                    incentives in the brokerage may or may not line

1 up well with the incentives to investigate and  
2 discipline and it would be difficult for me to  
3 speak to that and it would vary from brokerage  
4 to brokerage. But the structure is certainly  
5 there in terms of the duties and the  
6 disciplinary outcomes if they're improperly  
7 handled. From our point of view we will  
8 discover it on the basis of a complaint whether  
9 made by a member of public, whether made  
10 anonymously, and many I believe -- and this is  
11 impressionist -- many of the anonymous  
12 complaints we receive are from within a  
13 brokerage or from another brokerage. So  
14 industry turning itself in, turning colleagues  
15 in. Or it comes up in our audit process where  
16 something has been discovered in the course of  
17 the audit and brought back and results in  
18 discipline.

19 Q Are there structural or institutional barriers  
20 to effective oversight by managing brokers? And  
21 two areas that I think you've touched on so far,  
22 one is the physical barrier in the sense that  
23 agents are often not in the office with the  
24 managing broker and so there might be a barrier  
25 there, and then the second institutional issue

1                   that you've just raised is this issue of whether  
2                   or not the financial incentive is aligned with  
3                   investigation and enforcement by the managing  
4                   broker within their brokerage. I wonder if you  
5                   could expand on those barriers.

6           A       (ES) I can speak a little bit just at a high  
7                   level in terms of the brokerage business model  
8                   that may or may not create a disassociation  
9                   between liability and authority. I think that  
10                  it's important that not all managing brokers  
11                  have an ownership stake in the business and thus  
12                  may be paid by salary and maybe an employee of  
13                  the business. In fact I think most are an  
14                  employee of the overall operations. Some have  
15                  ownership positions. I think that's where  
16                  there's risk that the owners seeking obviously  
17                  to maximize their profit and to maximize the  
18                  business have to be clear on what the regulatory  
19                  requirements are in terms of the managing  
20                  broker's role in oversight and compliance. I  
21                  think the superintendent's research again into  
22                  the role of managing brokers looks at this. I  
23                  think there have been efforts to strengthen the  
24                  framework in giving the managing broker the  
25                  tools he or she needs to be able to carry out

1 decisions that are consistent with the  
2 regulatory framework and prevent risk. I think,  
3 you know, one of the challenges we've seen with  
4 the managing broker population is while the  
5 number of new entrants to the trading services  
6 licensee representative category, for example,  
7 has been growing at a hugely impressive pace,  
8 even 200 individuals per week signing up to  
9 become real estate licensees as recently as  
10 January, the managing broker populations remain  
11 fairly stagnant, and I think one of the concerns  
12 that drove the superintendent in his work was  
13 the concern about do we have enough managing  
14 brokers at the right level of experience to keep  
15 the compliance regime functioning. We see the  
16 age of managing brokers very much 50 and above,  
17 if not 60, 70 and above, and I think there is a  
18 strong correlation between experience and  
19 success as a managing broker. You're advising  
20 your licensees on deals of great complexity,  
21 different types of transactions. It lends  
22 itself to being a position of experience and  
23 thus age. But I think one of the areas a  
24 superintendent is looking at is what other  
25 supports and education can be provided to

1 managing brokers. Are there needs to look more  
2 broadly longer term at the overall structure  
3 where licensees themselves may hold more  
4 accountability and there was consideration in  
5 the superintendent's consultation to even having  
6 a single licensing environment where the  
7 licensee itself, him or her, takes that  
8 responsibility for compliance much more  
9 directly. I think there is a lot more policy  
10 work involved in that, but it's certainly  
11 something that we talk about with our  
12 jurisdictional colleagues as well across Canada  
13 this is really isn't unique to BC. This is  
14 really a challenge in the profession across the  
15 country and probably internationally.

16 (DA) One of the things you notice that  
17 appears to be a gap when you first look at the  
18 rules as they came to me when I first reviewed  
19 them is there is a duty of licensees to report  
20 to the managing broker, but there is no duty of  
21 a managing broker to report to the real estate  
22 council. That -- I am not perhaps the best  
23 person to judge this, but that could be of  
24 assistance to managing brokers in coming forward  
25 and in relieving them of the judgment about the



1 balancing kind of equation that one might do in  
2 a business situation whether to come forward,  
3 whether to deal with it effectively themselves,  
4 if something were specified within the rules or  
5 elsewhere in terms of reporting, but if that  
6 were to be the case I caution that that would be  
7 specific and it would be that there be a  
8 magnitude to whatever had to be reported. It  
9 could be specific in terms of the rules or it  
10 could be perhaps less desirably specific in  
11 terms of the magnitude. The rules are  
12 complicated. There are minor slips. You  
13 wouldn't want managing brokers to be responsible  
14 for and potentially exposed, nor would you want  
15 to create the bureaucratic response of minor  
16 slips being continually reported, but certainly  
17 for deceptive dealing, which specified in the  
18 act as a misconduct, and matters of that kind,  
19 significant failures of duty and competence,  
20 that sort of thing, it might be helpful to  
21 managing brokers. That would be something to  
22 consider.

23 Q I understand that the IAG report did make a  
24 reference to that duty that you're suggesting  
25 there, Mr. Avren, the duty on managing brokers

1 to report licensee misconduct; is that right?

2 A (DA) I believe so.

3 Q I think maybe we'll take a moment to go to that.  
4 Madam Registrar, if you could pull the IAG  
5 report up at page 41. It's recommendation 11, I  
6 believe.

7 And so my understanding is that this type of  
8 change would now have to be made by the Office  
9 of the Superintendent of Real Estate because  
10 that is where the rulemaking authority sits. Am  
11 I right in that?

12 A (DA) That's correct.

13 Q And are you aware of any work that has been done  
14 in furtherance of that recommendation?

15 A (DA) That would be subsumed I think within the  
16 broad consultation on the role of managing  
17 brokers going forward.

18 Q Thank you. I think we're done with the document  
19 there, Madam Registrar.

20 I wanted to take a step back and we sort of  
21 discussed some of the barriers that managing  
22 brokers face, but I wonder if either Ms. Seeley  
23 or Mr. Avren, if you could describe the basic  
24 compensation structure of a real estate  
25 licensee, and -- sorry, I should say real estate

1 agent, as well as a managing broker in sort of  
2 from your understanding of what is typical.

3 A (ES) Why don't I start and then I'll let  
4 Mr. Avren add to this. At a very high level we  
5 are regulating salespeople. It is primarily in  
6 the trading services realm commission based and  
7 the regulations, the statutory framework doesn't  
8 prescribe tariffs for services as in other  
9 regulated profession, so I think that present a  
10 particular challenge when you're looking at  
11 overall fairness to clients and alignment of  
12 interest in terms of compliance when you're  
13 getting paid to close the transaction. It can  
14 be a challenge. So I think licensees,  
15 predominantly commission based. The commissions  
16 are paid to the brokerage and so the brokerage  
17 then can fund its operations through the  
18 commissions as well and those are used to pay  
19 anything from the corporate services back end to  
20 the managing broker in terms of salary and those  
21 are negotiated with the licensee, those kinds of  
22 splits on commissions. It is customary,  
23 although not prescribed, that it is the seller  
24 at least in residential real estate who would  
25 pay the commission, but the commission may be

1 split between a buyer's licensee and a seller's  
2 licence. In the case of that there are separate  
3 agreements than prescribing through the  
4 brokerage. Again the fees fund through the  
5 brokerage -- the fees flow through the brokerage  
6 trust accounts. There are agreements  
7 prescribing the splits of those commissions. In  
8 other sides, rental strata, there may be other  
9 monetary patterns. It's not so much a  
10 commission based although it may be based on the  
11 number of units managed, for example, as a  
12 common way to set costs and set revenue. I  
13 think the other area that is important with the  
14 structure and the commission-based nature is  
15 it's lent the regulator to focus on disclosure  
16 and that is really where we spend -- have spent  
17 a lot of time with the superintendent and spend  
18 a lot of time in practice guidance making sure  
19 that licensees comply with the requirements to  
20 disclose the remuneration that they're  
21 receiving, and that definition of remuneration  
22 in the act is broad. It can include referral  
23 fees. It can include remuneration in kind.  
24 Anything from travel points to gifts must be  
25 disclosed. So the transparency element of the

1 regime is critical because there aren't tariffs  
2 prescribed and there isn't the same regulatory  
3 oversight of exactly what fees are charged.

4 Q Sorry, when you say the splits of commissions  
5 are you referring to the split between agent and  
6 brokerage?

7 A (ES) Can be agent and brokerage. It can be  
8 brokerage to brokerage in terms of a cooperating  
9 brokerage. That would be the scenario I  
10 described where there is a buyer and a seller  
11 each having his or her own licensee in  
12 British Columbia. As referenced in the  
13 documentation dual agency is banned in almost  
14 all cases, so the ability for a licensee to act  
15 on behalf of a buyer and a seller in almost all  
16 cases except for remote rural communities and a  
17 very minor exemption that's prohibited in BC.  
18 So it does mean that there are now commissions  
19 being divided between a buyer's licensee and a  
20 seller's licensee and that transaction would  
21 occur through the brokerage and the brokerage  
22 accounts.

23 Q To your knowledge has there been a change in the  
24 typical distribution or split between a  
25 brokerage and an agent of the commissions

1 received on a sale? Has that changed over time?

2 A (ES) I'm not aware of the patterns except to say  
3 that I think the business model depends  
4 brokerage to brokerage. I think historically  
5 again where brokerages had physical space, where  
6 there were people coming into the office every  
7 day and that direct office environment, the  
8 overhead costs were greater and perhaps  
9 brokerages were taking more of the commissions  
10 than now. But it depends on the brokerage and  
11 the model. There are brokerages that charge  
12 desk fees where they really charge per licensee  
13 and they may have more licensees because they  
14 have a different commission negotiation with  
15 their agent. So I think it does vary and I  
16 can't speak to trends specifically in this area,  
17 although with commissions often tied to the sale  
18 price of the homes, the commission overall has  
19 increased substantially with the increase in  
20 prices, particularly in the Lower Mainland.

21 Q Are you aware or could you speak to a range of  
22 what might be typical in terms of splits between  
23 brokerage and agent?

24 A (ES) I would hesitate to speculate on that  
25 number. And it may be I know the BC Real Estate

1 Association is also participating. That may be  
2 more specific to the association in terms of  
3 sector trends. It's not something that we  
4 collect on a case-by-case basis, although we  
5 certainly look at it in our audit practices.

6 Q What are the relative earnings of a managing  
7 broker as compared to a real estate agent on  
8 perhaps a yearly basis?

9 A (ES) Again, I think it varies. You know, one of  
10 the challenges is with 26,000 licensees in  
11 British Columbia and on average I think last  
12 year, say the last three years there have been  
13 between 70- or 90- or 100,000 transactions.  
14 It's clear that not all licensees are active  
15 full-time and it isn't a requirement to be  
16 full-time in the profession. So I think it  
17 varies greatly from the very active participants  
18 who may carry out 10s, 20s of transactions in an  
19 urban environment to smaller rural, you know,  
20 one or two transactions in a month, even fewer.  
21 And I think that is where we don't have data  
22 that gives us a meaningful sense of that  
23 spectrum and it's something I know my colleague,  
24 the superintendent, in his earlier testimony  
25 discussed the data. I think it's something

1                   we're very eager to take more focus on. I think  
2                   we spend a lot of our time on our compliance  
3                   rules based approach and I think there are other  
4                   indicators such as earnings of a licensee that  
5                   may help to identify risk. I would say on a  
6                   general observation in working with the  
7                   superintendent's office and their review of the  
8                   managing broker that the data provided as part  
9                   of that review showed managing brokers at a  
10                  salary that is significantly less than the  
11                  higher producing licensees because they are that  
12                  salaried compliance employee and not the  
13                  commission-based earning agent. And yet, we  
14                  also know that some managing brokers are acting  
15                  as licensees as well and that is to supplement  
16                  their income, and also in smaller communities  
17                  where it may not be feasible to have a full-time  
18                  managing broker dedicated and compensated for  
19                  that supervisory role. So it's difficult, as  
20                  you can hear from my commentary, to make  
21                  generalizations about it, and I think one  
22                  caution I would make is that the faces we see on  
23                  the bus stops and on the buses represent a very  
24                  small portion of that 26,000 and not to make the  
25                  generalization that every agent is significantly



1                   earning high income in their role. But I think  
2                   it's also a challenge for new entrants because  
3                   we do provide a lot of information to licensees  
4                   when they enter the profession about the costs  
5                   of just getting established, and I think the  
6                   fact that we see so many people coming into the  
7                   business perhaps is another opportunity to look  
8                   at that data and to be able to share a realistic  
9                   picture of what earnings are like for licensees.

10            Q     If I were to -- sorry. Did you have something  
11                   to add there, Mr. Avren?

12            A     (DA) no, I was going to say that there are  
13                   licensees and quite a significant of number that  
14                   do no transactions in a year or only one or two,  
15                   even in the Lower Mainland. Some become  
16                   licensees for other purposes. Let's say they're  
17                   appraisers and they want access to particular  
18                   kinds of information, or it's just kind of to be  
19                   sure they don't fall afoul of any regulatory  
20                   requirements. The other comment was in terms of  
21                   gathering data, one of the modern goals in  
22                   regulation is to regulate the risk, identify  
23                   areas of risk both for education and  
24                   disciplinary efforts rather than just a blanket  
25                   approach. Be more sophisticated, use your

1 resources better, make sure that those who need  
2 information and whatever kind of category you  
3 are able to create, classification or area of  
4 practice you're able to create, or getting what  
5 they need to fully comply and do better.

6 Q If I limit my question to agents with a  
7 relatively high-volume practice in an urban  
8 centre like in the Lower Mainland, would it be  
9 fair to say that agents in that circumstance  
10 make -- who are earning on a commission with  
11 perhaps multiple transactions of million dollar  
12 properties in a year would make significantly  
13 more than their managing broker?

14 A (ES) I think that is a fair characterization.  
15 Again, I would say just to qualify that that it  
16 depends on the managing brokers arrangements as  
17 an employee or potentially an owner, as I said,  
18 of the brokerage. So the true answer is it  
19 depends, but there are those scenarios that  
20 exist, yes.

21 Q And does that create in those scenarios, does  
22 that create a difficult power dynamic in terms  
23 of supervision of the agents and ensuring that  
24 that ethical obligations are met?

25 A (ES) I think that there is of course as my

1           colleague Mr. Avren mentioned an importance of  
2           alignment of interests, and I think where -- you  
3           know, I wouldn't necessarily say that it causes  
4           a challenge. I think as we talked about, the  
5           managing broker understands very much the risk  
6           of compliance and the role that they play and I  
7           think the licensees, particularly the active  
8           ones, are very concerned about reputation. And  
9           there's nothing worse for a licensee than to  
10          have a complaint filed or an investigation by  
11          the regulator or a disciplinary finding. And  
12          that's public information. We publish those  
13          decisions. So I think insofar as there are  
14          sufficient regulatory tools, we have now an  
15          increase in penalties since 2016, up to \$500,000  
16          for brokerages and 250,000 per infraction at a  
17          maximum for licensees, and I think that is a  
18          significant deterrent and I think it also is a  
19          significant encouragement for compliance. We  
20          talked about the managing broker's duty to  
21          report insofar as he or she knows about  
22          misconduct, and I think the engagement that we  
23          have with managing brokers lends us to  
24          understand that they take that role very  
25          seriously.

1                   Now, the challenge, though, of regulating  
2                   sales, a commission and the high prices and the  
3                   high earnings are that there can be ethical  
4                   pressures, and I think that's where we've also  
5                   introduced recent training mandatory ethics  
6                   course for licensees to address those grey areas  
7                   and ensure that compliance in using appropriate  
8                   judgment, the duties to clients, the oath of  
9                   confidentiality that they provide to their  
10                  clients, et cetera, that that can be maintained  
11                  despite the financial reward that may be driving  
12                  so much of the sales and commission focus of the  
13                  profession.

14                  Q     Mr. Avren, did you have anything to add to that?

15                  A     (DA) No. Thank you.

16                  MS. ROSE: So, Mr. Commissioner, I intend to ask the  
17                  panel a few questions about the compliance  
18                  process at the Real Estate Council of BC, but I  
19                  note that this topic is covered more thoroughly  
20                  in our overview report on the legislative and  
21                  regulatory structure of real estate in BC at  
22                  exhibit 603 and this section with respect to the  
23                  complaint and enforcement of the real estate  
24                  council begins at page 46 of that exhibit. So I  
25                  therefore intend to ask just a few overview

1                    questions of this process by way of asking a few  
2                    leading questions if that's all right with you,  
3                    Mr. Commissioner.

4                    THE COMMISSIONER: Yes, by all means.

5                    MS. ROSE:

6                    Q     So, Ms. Seeley, the real estate council receives  
7                    complaints from the public and industry members  
8                    and then also conducts audits of brokerages?

9                    A     (ES) Yes, that's correct.

10                  Q     And those audits in the past primarily targeted  
11                  financial recordkeeping insolvency but since  
12                  2016 now include a more holistic view of the  
13                  brokerage with a view to licensing misconduct  
14                  and health and safety issues among others?

15                  A     (ES) That's true. Particularly in the  
16                  environment of the pandemic the audit practice  
17                  has shifted significantly both as a supportive  
18                  resource tool for managing brokers going to the  
19                  point of health and safety in the workplace with  
20                  the pandemic and managing that, but also a more  
21                  detailed risk assessment now in terms of audit  
22                  work so that we can focus our resources on the  
23                  higher-risk brokerages and the audit function  
24                  there.

25                  Q     And are investigators and those that conduct

1                   these audits, are they empowered to identify  
2                   potential money laundering issues that are not  
3                   specifically alleged in a complaint or otherwise  
4                   identified in an audit?

5           A       (ES) So the audit work is specifically directed  
6                   at the regulatory framework and that is the  
7                   oversight of the trust accounts primarily. It  
8                   is a sample-based audit and it is also focused,  
9                   as you mentioned, more holistically at policies.  
10                  So I would say that, you know, again the real  
11                  estate council doesn't have an anti-money  
12                  laundering mandate specifically. Where an audit  
13                  may raise red flags and we have concerns either  
14                  about flows of money through the trust accounts  
15                  or the responses that we're receiving from the  
16                  managing broker, we can investigate further and  
17                  we may through the course of that investigation  
18                  and even initiating our own discipline process  
19                  we may able to share information with law  
20                  enforcement or with FINTRAC, but the auditors  
21                  are not specifically looking for money  
22                  laundering in their audit. There's been a lot  
23                  of discussion, I think quite productive, with  
24                  FINTRAC in our MOU about how we can work  
25                  together and yet still recognize these distinct

1 mandates. FINTRAC is in and of itself an  
2 auditor of the compliance of the brokerages. We  
3 carry out the audit function and not wanting to  
4 overlap and duplicate but strengthen is  
5 something that I hope we can continue to work  
6 toward.

7 Q But if investigators spot something that might  
8 be a red flag for money laundering they are able  
9 to bring that forward or refer it to the right  
10 person?

11 A (ES) That's correct, yes. But they wouldn't be  
12 specifically looking for it. That's part of the  
13 qualification in the audit. It's not an  
14 anti-money laundering audit.

15 Q And what training or education do investigators  
16 have -- I should say do the investigators at the  
17 Real Estate Council of BC have in order to  
18 identify signs of potential money laundering?

19 A I'll let Mr. Avren speak to that.

20 (DA) well, The auditors would be different  
21 and I know sometimes we referred just now to  
22 auditors being investigators. They are  
23 typically accountants, but in the investigations  
24 group there is a range of experience. Everyone  
25 at minimum has the AML course that RECBC has

1 developed. They've all taken that as a  
2 requirement, and in addition there are presently  
3 three investigators out of a total of I think  
4 17 investigators who have training, additional  
5 training either through police, RCMP or and/or  
6 financial institutions on the security and  
7 investigation side that they have worked for, so  
8 sophisticated understanding from an  
9 investigation point of view. And the AML work  
10 that the AML investigations that we have would  
11 go to those three. They would have either  
12 direct control of it or some supervisory  
13 oversight of how it was being carried out.

14 Q Ms. Seeley, are you familiar with commentary in  
15 the IAG report and the Perrin report regarding  
16 the makeup of the Real Estate Council of BC's  
17 counsel, being the board members who preside  
18 over disciplinary hearings with respect to  
19 whether those members ought to be elected by  
20 industry or appointed? Are you familiar with  
21 that discussion?

22 A (ES) I'm familiar. I think the reports  
23 reference different phases of the real estate  
24 council. As I mentioned the independent  
25 advisory group references a time of



1 self-regulation when council members were  
2 members of the industry, licensed as managing  
3 brokers or representatives. With the exception  
4 of one or two public members they, the board of  
5 directors, as we call it the council, was  
6 dominated by licensees with sector experience.  
7 Post-2016 as a Crown agency the council is  
8 appointed by the lieutenant Governor-in-Council  
9 and that means it's had a range of expertise and  
10 experience, much more a governance board, and  
11 yet still in its function it's something of a  
12 hybrid because the board members act as  
13 governance and oversight carrying out fiduciary  
14 duties. They are also as required under the  
15 *Real Estate Services Act* comprising a majority  
16 of panels on discipline hearings, and that is I  
17 would call it a holdover from self-regulation,  
18 but it has carried through and currently now in  
19 our structure discipline panels must be a  
20 majority of council. In cases where we have  
21 licensees we will often have a licensee member  
22 of a panel so that we can have the industry  
23 expertise contributing to the review of the  
24 facts of the matter. But it is not required in  
25 the statute either, so it is something we can



1                   allegations, part of the charges as conduct  
2                   becoming, et cetera, for it to be strongly  
3                   influential in terms of the penalty imposed.  
4                   Otherwise, it would have been a contextual  
5                   matter which properly would have had to form  
6                   part of the evidence.

7           Q        So for it to be strongly influential, as you  
8                   say, it would need to be alleged in a complaint?

9           A        (DA) Yes, formed -- well, it wouldn't have to be  
10                   alleged in the complaint itself, but it would  
11                   have to form a part of the underlying charge.  
12                   These things get complaints and what is  
13                   discovered in the course of investigating  
14                   complaints are reduced to specific charges and  
15                   anti-money laundering activity would be referred  
16                   to specifically as one of the counts, if you  
17                   will, converted into more criminal law type  
18                   language. That is how it would manifest itself.

19          Q        And the charges, is that articulated by the  
20                   investigator?

21          A        They don't -- that is by the legal department,  
22                   they are the ones that issue a notice of  
23                   disciplinary hearing, we would call it, which  
24                   would be -- would articulate the counts and  
25                   specify a date and a place for appearance to

1                   depend against them, and then there's process  
2                   beyond that. But the investigators would come  
3                   forward with an initial view of what offences  
4                   might have occurred and then that is reviewed by  
5                   you could consider a sort of charge approval  
6                   lawyer who straddles the investigations group  
7                   and legal reporting through to legal. Then if  
8                   it passes the hurdles a couple of other  
9                   approvals move fully into the legal department  
10                  handled by the lawyers who then approve a notice  
11                  of disciplinary hearing specifying the counts  
12                  depending on their evaluation of the evidence  
13                  and what can be proven.

14                  Q       And what sort of training do council members  
15                  have with respect to anti-money laundering?

16                  A       (ES) I would say similar to the investigators,  
17                  the anti-money laundering course has been a  
18                  feature. We've had additionally input from  
19                  FINTRAC in terms of sharing presentations on the  
20                  MOU and opportunities with former council  
21                  members to engage directly with FINTRAC and  
22                  understand that regime as well as opportunities  
23                  for council to participate in staff training  
24                  sessions. So when we've had FINTRAC present to  
25                  staff we've also invited council. It is not a

1 common feature in the discipline process and so  
2 it has not come up repeatedly in discipline  
3 cases, but as David mentioned it's an important  
4 feature of the complex environment in which the  
5 brokerage and the licensees operate.

6 Q And I understand the discipline process may be  
7 somewhat different as the Real Estate Council of  
8 BC joins with the BC Financial Services  
9 Authority. Are you able to -- is there a plan  
10 for how disciplinary hearings will proceed in  
11 that new model? And can you speak to what sort  
12 of training that individual or panel will have  
13 with respect to money laundering.

14 A (DA) well, One of the potential and perhaps  
15 likely outcomes, and this is more I think a  
16 matter of choice than anything that emerges  
17 through any planned legislation, is moving to a  
18 hearing officer model as a result of the  
19 amalgamation. The council itself will  
20 disappear. The council has the dual functions  
21 of being both the standard governance board as  
22 well as a tribunal, which creates some  
23 interesting challenges sort of an ethical wall  
24 point of view. Everyone is under one roof, the  
25 prosecutors, the investigators and the judges.

1                   So those are interesting challenges. That to  
2                   some extent disappears but needs to be replaced  
3                   as you mentioned. And it will probably move --  
4                   and this is a matter governance choice. These  
5                   are the kinds of discussions we're having in the  
6                   planning for the amalgamation to what would be a  
7                   hearing officer model which would be staff,  
8                   probably lawyers who have background in  
9                   litigation, handling hearings in one fashion or  
10                  another, who will conduct the disciplinary  
11                  hearings as necessary in various other  
12                  functions, at that kind of level in terms of  
13                  orders and determinations. They would probably  
14                  ultimately report through to what will likely be  
15                  a superintendent of real estate because the  
16                  council itself disappears. The role and the  
17                  mandate doesn't disappear; it has to go  
18                  somewhere. And in an amalgamation with the  
19                  BCFSA that council function either lands with  
20                  the BCFSA board itself becoming also a tribunal,  
21                  probably an unlikely outcome, or is handled by  
22                  the superintendent or his delegate, and hearing  
23                  officers would be delegates in this potential  
24                  model I'm describing and it would probably be a  
25                  single hearing officer in most cases with likely

1           option to appoint externals, a lawyer in private  
2           practice, for example, to conduct hearings  
3           depending on -- it could be various reasons for  
4           going out, but I think the hearing officer model  
5           seems to be the more likely of the various  
6           options at this point.

7           Q     And earlier we discussed a duty on licensees to  
8           report misconduct to the managing broker. Does  
9           the real estate council receive many complaints  
10          that consist of industry members reporting other  
11          industry members?

12          A     (DA) We do. We receive several hundred  
13          anonymous tips, and as I've said my hunch is  
14          that -- and I don't listen to the tips myself on  
15          the phone line or see them and I try to keep  
16          myself one removed, but the general assumption  
17          is they are members of industry to some extent  
18          reporting on each other, or probably a majority.  
19          We do receive more express attributable  
20          complaints as well, but they are fewer and  
21          farther between. So they do -- yes, I would say  
22          they do report each other. Just to give you an  
23          idea of the anonymous tip we probably receive 4-  
24          or 500 anonymous tips of which 100 to 200  
25          typically would move into investigation. Some

1           you can't make much of. It's a short phone call  
2           without enough data to really get you going,  
3           other than just someone naming a name and making  
4           an unsupported allegation without more. So if  
5           there's enough to go on that's of a proper  
6           nature those would move into the normal  
7           investigation channels, and of that, say, 500  
8           maybe 140, 150 might prove out, have enough to  
9           start chewing at.

10          Q     I understand that the rules contained at  
11           section 3-2(5) a duty to report another  
12           licensee; is that right?

13          A     (DA) I have it here. That's the one we spoke of  
14           earlier. That's notifying the managing broker  
15           within the realm of your brokerage and its  
16           affiliates.

17          Q     And there's also I understand a concern stated  
18           in the IAG report that even where real estate  
19           licensees may be acting ethically they may not  
20           be holding others to a similar high standard.  
21           Is this something -- do you agree with that  
22           characterization first of all? And I'll start  
23           perhaps with Ms. Seeley and then Mr. Avren.

24          A     (ES) I think this goes back to 2016 and the  
25           independent advisory group report that was a



1 feature of the recommendation in setting up a  
2 confidential reporting channel was the concern  
3 that because of the relationship-based nature of  
4 the profession, the perception of complaining  
5 about the conduct of a licensee on the other  
6 side of the deal, if you will, would be one that  
7 could invite retaliation or disloyalty or loss  
8 of business, frankly, in a world where there is  
9 a lot of cooperation between brokerages and  
10 between licensees. I think that, you know, part  
11 of the education push we've made is to really  
12 focus on the importance of the ethical judgment,  
13 but as we talked about, the price increases, the  
14 volume of transactions in the market and the  
15 commission-based remuneration lend themselves to  
16 very difficult decisions and that's one where  
17 when we see in our discipline cases and in  
18 complaints, those are the decisions that  
19 ultimately yield significant discipline  
20 outcomes. The unethical conduct unbecoming, the  
21 dishonesty, those are of course the most  
22 alarming and the highest, I would say, in terms  
23 of penalties and consequences. But I don't know  
24 that I can generalize. I'm cautious about  
25 making comments that apply to

1                   26,000 individuals. I think what we see through  
2                   our complaints receiving upwards of 6- to 800 a  
3                   year in the realm of again almost 80-, 90-,  
4                   100,000 transactions, is that representative of  
5                   the licensee population, is there more out there  
6                   that we don't see, this is where we really want  
7                   to move to a risk-based proactive model, but I  
8                   hesitate to make generalizations about the  
9                   licensee population.

10            Q     Mr. Avren, did you have anything to add to that?

11            A     (DA) No, I think what you're saying is generally  
12                   true in that there are always people who are  
13                   always working at different standards and, you  
14                   know, so it wouldn't be -- you know, that would  
15                   be probably a feature of the real estate  
16                   profession as well as all other professions and  
17                   one would want that when standards fall below a  
18                   certain level that there is address, but above  
19                   that level, you know, it's a matter of  
20                   discretion.

21            Q     Are you aware of any cases in which the real  
22                   estate council has applied sanction to an  
23                   individual who from the investigation obviously  
24                   knew about a particular instance of misconduct  
25                   but did not report?

1           A       (DA) I'm not, no.

2           MS. ROSE: Okay. I think that might be a good place  
3                   to end for the day, Mr. Commissioner, and resume  
4                   in the morning.

5           THE COMMISSIONER: All right. Thank you, Ms. Rose.  
6                   We will adjourn until tomorrow morning at 9:30.  
7                   Ms. Seeley and Mr. Avren, thank you for your  
8                   attendance today and we'll resume tomorrow  
9                   morning.

10          THE WITNESS: (DA) Thank you very much.

11          THE REGISTRAR: The hearing is now resumed [sic] until  
12                   February 17, 2021 at 9:30 a.m. Thank you.

13                   **(WITNESSES STOOD DOWN)**

14                   **(PROCEEDINGS ADJOURNED AT 2:28 P.M. TO FEBRUARY 17, 2021)**

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