Part IV
The Real Estate Sector

Real estate presents enormous money laundering vulnerabilities in British Columbia, no less than in other jurisdictions. In Chapter 15, I examine how real estate provides a safe and attractive investment for both legitimate and illicit proceeds, and is vulnerable to multiple money laundering methods. In Chapter 16, I turn to the regulation and anti–money laundering responsibilities of real estate professionals – real estate agents and mortgage brokers. These gatekeepers are in a position to both detect and report suspicious activity if it is recognized as such, but also to knowingly or unwittingly assist money laundering activity.

In Chapter 17, I address a particular area of concern, private lending secured by real estate. In Chapter 18, I examine how the large amount of data collected in the real estate sector provides an opportunity for data analysis that can help to identify money laundering trends and risks and to assist in responding to them proactively.

The remarkable rise in residential real estate values, in particular, has both sharpened public attention on the real estate sector and created further opportunities to clean the proceeds of crime. In Chapter 19, I examine the extent to which it can be concluded that money laundering has contributed to housing unaffordability in the province.

Chapter 15
Vulnerabilities to Money Laundering in Real Estate

In the public discourse around money laundering in this province, skepticism has been expressed about the prevalence or even existence of money laundering in real estate. To their credit, none of the participants in the hearings before me took the position that money laundering was not happening in or through real estate.

In order to dispel any lingering doubts about the existence of money laundering in the real estate sector, I have set out in this chapter a review of the intergovernmental, governmental, and academic consensus on the prevalence of money laundering in real estate. This chapter also canvasses the commonly understood typologies involving the use of real estate to launder the proceeds of crime.

One of my purposes in doing so is to illustrate that, in the real estate sector, money laundering transactions are usually one or more steps removed from the physical cash that some members of the public may associate with the words "money laundering." While money laundering typologies involving real estate do not conjure up dramatic images of hockey bags or suitcases of cash being emptied onto the desks of realtors, that does not mean that money laundering is not happening in this sector. A focus on physical cash when considering the risks of money laundering reflects a misunderstanding of how various money laundering typologies work. In the real estate sector, this sort of focus on cold cash can lead to a failure to appreciate the magnitude of the risk and to recognize indicators of money laundering.

This chapter reviews some of the recognized typologies in brief. Later in this Report, I return to certain typologies to discuss them in context and in detail.

Why Real Estate Is Attractive to Money Launderers

The literature[1] repeatedly cites a number of practical benefits and attractions of real estate for money launderers, notably:

- enjoyment of the property, both in terms of residing / conducting business on the property, and as a display of one's success;
- the benefit of having a location at which to conduct criminal activity;[2]
- the fact that a large amount of money can be laundered with a single transaction, due to the high value of real estate relative to other goods;[3]
- the relatively low transaction costs, as compared to other methods of money laundering,
- the perception of real estate as a safe investment;[4]
- the potential for income generation via rental income or the appreciation of property;[5]

1 See, for example: Louise Shelley, "Money Laundering into Real Estate," in Michael Miklaucic and Jacqueline Brewer (eds), *Convergence: Illicit Networks and National Security in the Age of Globalization* (Washington, DC: National Defense University Press, 2013), p 134; Joras Ferwerda and Brigitte Unger, "Detecting Money Laundering in the Real Estate Sector," in Brigitte Unger and Daan van der Linde (eds), *Research Handbook on Money Laundering* (Northampton: Edward Elgar, 2013), pp 268–69; Sean Hundtofte and Ville Rantala, "Anonymous Capital Flows and US Housing Markets" (University of Miami Business School Research Paper No. 18-3, 2018), p 10; Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate and Response from Real Estate Industry, Appendix 10, European Parliamentary Research Service, *Understanding Money Laundering Through Real Estate Transactions* (European Union: 2019) [*European Parliament Real Estate Report*], p 2, online: https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/633154/EPRS_BRI(2019)633154_EN.pdf.

2 L. Shelley, "Money Laundering into Real Estate," p 134; AUSTRAC, *Strategic Analysis Brief: Money Laundering Through Real Estate* (Australia: 2015), p 9, online: https://www.austrac.gov.au/sites/default/files/2019-07/sa-brief-real-estate_0.pdf; J. Ferwerda and B. Unger, "Detecting Money Laundering in the Real Estate Sector," p 269.

3 L. Shelley, "Money Laundering into Real Estate"; Brigitte Unger et al, *Detecting Criminal Investment in the Dutch Real Estate Sector* (Dutch Ministry of Finance, Justice and Interior Affairs, January 2010), p 14, online: https://www.politieacademie.nl/kennisenonderzoek/kennis/mediatheek/PDF/86218.pdf; J. Ferwerda and B. Unger, "Detecting Money Laundering in the Real Estate Sector," p 269; Transparency International Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)* (Ottawa: 2019), p 20, online: https://static1.squarespace.com/static/5df7c3de2e4d3d3fce16c185/t/5dfb8cf8f8effb79c8bdf415/1576766716341/opacity.pdf; S. Hundtofte and V. Rantala, "Anonymous Capital Flows and US Housing Markets," p 10; Edwin W. Kruisbergen, Edward R. Kleemans, and Ruud F. Kouwenberg, "Profitability, Power, or Proximity? Organized Crime Offenders Investing their Money in Legal Economy" (2015) 21(2) *European Journal on Criminal Policy and Research*, p 243, online: https://www.researchgate.net/publication/267641936_Profitability_Power_or_Proximity_Organized_Crime_Offenders_Investing_Their_Money_in_Legal_Economy.

4 L. Shelley, "Money Laundering into Real Estate," p 136: "… many forms of laundering cost launderers 10 to 20 percent of the sums they seek to clean, this rule does not always apply in the real estate sector"; see also E.W. Kruisbergen et al, "Profitability, Power, or Proximity? Organized Crime Offenders Investing their Money in Legal Economy," pp 243, 252; Fabian Maximilian Johannes Teichmann, "Real Estate Money Laundering in Austria, Germany, Liechtenstein and Switzerland" (2018) 21(3) *Journal of Money Laundering Control*, p 374.

5 L. Shelley, "Money Laundering into Real Estate," p 136; J. Ferwerda and B. Unger, "Detecting Money Laundering in the Real Estate Sector," p 269; Exhibit 601, Appendix 10, *European Parliament Real Estate Report*, p 2; F.M.J. Teichmann, "Real Estate Money Laundering in Austria, Germany, Liechtenstein and Switzerland," pp 372–74; see also E.W. Kruisbergen et al, "Profitability, Power, or Proximity? Organized Crime Offenders Investing their Money in Legal Economy," pp 243, 252.

- opportunity for further money laundering via real estate, such as by construction on the property;[6]
- the fact that taking out a mortgage to pay for real estate provides an opportunity to use illicit funds to service the debt and legitimize the money that is moving into financial institutions;[7] and
- the ability to develop influence and power at a local level, such as in cases where a large real estate portfolio is owned in a small town or neighbourhood.[8]

In addition to these practical benefits, structural and regulatory factors are cited as incentives for using real estate to launder funds, such as:

- pressure on financial institutions to avoid doing business with potential money launderers, which has led to reforms that have encouraged launderers to seek alternate means of laundering;[9]
- the ability to manipulate price of real estate;[10]
- the ease of maintaining privacy, because of the lack of transparency in public corporate and land registries (see more below);[11]
- conflict for real estate professionals, who are expected to balance expectations of performing due diligence as to the source of funds, but also attract clients;[12]

6 B. Unger et al, *Detecting Criminal Investment in the Dutch Real Estate Sector*, p 14; Peter B.E. Hill, *The Japanese Mafia: Yakuza, Law, and the State* (Oxford: Oxford University Press, 2003), p 96; TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)*, p 20; F.M.J. Teichmann, "Real Estate Money Laundering in Austria, Germany, Liechtenstein and Switzerland," pp 372–73.

7 AUSTRAC, *Strategic Analysis Brief: Money Laundering Through Real Estate*, p 7.

8 Kruisbergen et al, "Profitability, Power, or Proximity? Organized Crime Offenders Investing their Money in Legal Economy," p 248.

9 L. Shelley, "Money Laundering into Real Estate," p 132; TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)*, p 20.

10 TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)*, p 20; S. Hundtofte and V. Rantala, "Anonymous Capital Flows and US Housing Markets," p 10; AUSTRAC, *Strategic Analysis Brief: Money Laundering Through Real Estate*, p 8.

11 TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)*, pp 20–21; Transparency International, "Doors Wide Open: Corruption and Real Estate in Four Key Markets" (2017), p 14, online: https://images.transparencycdn.org/images/2017_DoorsWideOpen_EN.pdf; Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate and Response from Real Estate Industry, Appendix 11, Transparency International Canada, *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts* (Ottawa: 2016), pp 14–15, online: https://static1.squarespace.com/static/5df7c3de2e4d3d3fce16c185/t/5dfb8a955179d73d7b758a98/1576766126189/no-reason-to-hide.pdf; L. Shelley, "Money Laundering into Real Estate," p 141; S. Hundtofte and V. Rantala, "Anonymous Capital Flows and US Housing Markets," p 2; E.W. Kruisbergen et al, "Profitability, Power, or Proximity? Organized Crime Offenders Investing their Money in Legal Economy," p 243.

12 L. Shelley, "Money Laundering into Real Estate," p 132; Transparency International, "Doors Wide Open: Corruption and Real Estate in Four Key Markets," p 19; Ilaria Zavoli and Colin King, "New Development: Estate Agents' Perspectives of Anti–Money Laundering Compliance – Four Key Issues in the UK Property Market" (2020) 40(5) *Public Money & Management*, p 416, online: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4033773.

- minimal reporting of suspicious transactions, whether on the part of the opposite party in the sale, or on the part of real estate professionals;[13] and
- poor enforcement and insufficient sanctions for facilitating money laundering in real estate.[14]

Canadian Money Laundering Vulnerabilities: FATF 2016 Mutual Evaluation Report

In September 2016, the Financial Action Task Force (FATF) released its fourth mutual evaluation report[15] for Canada.[16] The key findings of the Canada fourth mutual evaluation report with respect to real estate were as follows:

- The real estate sector in Canada is "highly vulnerable" to money laundering, including international money laundering.[17] The sector is exposed to high-risk clients, including politically exposed persons from Asia and foreign investors from locations of concern.[18]
- Certain real estate products, such as mortgage loans, were considered high risk.[19]
- The main typologies identified in reviewing real estate-related suspicious transaction reports submitted to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) ranged from the use of nominees by criminals, and structuring of cash deposits, to sophisticated schemes involving loans, mortgages, and the use of a lawyer's trust account.[20]
- The existence of a memorandum of understanding between the RCMP and the People's Republic of China was important, but "no assistance with this country was reported in the province of British Columbia, despite the fact that it appears to be at greater risk of seeing its real estate sector misused to launder [proceeds of crime] generated in China."[21]

13 Transparency International, "Doors Wide Open: Corruption and Real Estate in Four Key Markets," pp 24, 29–30; Mohammed Ahmad Naheem, "Money Laundering and Illicit Flows from China – The Real Estate Problem" (2017) 20(1) *Journal of Money Laundering Control,* p 23.

14 L. Shelley, "Money Laundering into Real Estate," p 132; TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It),* p 20; Transparency International, "Doors Wide Open: Corruption and Real Estate in Four Key Markets," pp 31–32; Exhibit 601, Appendix 11, TI Canada, *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts*.

15 See Chapter 6 for a discussion of the mutual evaluation process. Mutual evaluations are essentially peer reviews in which members of the Financial Action Task Force evaluate other members' anti–money laundering and counter-terrorist financing measures against the task force's 40 recommendations.

16 Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate and Response from Real Estate Industry, Appendix 5, FATF, *Anti–Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016) [*FATF Fourth Mutual Evaluation*], also online: www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html.

17 Ibid, p 16, para 52.

18 Ibid.

19 Ibid, pp 78–79, para 206.

20 Ibid.

21 Ibid, p 112, para 310.

- The supervision of real estate sector is not commensurate with the money laundering risks in that sector; more supervision is necessary.[22]
- Real estate agents are not aware of their anti–money laundering obligations.[23] Real estate agents are not familiar with basic customer due diligence processes and, in particular, are non-compliant with the third-party determination rule, which requires that real estate agents determine whether their customers are acting on behalf of another person or entity.[24]
- Real estate agents "consider that they face a low risk because physical cash is not generally used in real estate transactions … [and they] are overly confident on the low risk posed by 'local customer[s],' as well as non-resident customer[s] originating from countries with high levels of corruption."[25] Further, "detection of suspicious transactions is mainly left to the 'feeling' of the individual agents, rather than the result of a structured process assisted by specific red flags."[26]
- Suspicious transaction reports have gradually increased, but remain very low in real estate.[27]
- More dialogue is necessary with the real estate industry.[28] FINTRAC "needs to further develop its sector-specific expertise and increase the intensity of supervision of [designated non-financial businesses or professions], particularly in the real estate sector and with respect to [dealers in precious metals and stones], commensurate with the risks identified in the [national risk assessment]."[29] FINTRAC should update money laundering and terrorist financing typologies and red flags to assist in detection of suspicious transactions.[30] FINTRAC does not provide enough sector-specific compliance guidance and typologies especially in the real estate sector.[31]

Typologies and Academic Literature

Intergovernmental / Governmental Reports on Typologies

On June 29, 2007, the FATF released its report on money laundering and terrorist financing through the real estate sector.[32] This report addressed the topic generally

22 Ibid, p 4, para 9.

23 Ibid, p 5, para 19.

24 Ibid, p 82, para 222.

25 Ibid, p 80, para 213.

26 Ibid, p 85, para 234.

27 Ibid, p 7, para 30, Table 2 at p 41.

28 Ibid, p 5, para 18.

29 Ibid, pp 7–8, para 31.

30 Ibid, p 78.

31 Ibid, pp 98–99, para 276

32 Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate and Response from Real Estate Industry, Appendix 1, FATF, *Money Laundering & Terrorist Financing Through the Real Estate Sector* (June 29, 2007) [*FATF Real Estate Report*].

and internationally, rather than focusing on any one country. The report aggregated case studies in order to identify the following basic techniques:[33]

- use of complex loans or credit finance;
- use of non-financial professionals;
- use of corporate vehicles;
- manipulation of the appraisal or valuation of a property;
- use of monetary instruments;
- use of mortgage schemes;
- use of investment schemes and financial institutions; and
- use of properties to conceal money generated by illegal activities.

The 2007 FATF report goes on to identify specific typologies as instances of the use of each technique. I will review those briefly here.[34]

Use of Complex Loans and Credit Finance

Loan-back schemes: illicit funds are used to purchase shares in property investment funds, which then provide loans back to the criminal investor for the purpose of buying property, creating the appearance of a legitimate loan from a real business activity.[35]

Back-to-back loan schemes: a financial institution lends money on the basis of security (real property) that was acquired with criminal funds.[36]

Use of Non-financial Professionals

Obtaining access to financial institutions through gatekeepers: money launderers seek out the services of accountants, lawyers, tax advisors, notaries, financial advisors, and others in order to create the structures they need to move funds unnoticed. Professionals lend credibility to transactions by, for instance, approaching financial institutions on behalf of their clients to obtain loans for the acquisition of property.[37]

33 Ibid, p 7.

34 Exhibit 601, Appendix 10, *European Parliament Real Estate Report*. In February 2019, the European Parliamentary Research Service released *Understanding Money Laundering Through Real Estate Transactions*, a briefing report that sets out typologies and case studies and provides suggestions for combatting money laundering. The report repeats many of the indicators articulated by FATF and set out in the academic literature. As with the FATF reports, the EU report indicates "… real estate plays a role (mainly) in the third and final stage of the money-laundering cycle, after the placement and the layering phases."

35 Exhibit 601, Appendix 1, *FATF Real Estate Report*, p 7.

36 Ibid, p 8.

37 Ibid, p 9.

Assistance in the sale or purchase of property: professionals such as notaries and real estate agents are used to help carry out real estate transactions. FATF noted that "[t]heir professional roles often involve them in a range of tasks that place them in an ideal position to detect signs of money laundering or terrorist financing."[38]

Trust accounts: the FATF identified the use of lawyers' trust accounts (and advice) as a technique used to launder illicit funds through real estate.[39]

Management or administration of companies: professionals are engaged to set up, and then manage and administer, corporate entities that engage in financial transactions, including real estate investments, with laundered funds. FATF notes that such professionals' "access to the companies' financial data and their direct role in performing financial transactions on behalf of their clients make it almost impossible to accept that they were not aware of their involvement."[40]

Corporate Vehicles

Offshore companies: the use of legal entities incorporated in another jurisdiction can make determining beneficial ownership and actual control difficult. Offshore companies can also take advantage of enhanced bank secrecy and other protective rules applicable in other jurisdictions.

Trust arrangements: trusts, which can be arranged even without the need for a written documents constituting them (unlike corporations), can be used to hide the identity of the beneficial owner of assets or funds.

Shell companies: companies with no significant assets or operations may be set up engage in a particular transaction or to hold an asset, while hiding the identity of the beneficial owner(s).

Property management companies: real estate purchased with illicit funds may be rented out to provide a legitimate source of income. Further, illicit income can be mingled with legitimate rental income to camouflage it.[41]

Manipulation of the Appraisal or Valuation of a Property

Over-valuation or under-valuation: the purchase of a property from a related or complicit party at an inflated price allows criminals to insert more money into the financial system than they would otherwise be able to. The over-valuation of a property at the appraisal stage may also allow a borrower to obtain a larger mortgage than the fair market value would justify (and, in some cases, to later default on the mortgage and abscond with the proceeds).[42]

38 Ibid, p 10, para 19.

39 Ibid, pp 10–11, paras 19–22.

40 Ibid, p 11, para 23.

41 Ibid, pp 15–16, para 32.

42 Ibid, p 17, para 36 and p 24, paras 54, 55.

With under-valuation, the seller may agree to sell for a reduced price on paper, but accept the balance of the fair market value in a cash payment directly from the buyer.[43] Under-valuation also has the benefit of creating an apparently larger capital gain on a future sale of the property at market value, thereby creating an explanation for funds that otherwise have no explained source.[44]

Successive sales and purchases: related parties sell the same property to each other in successive transactions, providing cover for transactions with no real economic purpose, but which enable the transfer of funds.[45]

Monetary Instruments

Cash: although the FATF identifies purchases of real property with physical cash as an indicator of money laundering,[46] I conclude that this methodology is not prevalent in the British Columbia real estate market. However, cash can be injected into real estate by other means, including by adding to property value through renovations paid for in cash. Cash can also be used for smaller-scale real estate transactions, such as rental payments or even mortgage payments to private lenders. This typology is discussed later in this chapter, in the context of a small study completed by Commission counsel on the use of cash in the purchase of building supplies.

Cheques and wire transfers: funds are paid into an account by way of multiple wire transfers and cheque deposits, with little or no economic of commercial justification. Funds may then be used to purchase real estate.

Mortgage Schemes

Illegal funds in mortgage loans and interest payments: criminals obtain a mortgage and then repay the loan with illicit funds. This typology is discussed further in the section of this Report on mortgage brokers.[47]

Mortgage fraud: one method of generating illicit funds is to obtain a mortgage by fraud. The fraud can consist of inflating the value of a property or overstating the qualification of the borrower. A nominee purchaser may also be put forward to obtain the mortgage (hiding the actual owner). An inflated property valuation can lead to a large mortgage loan, which a bad actor may steal and abscond with.[48]

43 Ibid, p 17, para 37.

44 Ibid, case study 6.2 at pp 21–22.

45 Ibid, pp 17–18.

46 Ibid, p 18.

47 Ibid, p 21, para 49.

48 Ibid, p 24, para 55.

Investment Schemes and Financial Institutions

Like anyone else, criminals may invest their funds directly or indirectly in real estate. This may take the form of buying property directly or through a legal entity, or it may take the form of investing in a partnership or a real estate investment trust (REIT).[49]

Concealing Money Generated by Illegal Activities

Investment in hotel complexes, restaurants, and similar developments: in the final phase of money laundering – integration – illicit funds may be invested in real estate-based businesses, which not only provide stable investments, but may also provide an opportunity to develop a cash-based business that can further assist in the ongoing money laundering process.[50]

The 2007 FATF report includes case studies from a number of countries. One Canadian example involved the conviction of an individual who had provided false information on multiple mortgage applications, and used nominee purchasers (family members) in order to purchase five properties.[51] Both the individual and all nominees paid more toward the properties than could be supported by their income as declared to the Canada Revenue Agency. The individual was later convicted of drug trafficking as well as money laundering.[52]

The report's authors emphasized that real estate agents are well placed to detect suspicious activity or identify red flags, because they generally know their clients better than other parties to the transaction.[53] The report concluded:

> Professionals working with the real-estate sector are therefore in a position to be key players in the detection of schemes that use the sector to conceal the true source, ownership, location or control of funds generated illegally, as well as the companies involved in such transactions.[54]

As noted by the Expert Panel on Money Laundering in Real Estate, the transactions above are examples of legitimate and frequent types of transactions that occur in the real estate market. In the absence of a red flag indicating a direct connection to criminal activity, it is difficult to distinguish a transaction with a criminal purpose from a legitimate one.[55] In general terms, they look the same.

49 Ibid, p 26, para 59.

50 Ibid, p 27, para 64.

51 Ibid, p 25, case study 6.3.

52 Ibid.

53 Ibid, p 29.

54 Ibid, p 10, para 21.

55 Exhibit 330, Maureen Maloney, Tsur Somerville, and Brigitte Unger, "Combatting Money Laundering in BC Real Estate," Expert Panel, March 31, 2019, p 21.

Academic Reports

There is considerable academic and quasi-academic literature describing the appeal and use of real estate as a money laundering vehicle. The use of real estate by criminals, particularly organized criminals, as a means of offloading and laundering proceeds of crime occurs globally. There are documented occurrences in Europe, Southeast Asia, Japan, South and Latin America, the United Kingdom, the United States, Australia, and Canada.[56] One study of 52 Dutch criminal cases found that, in 30 to 40 percent of money laundering cases, money was invested in real estate.[57]

Cash and Money Laundering in Real Estate

Elsewhere in this Report, I address the ongoing academic debate over the accuracy and utility of the traditional conception of money laundering as having three phases (placement, layering, and integration). For present purposes, however, I will make use of that conventional framework to discuss how real estate is employed for money laundering. Professor Louise Shelley observed that real estate is used at all three phases of the traditional conception of the money laundering cycle.[58] She describes those phases as follows:

> **Placement** involves the introduction of dirty money into the system. **Layering** occurs when the money is already in the system and the audit trail is deliberately obscured. **Integration** occurs when the money is already functioning within the system. [Emphasis added.][59]

While purchases of real estate with physical cash occur in some developing nations, in countries like Canada there are usually barriers to purchasing real estate with physical cash.[60] In developed nations, purchasing real estate with cash is seen as suspicious, such that financial institutions become the initial entryway (or placement stage) for proceeds of crime entering real estate.[61] However, in the latter two phases of the money laundering cycle, layering and integration, money laundering occurs everywhere. Professor Shelley writes:

> Transactions in the layering stage are intended to obscure any financial (traceable) links between the funds and their original criminal sources.

56 L. Shelley, "Money Laundering into Real Estate," pp 131–33; AUSTRAC, *Strategic Analysis Brief: Money Laundering Through Real Estate,* p 5.

57 J. Ferwerda and B. Unger, "Detecting Money Laundering in the Real Estate Sector," p 269, citing J. Meloen, R. Landman, H. de Miranda, J. van Eekelen, and S. van Soest, *Bui ten Besteding: Een Empirisch OnderZoek Naar de Omvang, de Kennerken en de Besteding van Misdaadgeld* (Den Haag: Reed Business Information, 2003).

58 L. Shelley, "Money Laundering into Real Estate," p 132; as per Professor Brigitte Unger: "To sum up, the real estate sector is by its very nature complex and prone to criminal abuse": B. Unger et al, *Detecting Criminal Investment in the Dutch Real Estate Sector*, pp 202–3; F.M.J. Teichmann, "Real Estate Money Laundering in Austria, Germany, Liechtenstein and Switzerland," p 371.

59 L. Shelley, "Money Laundering into Real Estate," p 140; see also J. Ferwerda and B. Unger, "Detecting Money Laundering in the Real Estate Sector," p 269.

60 Ibid.

61 Ibid.

> In this stage, laundering typically occurs by moving funds in and out of offshore bank accounts. Overseas, the money may be used for real estate investments or may assume the form of a foreign bank loan to buy a house, when the loan is in reality the purchaser's own money parked overseas. Finally, the goal of integration is to create a "history" showing that funds were acquired legally. In the integration phase, the criminal places money in the real estate sector and is not interested in trading in real estate but in investing.[62]

Types of Real Estate Susceptible to Laundering

Experts agree that both commercial and residential real estate are vulnerable to money laundering.[63] Significant examples of laundering in commercial real estate include: the *yakuza* in Japan prior to the long-term recession,[64] laundering using cattle ranches in Colombia,[65] property purchases in the red-light district of Amsterdam,[66] and hotel purchases in tourist areas in Spain and Turkey.[67]

Of course, residential examples abound.[68] While attention has often focused on the use of lavish, high-end real estate by criminal organizations, low-end real estate is also subject to use for money laundering. Examples of the latter include Arizona,[69] rural Ohio, and central Tokyo.[70] In some cases, property is purchased but left vacant, and "[s]uch decay may be allowed so the criminal investors can subsequently buy neighboring properties at depressed costs, thereby increasing their territorial influence."[71] In Austria,

62 Ibid, p 132

63 L. Shelley, "Money Laundering into Real Estate," p 134; TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)*, p 21.

64 L. Shelley, "Money Laundering into Real Estate," p 135; P.B.E. Hill, *The Japanese Mafia: Yakuza, Law, and the State*, pp 185, 177–247; Shared Hope International, *Demand: A Comparative Examination of Sex Tourism and Trafficking in Jamaica, Japan, the Netherlands and the United States* (July 2012), pp 113–14, online: https://sharedhope.org/wp-content/uploads/2012/09/DEMAND.pdf; David Kaplan and Alec Dubro, *Yakuza: Japan's Criminal Underworld, Expanded Edition* (Berkeley and Los Angeles: University of California Press, 2003), pp 196–220.

65 L. Shelley, "Money Laundering into Real Estate," p 136; International Crisis Group, *War and Drugs in Colombia, Latin America Report: Latin America Report No. 11* (January 27, 2005), p 26, online: https://www.crisisgroup.org/latin-america-caribbean/andes/colombia/war-and-drugs-colombia.

66 L. Shelley, "Money Laundering into Real Estate," p 138; B. Unger et al, *Detecting Criminal Investment in the Dutch Real Estate Sector*, pp 6–7;

67 L. Shelley, "Money Laundering into Real Estate," p 136.

68 L. Shelley, "Money Laundering into Real Estate," p 134–40; TI Canada, *Opacity – Why Criminals Love Canadian Real Estate (And How To Fix It)*, pp 16, 23–24, 28, 29, 30; Exhibit 601, Appendix 11, TI Canada, *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts*, p 31; United States Senate Permanent Subcommittee on Investigation, *Keeping Foreign Corruption out of the United States: Four Case Histories* (February 4, 2010), online: https://www.hsgac.senate.gov/imo/media/doc/FOREIGNCORRUPTIONREPORTFINAL710.pdf; United States Department of Justice, Press Release (July 20, 2016), online: http://www.justice.gov/opa/pr/united-states-seeks-recover-more-1-billion-obtained-corruption-involving-malaysian-sovereign; see also *USA v "The Wolf of Wall Street" Motion Picture*, 2016, 2:16-cv-05362, online: www.justice.gov/archives/opa/page/file/877166/download.

69 L. Shelley, "Money Laundering into Real Estate," p 140.

70 Ibid, p 134.

71 Ibid, pp 135–36.

Germany, Liechtenstein, and Switzerland, money launderers were observed to prefer to buy property in large metropolitan areas where they can maintain anonymity.[72]

In a study of money laundering through real estate in the Netherlands, one study found that the type of property used by money launders differed depending on the predicate offence. For those who engaged in criminal activities like drug trafficking, human smuggling, and the illegal arms trade, 45 percent of the property acquired was for residential use while 18 percent was for commercial use (such as hotels and casinos). In comparison, only 24.5 percent of the property acquired by those who engaged in fraud and money laundering was residential, while 69.9 percent was for commercial use.[73]

Conclusion

My purpose in this chapter has been to highlight the international consensus that (a) real estate is an attractive vehicle for money laundering, and (b) money laundering does, in fact, occur with some frequency in this sector. The remainder of this section will set out evidence of money laundering occurring in the British Columbia real estate sector and will identity particular areas of vulnerability. I begin with a case study on building supply companies and their vulnerability to money laundering.

Case Study: Building Supply Companies and Money Laundering Vulnerability

Neither builders nor building supply companies are reporting entities under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*). As such, they fall outside the *PCMLTFA* regime, including the requirement to submit reports for suspicious and large cash transactions to FINTRAC.

Reporting entities in the real estate industry are expected to assess all clients for suspicious activity that may indicate money laundering, including a long list of indicators outlined in guidance published by FINTRAC, in accordance with the *PCMLTFA* and its associated regulations.[74] Certain client activity automatically triggers a reporting entity's requirement to file a report with FINTRAC. One such activity is where a reporting entity receives a cash transaction of $10,000 or more, or multiple cash transactions in a 24-hour period that total $10,000 or

72 F.M.J. Teichmann, "Real Estate Money Laundering in Austria, Germany, Liechtenstein and Switzerland," p 372.

73 Kruisbergen et al, "Profitability, Power, or Proximity? Organized Crime Offenders Investing their Money in Legal Economy," pp 243–45.

74 Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, SOR/2002-184.

more. In such circumstances, the reporting entity must file a large cash transaction report with FINTRAC within 15 calendar days.

As noted, builders and building supply companies are *not* reporting entities under the *PCMLTFA*. They are therefore not obligated to report large cash transactions or conduct know-your-customer due diligence, including inquiring about their customers' sources of funds.

In order to gain a better understanding of the prevalence of large cash transactions in the building supply industry, the Commission issued summonses to eight randomly selected building supply companies in the Lower Mainland. The aim of this undertaking was to gain some insight into the extent of large cash activity at building suppliers, which in turn would help understand the risk arising in this sector.

The summonses asked recipients to produce the following information and records in their possession related to cash transactions:

- records of cash transactions with a value of $10,000 or greater, related to the purchase of building supplies from the recipient;
- records related to the return and refund of the purchase price of any building supplies purchased in cash (over $10,000) from the recipient; and
- records related to the policies and practices of the recipient with respect to the acceptance of cash as a means of payment for the purchase of building supplies.

Of the eight companies that received summonses, five provided records to the Commission. While the sample was small, the responses provide some insight into the extent to which cash is used in the building supply industry. The results are summarized below.

The five responding companies were smaller, principally family-owned companies operating in the Lower Mainland outside of Vancouver. They provided records of all cash transactions over $10,000 from 2015 to 2020. In total, there were 77 cash transactions reported to the Commission from 55 individual buyers. The tables below provide details on the transactions from each responding company:

Table 15.1: Summary of Cash Transactions over $10,000, 2015–2020

Supplier	Number of Cash Transactions over $10,000	Number of Individual Buyers	Total Value of Transactions
Building Supply Company A	4	4	$67,200.00
Building Supply Company B	40	26	$487,927.22
Building Supply Company C	4	3	$82,837.30
Building Supply Company D	16	15	$275,832.40
Building Supply Company E	13	7	$217,753.29
Total	**77**	**55**	**$1,131,550.21**

Source: Compiled by the Commission.

A detailed breakdown of the records year-to-year is provided below:

Table 15.2: Details Of Cash Transactions by Building Company, 2015–2020

Year	Supplier	Number of Cash Transactions over $10,000	Number of Individual Buyers	Total Value of Transactions
2015	Company A	0	0	$0.00
	Company B	16	7	$183,966.85
	Company C	0	0	$0.00
	Company D	0	0	$0.00
	Company E	0	0	$0.00
	2015 Total	**16**	**7**	**$183,966.85**

Table 15.2 cont'd.

Year	Supplier	Number of Cash Transactions over $10,000	Number of Individual Buyers	Total Value of Transactions
2016	Company A	0	0	$0.00
	Company B	3	1	$34,500.00
	Company C	0	0	$0.00
	Company D	5	5	$86,252.60
	Company E	5	3	$63,806.01
	2016 Total	**13**	**9**	**$184,558.61**
2017	Company A	0	0	$0.00
	Company B	9	6	$110,206.08
	Company C	2	1	$21,381.34
	Company D	4	4	$70,034.25
	Company E	6	2	$133,947.28
	2017 Total	**21**	**13**	**$335,568.95**
2018	Company A	1	1	$11,200.00
	Company B	5	5	$60,202.04
	Company C	0	0	$0.00
	Company D	1	1	$55,872.30
	Company E	3	3	$10,000.00
	2018 Total	**10**	**10**	**$137,274.34**
2019	Company A	3	3	$56,000.00
	Company B	7	7	$99,052.25
	Company C	2	2	$61,455.96
	Company D	2	1	$30,200.00
	Company E	1	1	$10,000.00
	2019 Total	**15**	**14**	**$256,708.21**
2020	Company A	0	0	$0.00
	Company B	0	0	$0.00
	Company C	0	0	$0.00
	Company D	2	2	$33,473.25
	Company E	0	0	$0.00
	2020 Total	**2**	**2**	**$33,473.25**
Total		**77**	**55**	**$1,131,550.21**

Source: Compiled by the Commission.

Most cash transactions were conducted by unique buyers, with only one or two repeat customers per company. However, one company did have a single buyer who used cash for 17 different transactions between 2015 and 2018, amounting to $184,500.

Of all the cash transactions recorded, almost one-third of transactions (24 of 77) were for exactly $10,000. Only seven of the 77 transactions were for more than $25,000, and of those, only one transaction was for more than $50,000. A summary of the transactions is provided in Table 15.3:

Table 15.3: Number of Cash Transactions over $10,000

Transaction Range	Number of Transactions
$10,000	24
$10,001–$15,000	29
$15,001–$20,000	15
$20,001–$25,000	2
$25,001–$30,000	4
$30,001–$35,000	1
$35,001–$40,000	1
$40,001–$45,000	0
$45,001–$50,000	0
$50,001 and above	1

Source: Compiled by the Commission.

It is worth noting that of the 77 transactions recorded, 24 were in the exact amount of $10,000, four were in the exact amount of $15,000, and six were in the exact amount of $20,000. No information was provided about the denomination of the cash used by purchasers (i.e., whether it was all $20 or smaller denomination bills).

From the review of the records provided, many of the cash transactions occurred when contractors would charge orders to their account with the building supply company, and then use cash to pay off some, or all, of their account.

Cash Refunds

No records for cash refunds over $10,000 were provided. One company informed the Commission that orders in excess of $1,000 would be deemed "custom ordered" and therefore would generally not be eligible for a refund. A second company was noted to have a policy of not allowing returns of special orders, as cited on the invoices the company provided to the Commission.

Cash Policies

No records responsive to the request for records related to the policies and practices of the recipient (with respect to the acceptance of cash as a means of payment for the purchase of building supplies) were provided. In conversation with building supply companies, Commission counsel were advised that such written policies did not exist.

Conclusions

When it comes to building supply companies, it is worth noting the lack of regulatory coverage and the apparent lack of internal company policies regarding the acceptance of unsourced cash as payment for building supplies. These characteristics may make this sector of the market vulnerable to money laundering. However, the small sample of companies that provided information to the Commission does not indicate a substantial amount of cash transactions at these businesses.

All transactions reported over the $10,000 threshold were in the low tens of thousands of dollars. The large majority of transactions involving such amounts were for $20,000 or less. Across the five building supply companies that supplied records to the Commission, a total of $1,131,550 was paid for in cash between 2015 and 2020.

The Commission did not receive information on source of funds and did not investigate those making the payments. As such, no determination can be made on whether any of these cash payments were used to launder money.

The results of the study suggest that there is little that stands in the way of disposing large amounts of cash through the purchase of building supplies. Making improvements to real property by building or renovating is simply another means of converting cash into equity in real estate. That investment can later be realized on sale of the property, becoming legitimate profit in the hands of the homeowner. In the current real estate market in British Columbia, home improvement is also likely to be a safe investment.

I do not go so far as to recommend that the Province urge the federal government to make building supply companies reporting entities to FINTRAC, with all of the attendant compliance obligations. However, as I outline in considerable detail in Chapter 34, there are significant risks of money laundering arising from businesses that undertake transactions involving over $10,000 in cash.

As such, as I explain in Chapter 34, I have recommended that the Province enact legislation requiring any business accepting $10,000 or more in cash as payment for a good or service in a single transaction (or series of related transactions), with identified exceptions, be required to:

- verify a customer's identification and record their name, address, and date of birth;
- inquire into and record the source of funds used to make the purchase;
- determine whether the purchase is being made on behalf of a third party and, if so, inquire into and record the identity of that their party; and
- report the transaction – including the total amount of cash accepted; the item or service purchased; the source of funds reported by the customer; whether the purchase was made on behalf of a third party and, if so, the identity of that third party; and the name, address, and date of birth of the customer – to the Province.

While the evidence from this small-scale inquiry into the building supply industry was extremely modest, it seems to me that it is nonetheless revealing. Five relatively small-scale suppliers generated over a million dollars in large cash sales (over $10,000) over five years. This suggests that there are real risks, and that money launderers could exploit the lack of oversight and reporting to move significant amounts of illicit money through building suppliers. The recommendation I have made in Chapter 34, repeated above, may well deter many building suppliers from accepting cash over $10,000, and the scrutiny this recommendation provides will reduce the risk of money laundering in this and other sectors of the British Columbia economy.

Chapter 16
Real Estate Professionals and Regulators

My Terms of Reference require that I report on money laundering and the effectiveness of anti–money laundering measures in numerous sectors of the provincial economy. One of the largest sectors – both in terms of value and activity – is, of course, real estate. In this chapter, I describe the professionals involved in real estate transactions and the regulatory regime in which they operate. I pay particular attention to mortgage brokers, because of a noteworthy gap in this area. In addition, I consider how BC's real estate industry interacts with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) within the federal anti–money laundering regime, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*).

I begin with a high-level overview of the history of how real estate has been regulated in British Columbia, and the regulatory framework for those who provide real estate services. This includes people (both licensed and unlicensed) who work as real estate agents, strata and property management agents, and property developers. In the course of that discussion, I address the money laundering vulnerabilities within the existing regulatory framework.

In the second section of this chapter, I examine the relationship between FINTRAC and the BC real estate industry, with a particular focus on how the industry has responded to criticism that it has not met its anti–money laundering obligations.

Finally, in the third section, I focus on mortgage brokers and sub-brokers, with a discussion of the regulatory framework, money laundering vulnerabilities in the industry, and gaps in the regulatory and legislative framework. I include two case studies that provide insight into mortgage brokers.

Part 1: Overview of the Regulation of Real Estate in BC

History of Real Estate Regulation in BC

The jurisdiction now known as British Columbia was populated by Indigenous peoples before contact with European peoples. In 1858, the mainland of British Columbia was established as a British colony, with Vancouver Island having already been provided by the Crown to the Hudson's Bay Company in 1849.[1] In 1859, Governor James Douglas passed the *Land Proclamation, 1859*, affirming Crown ownership of all lands in British Columbia.[2] The following decade, the *British North America Act, 1867*, 30 & 31 Vict, c 3 (UK) (now known as the *Constitution Act, 1867*), established that jurisdiction for "property and civil rights" fell to the provinces rather than the federal government.[3] British Columbia joined Confederation in 1871.

Following the *British North America Act, 1867,* British Columbia implemented a modified Torrens land title system. A Torrens system of land title registration is based on the principles of indefeasibility, registration, and abolition of notice and assurance.[4] In British Columbia, a person who has registered title has an indefeasible right to the subject property, meaning the Province ensures the registered owner, and nobody else, is considered the true owner.[5] The land title registry is assured to be conclusive as to ownership of land in British Columbia, backed by the Land Title and Survey Authority Assurance Fund.[6] This almost entirely eliminates the need to make inquiries about the validity of someone's claim of title or interest; a purchaser may rely exclusively on the information registered with the Land Title and Survey Authority. This system also means that any beneficial interests in a property that are *not* registered are not easily traceable.[7] British Columbia is sometimes referred to as a "modified" Torrens system because the indefeasibility of title is subject to certain exceptions set out in the *Land Title Act*, RSBC 1996, c 250.[8]

The land title registry and other official records of the land title office are open to inspection and search by any person.[9] Open access to real estate records is a mainstay of the British Columbian land titles system.[10] In 2005, responsibility for maintaining the land title registry was assumed by the Land Title and Survey Authority.[11]

1 *An Act to Provide for the Government of British Columbia* (UK), 21 & 22 Vict C.99 (August 2, 1858), Preamble.

2 *Proclamation by His Excellency James Douglas, Companion of the Most Honourable Order of the Bath, Governor and Commander-in-Chief of British Columbia*, dated February 14, 1859, available online: https://open.library.ubc.ca/collections/bchistoricaldocuments/bcdocs/items/1.0370690.

3 *Constitution Act*, 1867, s 92(13).

4 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, Appendix R, Land Title and Survey Authority of BC, "History of BC's Land Title System."

5 *Land Title Act*, s 23(2).

6 Ibid, Part 19.1; Land Title and Survey Authority of BC, "History of BC's Land Title System," online: https://ltsa.ca/property-owners/about-land-records/history-of-bcs-land-title-system/. It should be noted here that this system did not account for Indigenous title or rights, and so was not truly "conclusive."

7 *See Land Title Act*, ss 29(2)–(3) for the limited exceptions to this principle.

8 Ibid, s 23(2).

9 Ibid, s 377.

10 Ibid, s 377. See also the predecessor legislation: *Land Title Act*, RSBC 1979, c 219, s 306.

11 Land Title and Survey Authority of BC, "Our Mandate," online: https://ltsa.ca/about-ltsa/ltsa-mandate/.

When transferring land, the transferor has an obligation to provide the transferee with a registrable instrument[12] and/or to provide any further description, plan, other instrument, or conveyance, as required by the registrar.[13] Any person can acquire and dispose of land in British Columbia regardless of citizenship,[14] and the owner must not be disturbed in their possession of land because of their citizenship status.[15]

In 1920, the sale of real estate became a regulated industry, discussed in more detail below.[16] As of August 1, 2021, the body responsible for regulation of those engaged in real estate sales and the management of rental or strata property, is the British Columbia Financial Services Authority (BCFSA).[17] The BCFSA is also responsible for administering the *Mortgage Brokers Act*, RSBC 1996, c 313. At present, BCFSA does not have an anti–money laundering mandate.[18]

Evolution of the Law Applicable to Real Estate Agents and Property Developers

The real estate profession was first subject to provincial regulation in 1920, with the enactment of the *Real-Estate Agents' Licensing Act*.[19] In 1958, the *Real Estate Act*[20] replaced the *Real-Estate Agents' Licensing Act*. The *Real Estate Act* established the Real Estate Council of British Columbia (RECBC) in 2005, with a majority of industry-elected council members. RECBC was responsible for licensing and educating real estate professionals. The Office of the Superintendent of Real Estate (OSRE) was responsible for enforcing regulatory requirements related to licensing. As of August 1, 2022, both RECBC and OSRE have been incorporated into BCFSA.

The *Real Estate Services Act* (*RESA*), the successor to the *Real Estate Act,* requires those providing real estate services to have a licence issued by the regulator, and both prohibit unlicensed activity.[21] The *RESA* governs the use of trust accounts by licensees;[22] requires

12 *Property Law Act*, RSBC 1996, c 377, s 5.

13 Ibid, s 7.

14 I note the recent federal budget announcement that the federal government would be placing a two-year moratorium on the purchase of non-recreational residential real estate by foreign commercial enterprises and individuals who are neither citizens nor permanent residents. See Government of Canada, Budget 2022, *Chapter 1: Making Housing More Affordable*, at "1.4 Curbing Foreign Investment and Speculation," online: https://budget.gc.ca/2022/report-rapport/chap1-en.html#2022-4.

15 *Property Law Act*, s 39. This provision was enacted with the original passing of the Property Law Act in 1979.

16 *Real-Estate Agents' Licensing Act*, RSBC 1948, c 189.

17 BC Financial Services Authority, "BC Financial Services Authority's Integration with B.C's Real Estate Regulators Is Now Complete," August 3, 2021, online: https://www.bcfsa.ca/about-us/news/news-release/bc-financial-services-authoritys-integration-with-bcs-real-estate-regulators-now-complete.

18 Evidence of M. Noseworthy, Transcript, February 16, 2021, p 51; Evidence of B. Morrison, Transcript, February 16, 2021, pp 51–52.

19 RSBC 1948, c 189.

20 RSBC 1996, c 397 (now repealed).

21 *RESA*, SBC 2004, c 42, s 3.

22 Ibid, ss 26–33.

the carrying of errors and omissions and liability insurance;[23] and makes licensees subject to the jurisdiction of the Superintendent of Real Estate (previously RECBC) to investigate misappropriation of trust funds, breaches of the legislation and regulations, and other misconduct.[24] The *RESA* provides for discipline following a hearing and grants BCFSA powers of compulsion.[25] Penalties available to the regulator include the cancellation of a license, reprimands, suspensions, and mandatory enrollment in training courses.[26] The *RESA* also makes proof of a license a precondition to recovery in court of any compensation for acts performed as an agent.[27]

Changes to the Regulator

The evolution in the regulation of the real estate industry from 2005 to 2018 was detailed in the *Real Estate Regulatory Structure Review* by Dan Perrin (Perrin Report),[28] one of the reports referred to expressly in the Terms of Reference for this Inquiry. I describe that evolution in a summary way here. RECBC was created by the *Real Estate Act* and was responsible for licensing and education. Over time, it was given increased regulatory authority. In 2005, the *RESA* made RECBC a self-regulated agency independent from government. The newly independent RECBC had rule-making authority and was responsible for licensing, education, and regulatory enforcement.[29] OSRE was responsible for regulating unlicensed activity in the sector and for intervening in licensed activity when it was in the public interest, as well as for approving disclosures under *Real Estate Development and Marketing Act*, SBC 2004, c 41.

As housing prices began to rise sharply, so did media scrutiny of, and public concern about, the conduct of real estate professionals. In spring 2016, RECBC commissioned the Independent Advisory Group on Conduct and Practices in the Real Estate Industry in BC, which released its report in June 2016 (the IAG Report). The IAG Report made 28 recommendations, organized under four key areas of concern: transparency and ethics; compliance and consequences; governance and structure; and licensee and public education.[30] The Independent Advisory Group highlighted the following concerns:

- the lack of a clear and easy-to-interpret code of conduct for licensees, maintained by the regulator;
- RECBC's inconsistent and narrow application of its rules intended to effectively deter misconduct and unethical behaviours, and the failure to take an assertive stand on compliance with regulatory standards such as anti–money laundering requirements;[31]

23 Ibid, ss 99–108.

24 Ibid, s 37.

25 Ibid, ss 37, 40–43.

26 Ibid, s 43(2).

27 Ibid, s 4.

28 Exhibit 607, Dan Perrin, Real Estate Regulatory Structure Review (2018) [Perrin Report].

29 Ibid, p 8.

30 Exhibit 618, Report of the Independent Advisory Group: On Conduct and Practices in the Real Estate Industry in British Columbia (June 2016) [IAG Report], pp 35–50.

31 Ibid, p 25.

- the continuing practice of dual agency (acting for both buyer and seller in one transaction);
- a need for more proactive investigation and less reliance on complaints;
- inadequate financial penalties and sanctions for misconduct, in contrast to steadily rising real estate prices and related commissions;
- inadequate public explanation by RECBC for its decisions, consent orders, and penalties;
- a confusing overlapping of roles between the regulator and industry organizations, especially in respect of addressing licensee misconduct;
- the difficulties faced by managing brokers in supervising increasingly independent licensees;
- an inefficient division of regulatory duties between RECBC and OSRE;
- the domination of RECBC by industry participants, creating a perception and a risk that industry views and interests would outweigh those of consumers and the public;
- entry-level education standards that are low compared to other financial professions; and
- a need for revisions to licensing education to include a greater focus on conduct and ethics as foundational elements in both the licensing and the re-licensing process.[32]

On the heels of the IAG Report, the provincial government restructured the regulatory framework, eliminating the self-governance of real estate professionals by making the RECBC board fully government appointed and refashioning OSRE as a stand-alone body with a broadened mandate and greater statutory authority. From late 2016 to August 1, 2021, OSRE continued to be responsible for regulation of unlicensed activity, but was also responsible for rule-making for licensees and for oversight of RECBC, including discipline licensee conduct that was deemed "seriously detrimental to the public interest."[33]

The Perrin Report, which was commissioned by the Ministry of Finance and released in September 2018, concluded that the regulatory structure described above was a significant factor contributing to dysfunction in the relationship between OSRE and RECBC. Mr. Perrin found that the 2016 changes led to significant tension between OSRE and RECBC. Disputes about jurisdiction arose from the lack of clarity on the overlapping roles of OSRE and RECBC, and the lack of industry expertise among the latter's new government-appointed board members noticeably slowed the processing of complaints.[34]

32 Ibid, pp 22–34.

33 *RESA*, s 48.

34 Exhibit 607, Perrin Report, p 15.

The report recommended that OSRE and RECBC be amalgamated with the Financial Institutions Commission (FICOM, the predecessor to BCFSA) to allow for regulation from a capital market conduct perspective as opposed to just licensee conduct. Put differently, this recommendation aimed to reorient regulation so that, instead of focusing on misconduct issues, it would address broader concerns involving the real estate market. Bringing RECBC and OSRE functions within FICOM, which already had regulatory responsibility for mortgage brokers and financial institutions, would place real estate regulation into a broader context of financial regulation.[35]

The Perrin Report also recommended a fundamental review of real estate regulatory policy. This included the question of whether real estate activity currently exempted from licensing requirements should be regulated, and how real estate conduct that is "disruptive to a fair, efficient and trusted market," or that is illegitimate, could be deterred.[36]

The Province has acted on some of these recommendations. FICOM's responsibilities (including administration of the *Mortgage Brokers Act*) were transferred to a new Crown agency, BCFSA, in November 2019.[37] BCFSA is an independent Crown agency that regulates credit unions, insurance and trust companies, pensions, and mortgage brokers. The agency's mandate is to safeguard confidence and stability in BC's financial sector by protecting consumers from undue loss and unfair market conduct.[38] BCFSA, like FICOM, supervises and regulates financial institutions and pension plans to determine whether they are in sound financial condition and are complying with their governing laws and supervisory standards.

It was also announced in November 2019 that the Province's real estate regulators, OSRE and RECBC, would be brought within BCFSA.[39]

BCFSA as the Single Real Estate Regulator

On March 9, 2021, the BC Legislative Assembly approved legislation integrating OSRE and RECBC with the BCFSA.[40] The integration occurred on August 1, 2021. BCFSA is now the sole regulator of real estate professionals in the province and has assumed the responsibilities of what was formerly RECBC and OSRE.[41]

35 Ibid, pp 2–3.

36 Ibid, p 3.

37 *Financial Services Authority Act*, SBC 2019, c 14; BC Financial Services Authority, "About Us," online: https://www.bcfsa.ca/index.aspx?p=about_us/index.

38 Ibid; see also BC Financial Services Authority, "Mandate and Values," online https://www.bcfsa.ca/about-us/what-we-do/mandate-and-values.

39 British Columbia, "News Release: Single Real Estate Regulator Protects People, Combats Money Laundering," BC Gov News (November 12, 2019), online: https://news.gov.bc.ca/releases/2019FIN0115-002149.

40 *Finance Statutes Amendment Act*, SBC 2021, c 2; BC Real Estate Association, "Update: Changes to the Real Estate Services Act and Move to Single Regulator" (March 16, 2021), online: https://www.bcrea.bc.ca/advocacy/update-changes-to-the-real-estate-services-act-and-move-to-single-regulator/.

41 BC Financial Services Authority, "History of BCFSA," online: https://www.bcfsa.ca/about-us/what-we-do/history.

The functions once performed by RECBC under the *RESA* are now performed by the Superintendent of Real Estate, a statutory role that now exists within BCFSA. The chief executive officer of the BCFSA has served as Superintendent of Real Estate since August 1, 2021, as well as filling other statutory roles such as being the Registrar of Mortgage Brokers and the Superintendent of Financial Institutions.[42] For simplicity, and because I do not believe it makes any substantive difference for my purposes, I will simply refer to the appropriate authority as the BCFSA.

BCFSA licenses individuals and brokerages engaged in various aspects of the real estate industry, including real estate sales and rental and strata property management. It sets entry qualifications, investigates complaints against licensees, and imposes disciplinary sanctions available under the *RESA*.

Most providers of real estate services in British Columbia must be licensed. BCFSA ensures that licensees, among other things, meet educational and professional standards, manage their funds through trust accounts, and carry errors and omissions insurance.

BCFSA is also responsible for the investigation and discipline of unlicensed real estate activity, the development of rules related to the activities of real estate licensees, and the administration of the *Real Estate Development Marketing Act*, SBC 2004, c 41. These functions were previously performed by OSRE.[43]

Regulated Persons: Real Estate Service Providers

I now turn to the different types of real estate professionals who are regulated in this province, which first requires a look at the provincial *Real Estate Services Act*.

Types of RESA *Licences*

In British Columbia, professionals who engage in real estate services generally fall into three licensed categories: managing brokers, associate brokers, and representatives. (There is also a fourth category of licence for real estate brokerages.) All four categories are supervised by BCFSA and are governed by the *RESA*.[44] Each category of professional has different licensing requirements and different duties under the *Real Estate Services Rules*.

Managing brokers are responsible for exercising the rights and performing the duties of a real estate brokerage. All real estate services must be provided through a brokerage, and every brokerage must have a licensed managing broker.[45] The

42 BC Financial Services Authority, "Who We Are – Senior Executive Team," online: https://www.bcfsa.ca/about-us/who-we-are/senior-executive-team.

43 BC Financial Services Authority, "History of BCFSA," online: https://www.bcfsa.ca/about-us/what-we-do/history.

44 *RESA*, s 5. See also its subordinate regulation, the *Real Estate Services Regulation*, BC Reg 506/2004 and the *Real Estate Services Rules*, BC Reg 209/2021.

45 *RESA*, s 6.

managing broker acts on behalf of the brokerage for all purposes and is responsible for the brokerage's real estate business, including supervision of the associate brokers and representatives licensed in relation to the brokerage.[46] The *Real Estate Services Rules* set out the responsibilities of managing brokers, including their responsibility to ensure that all business is carried out in accordance with the governing legislation. The rules also require that managing brokers ensure that all related licensees and staff, including associate brokers and representatives, have adequate supervision and are familiar with the rules.[47] A managing broker who has knowledge of improper conduct (or conduct unbecoming a licensee on the part of another licensee or a brokerage employee) is required to take reasonable steps to deal with the matter.[48]

Associate brokers are licensees who meet the educational and experience requirements to be a managing broker but are providing real estate services under the supervision of a managing broker.[49]

Representatives, commonly referred to as real estate agents or realtors when providing trading services, are licensed to provide real estate services under the supervision of a managing broker.[50] The obligations of both licensed associate brokers and representatives are set out in Rule 29. They are required to keep their managing broker informed of the real estate services that they are providing and must respond promptly to any inquiries from the managing broker. Both categories of licensee are responsible for promptly informing their managing broker if they become aware of misconduct or improper conduct, whether their own or that of another person for whom the managing broker has responsibility.[51]

There are three categories of real estate services governed by the *Real Estate Services Act* and the *Real Estate Services Rules*: rental property management, strata management, and trading services (real estate sales). Individuals must be licensed for each area in which they practice. Separate licensing and training requirements apply to each category of service.[52]

Following the release of the IAG Report in 2016, RECBC implemented more stringent suitability assessment requirements for prospective licensees. This included publishing more suitability hearing decisions, increasing English language proficiency requirements, and streamlining the assessment process in order to flag suitability issues at an earlier time.[53] In November 2020, RECBC updated its suitability guidelines to move

46 Ibid, s 6(2)(c).

47 BC Financial Services Authority, "Real Estate Services Rules" (updated August 1, 2021), online: https://www.bcfsa.ca/about-us/legislation/real-estate-services-rules; *Real Estate Services Rules*, s 28(1).

48 Ibid, s 28(2).

49 *RESA*, ss 5(1)(c), 5(2.1).

50 Ibid, s 5(1)(d).

51 *Real Estate Services Rules*, s 29(5).

52 BC Financial Services Authority, "Education and Licensing – Becoming Licensed," online: https://www.recbc.ca/professionals/licensing/becoming-licensed.

53 Evidence of Erin Seeley, Transcript, February 16, 2021, pp 153–54.

toward a "fitness to practice" standard, which also allows the regulator some discretion in assessing criteria for entrance to the profession.[54]

Exceptions to Licensing Requirement

There are exceptions to the requirement for licensing under the *RESA*, some of which I find problematic.

The first is for employees of developers who engage in sales activities. Those who work for real estate developers are not required to be licensed, even when they are engaging in what would otherwise be trading activities that are restricted to licensed real estate agents. This exemption has attracted much attention, including in the report prepared by Professors Maureen Maloney, Tsur Somerville, and Brigitte Unger[55] (Maloney Report) and the Perrin Report. Both reports recommended that the Ministry of Finance take steps to eliminate the exemption on the basis that doing so would both enhance public protection in the sale of residential developments and provide additional regulatory tools useful for anti–money laundering activities.[56]

This issue was also picked up by the federal-provincial ad hoc working group on real estate (which I describe in more detail in Chapter 18). The group set out "key considerations and challenges," including that allowing the employees of developers to engage in unregulated sales "decreases oversight and may increase risk of [anti–money laundering] non-compliance, tax evasion, and other misconduct."[57] Ultimately, the working group declined to make a recommendation, concluding only that further analysis and consultation with industry and regulators is required.[58]

I have less hesitation in urging the Province to end this exemption. The building and sale of new developments is a large and lucrative segment of the BC real estate market. To allow the continuation of a gap in licensing that may, as the working group noted, increase risk of anti–money laundering non-compliance, which is not an option for such a significant segment of the real estate market. Although real estate developers' employees have *PCMLTFA* obligations in respect of reporting suspicious transactions, they will not have the same education and training requirements as licensees while they remain outside of the licensing scheme. There are other valid reasons to bring these exempted employees into the scheme, such as making them subject to the conduct requirements of licensees and the oversight of BCFSA. I therefore recommend that the Province amend the *Real Estate Services Regulation* to bring the employees of developers within *RESA's* licensing scheme.

54 Ibid, p 154.

55 Exhibit 330, Maureen Maloney, Tsur Somerville, and Brigitte Unger, "Combatting Money Laundering in BC Real Estate," Expert Panel, March 31, 2019 [Maloney Report].

56 Exhibit 607, Perrin Report, pp 30–31; Exhibit 330, Maloney Report, pp 78–79.

57 Exhibit 704, BC Canada Real Estate Working Group, Work Stream 2, "Regulatory Gaps, Compliance, Standards and Education," (December 15, 2020) [Work Stream 2], pp 7–8.

58 Ibid, p 8.

Recommendation 8: I recommend that the Province amend the *Real Estate Services Regulation* to bring the employees of developers within the licensing scheme.

Another gap in the licensing requirements, identified again by the working group and in the evidence of Raheel Humayun, then managing director of investigations for OSRE (and now director of investigations at BCFSA), arises in relation to rental property. The issue arises when the rented property is owned, leased, or rented by a person who is providing what would otherwise be real estate services under the *RESA*.[59] Mr. Humayun provided two examples to illustrate the problem: "for lease by owner" and "for sale by owner."

In the first scenario, a person rents a property from the owner, but instead of occupying it, sublets it to a third party. In doing so, the person advertises the property for rent, enters into agreements with the sub-lessor for a higher amount than what they are paying to the owner, collects rent, and keeps the difference.[60] The problem, Mr. Humayun said, is that BCFSA has been seeing individuals or corporations entering into multiple residential tenancy agreements and then subletting them to multiple tenants. Such persons are providing rental management services and receiving remuneration for those services, yet they avoid the licensing requirement (and all of the attendant obligations imposed on licensees) because they fall under the exception for owners.[61]

In the second scenario, a person enters into an agreement to purchase a property directly with the owner. Where that purchase agreement allows for assignment, the buyer can then turn around and sell that purchase agreement to a third party. A person could hold multiple purchase agreements and assign them to multiple third parties, effectively acting at business scale (or to use a different phrase, at an industrial level). These activities, if not conducted in respect of their "own" properties, would amount to trading services and be subject to licensing requirements.[62]

In both situations, the regulatory regime does not capture activity that would otherwise be covered. This creates a gap. The working group wrote, in respect of such activity:

> RESA was first drafted in 2004 and does not contemplate the sophisticated volume-based business practices that have emerged to subvert the regulatory framework. [For sale by owner and for lease by owner] activity is being abused by unregulated service providers who are conducting large-scale activities and putting the public at risk. Wholesale business models now exist where entities enter into multiple purchase or tenancy agreements and engage to conduct unlicensed RESA services such as purchase contract assignment or subleasing.

59 Ibid, pp 8–10; Evidence of R. Humayun, Transcript, February 25, 2021, pp 27–32.

60 Evidence of R. Humayun, Transcript, February 25, 2021, pp 29–30.

61 Ibid, pp 27–29.

62 Ibid, pp 30–32.

> The broader regulatory and law enforcement framework and the AML [anti–money laundering] compliance regime have little to no insight into the activities of even large-scale unregulated entities acting in this manner, who unlike licensed persons, have no AML responsibilities, conduct expectations or consumer protection accountabilities.[63]

The gap in regulation was found, specifically, to present a money laundering vulnerability:

> The work stream further noted that unlicensed entities providing real estate services generally present a greater risk for money laundering and tax evasion than licensees and have no defined regulatory requirement to comply with AML reporting. As all levels of government seek to address AML reporting and misconduct through increased responsibilities and education for regulated real estate professionals, the gap between the regulated and unregulated areas of the market in terms of AML compliance has grown and continues to expand. There is reasonable likelihood that bad actors will favour the unregulated area of the market to escape the lens of law enforcement.[64]

The exemption for this category of operator means there is limited ability for the regulator to respond to activity that can be detrimental to consumers or to the market. Mr. Humayun testified that investigators are limited, even if they have concerns about the conducts of such operators, to making referrals to tax authorities.[65] That leaves consumers vulnerable to such actors.

The exemption also gives rise to a money laundering vulnerability. Real estate brokers and sales representatives are reporting entities to FINTRAC. However, the definition of the term "real estate broker or sales representative" in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* is tied to provincial authorization to act as an agent.[66] As a result, if someone does not fall within the provincial definition, they fall outside the federal FINTRAC reporting regime. There are no anti–money laundering reporting or record-keeping obligations that apply to people who are not licensed real estate service providers. The exemption therefore creates a gap in anti–money laundering oversight. As such, I recommend that the Province bring business scale "for lease by owner" and "for sale by owner" operations into the licensing scheme for real estate service providers. By "business scale" I mean leasing or sales activity operated as a business for its own sake as distinct from an incidental activity of a person who leases one or even two investment properties or chooses to act for themselves in the sale of their principal residence. I leave it to the Province to define with precision the scale of activity requiring licensing.

63 Exhibit 704, Work Stream 2, p 9.

64 Ibid.

65 Evidence of R. Humayun, Transcript, February 25, 2021, pp 33–34.

66 SOR/2002-184, s 1.

Recommendation 9: I recommend that the Province bring business-scale "for lease by owner" and "for sale by owner" operations into the licensing scheme for real estate service providers.

Educational Requirements for Real Estate Licensees

Prospective licensees must complete one of four courses (one for each type of real estate licence) administered by the University of British Columbia's Sauder School of Business.[67] Prospective trading services licensees must also complete an Applied Practice Course delivered by the BC Real Estate Association (BCREA).

Each real estate license is granted for a two-year period. A licensee must complete a six-hour relicensing education program in order to be eligible for renewal of their license.[68] Additionally, those licensees who are members of a local real estate board must complete 18 professional development program credits administered by BCREA during their license period.[69]

As noted above, in 2016, the IAG Report concluded that the entry requirements for licensees were low, and that both entry-level education and continuing education should be revised to include a greater focus on conduct and ethics.[70]

Both the regulator and industry have responded. Following the publication of the IAG Report, the required passing level for the pre-licensing examination was increased from 65 to 70 percent; English language proficiency requirements were raised; and BCREA's trading services practice course was redesigned to focus on concepts of agency, disclosure, and contracts. During each two-year license term, real estate licensees are now required to complete a Legal Update course.[71] In October 2020, RECBC instituted a mandatory course for licensees entitled "Ethics for the Real Estate Professional," which must be completed by all licensees within each license period. The course is now administered by BCFSA.[72]

There has also been education introduced that is aimed specifically at improving licensees' understanding of money laundering and compliance with anti–money laundering obligations. In January 2020, RECBC instituted an anti–money laundering course for all licensees to complete during their license term, (mandatory after mid-2020

67 UBC Sauder School of Business, "Real Estate Trading Services Licensing Course: Overview," online: https://www.sauder.ubc.ca/programs/real-estate/licensing-registration-courses/bc-licensing-courses/real-estate-trading-services-licensing.

68 Evidence of Erin Seeley, Transcript, February 16, 2021, p 143.

69 Exhibit 618, IAG Report, p 21.

70 Ibid, p 34.

71 BC Financial Services Authority, "Legal Update Course," online: https://www.bcfsa.ca/industry-resources/real-estate-professional-resources/education-and-licensing/continuing-education/legal-update.

72 BC Financial Services Authority, "Ethics – Building Trust," online: https://www.bcfsa.ca/industry-resources/real-estate-professional-resources/education-and-licensing/continuing-education/ethics-course.

for renewal of a license).[73] BCFSA also offers online resources for anti–money laundering education.[74] On October 5, 2020, BCREA launched its "Mastering Compliance: Anti–Money Laundering Training for Brokers" course for managing brokers.[75]

Regulated Persons: Property Developers

The *Real Estate Development and Marketing Act* applies to developers who market development property, which is defined as multiple lots or interests in land.[76] The Act is intended to protect the public by ensuring that developers have the necessary approvals and financing.[77] It does not provide for a licensing regime for developers;[78] however, BCFSA is responsible for regulating developers to the extent of ensuring that they provide full information and deposit protection to consumers.[79] The Act regulates those who "market"[80] residential real estate, including requiring developers to ensure title and services will be in place at the time of transfer, and that any deposits be held in trust.

The Act sets out a number of obligations for developers who are marketing a development property, including the provision of disclosure statements to consumers.[81] In 2018, it was amended to introduce requirements for disclosure of any assignment of purchase agreements (a.k.a. presale agreements) to the property tax administrator.[82] This information is maintained in the Condominium and Strata Assignment Integrity Registry.[83] The provisions governing assignments were introduced to create assignment reporting requirements for developers; they are targeted at tax avoidance by those who assign agreements for the purchase of new development units to subsequent purchases at a profit, without reporting the ensuing capital gain. Prior to the amendments to the Act, the rights to a presale development

73 BC Financial Services Authority, "Anti–Money Laundering in Real Estate," online: https://www.bcfsa.ca/industry-resources/real-estate-professional-resources/education-and-licensing/continuing-education/anti-money-laundering-real-estate.

74 BC Financial Services Authority, "Anti–Money Laundering Information," online: https://www.bcfsa.ca/industry-resources/real-estate-professional-resources/knowledge-base/information/anti-money-laundering-information; and "Anti Money Laundering Guidelines," online: https://www.bcfsa.ca/industry-resources/real-estate-professional-resources/knowledge-base/guidelines/anti-money-laundering-guidelines.

75 BC Real Estate Association, "Register Now for Mastering Compliance: Anti–Money Laundering Training for Brokers" (August 26, 2020), online: https://web.archive.org/web/20210331050019/https://www.bcrea.bc.ca/education/register-now-for-mastering-compliance-anti-money-laundering-training-for-brokers/.

76 *Real Estate Development Marketing Act*, s 1.

77 Evidence of R. Humayun, Transcript, February 25, 2021, pp 8–9.

78 The Crown corporation BC Housing provides licensing for builders. Some developers are builders, and are licensed by BC Housing, and some are not.

79 BC Financial Services Authority, "Real Estate Developer Resources," online: https://www.bcfsa.ca/industry-resources/real-estate-developer-resources/policy-statements.

80 *Real Estate Development Marketing Act*, s 1, online: https://web.archive.org/web/20210129220403/https://www2.gov.bc.ca/gov/content/housing-tenancy/real-estate-bc/real-estate-development-marketing

81 Ibid, s 3(1)(c).

82 *Real Estate Development Marketing Act*, Part 2.1; BC Financial Services Authority, "Condo and Strata Assignment Integrity Registry," online: https://www.bcfsa.ca/about-us/news/condo-and-strata-assignment-integrity-register-csair?hits=csair.

83 *Real Estate Development Marketing Amendment Act*, SBC 2018, c 25.

could be transferred multiple times and the collection of comprehensive information about such transfers was not mandated or routine.[84]

Not all actors involved in property development are captured by the Act. It is targeted at residential developments of more than five units; developments under this size and commercial or industrial developments are not included within its scope. Also falling outside the scope are the capital-raising activities of developers. These are gaps in the oversight regulation of the real estate industry that BCFSA, and the Ministry of Finance, will have to monitor in order to determine whether action is needed to ensure that the regulator has adequate insight into, and control over, actors in the industry.[85] This is an example of an area where the AML Commissioner recommended in Chapter 8 will bring expertise to bear on the money laundering vulnerabilities arising from gaps in the regulatory regime.

Investigation and Enforcement

I now consider the investigation of real estate licensees, followed by the enforcement and discipline regimes in place.

Regulator Investigations

BCFSA has now combined the investigative teams of BCFSA, OSRE, and RECBC.[86]

BCFSA supervises licensees in two key ways: performing regular random audits of brokerages and completing investigations of licensees – either in response to a complaint, or proactively on the initiative of the investigative team. In neither case is the regulator looking for money laundering.[87] When asked if auditors or investigators look for money laundering during the course of their work, David Avren, vice-president of legal and compliance at RECBC, testified, "We don't have an express AML mandate and our resources wouldn't permit us to undertake that [assisting and collaborating in supporting FINTRAC's audit work] at present in any event."[88]

Brokerages are audited by an audit team at least every five to six years. Individuals are also assessed for suitability at the time of their re-licensing, which occurs every two years. Any issues or adverse information that has emerged relating to a licensee during that period may result in conditions on licensing, or transfer to a hearing with a possibility of denial of re-licensing.[89]

84 British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 41st Parl, 3rd Sess, Issue No. 123 (24 April 2018), p 4169 (Hon. C. James).

85 Evidence of M. Noseworthy, Transcript, February 16, 2021, pp 94–95.

86 Exhibit 1051, Affidavit of Blair Morrison, sworn September 13, 2021, para 7.

87 Evidence of E. Seeley and D. Avren, Transcript, February 16, 2021, p 188.

88 Evidence of D. Avren, Transcript, February 17, 2021, p 44.

89 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, pp 46–47.

Auditors and investigators have taken the anti–money laundering course prepared by RECBC, and three of 17 investigators working specifically for RECBC at the time of our hearings had additional anti–money laundering training. Investigations that disclose an element of unusual flows of funds through a trust account, or other indications that a licensee is involved in money laundering, would be directed to the staff members who have that additional anti–money laundering training.[90]

The investigation team responds to complaints received by the regulator. Complaints are received from real estate clients, agents, an anonymous tip line, and occasionally from managing brokers. Investigators may also initiate examinations based on media reports or court decisions, or as a result of audit findings.

Complaints received, as well as open investigations, have been growing steadily. RECBC says this is due to increasing activity in the real estate industry and the organization's efforts to raise public awareness of its role as a consumer protection regulator.[91] From 2015 to 2020, the number of complaints received annually doubled from 536 to 1,028.[92]

According to RECBC's 2020/21–2022/23 Service Plan, the average number of days it took to complete a complaint investigation in 2017–18 was 310 days. By 2019–20, RECBC had decreased that to 245 days and was on track to reduce the length of investigations by more than 5 percent in 2020–21.[93]

RECBC reported to the Commission that one significant issue preventing it from pursuing complaints or complex investigative matters promptly was the difficulty in recruiting and retaining qualified investigators, particularly those with experience in financial crimes or real estate. This is in addition to the challenges arising from its increased volume of complaints.[94] In 2018, RECBC had only 10 investigators. By July 3, 2021, BCFSA reported it had 25 staff and was continuing to hire.[95] In 2020–21, RECBC forecast a $2.2 million increase in staffing costs to support additional full-time employees for compliance, audit, and operations functions (as well as increased employee benefit costs). [96]

RECBC indicated it had been "confronted with a variety of complex and publicly sensitive social issues such as undisclosed conflicts of interest, fraud, fake offers, and allegations of sexual misconduct by licensees."[97]

90 Evidence of E. Seeley and D. Avren, Transcript, February 16, 2021, pp 187–89.

91 Exhibit 1050, Affidavit of Michael Scott, sworn September 13, 2021 [Affidavit of M. Scott], para 14.

92 Ibid.

93 Real Estate Council of BC, *2020/21–2022/23 Service Plan* (February 2020) [RECBC Service Plan], p 9, online: https://www.bcfsa.ca/media/769/download.

94 Exhibit 1050, Affidavit of M. Scott, para 12.

95 Ibid, para 13.

96 RECBC Service Plan, p 18.

97 Exhibit 1050, Affidavit of M. Scott, para 7.

In the third part of this chapter, in the context of discussing RECBC's investigation of licensees who were allegedly involved in or connected with the frauds of one-time mortgage broker Jay Chaudhary, I urge the Province to ensure that BCFSA has adequate investigative resources to ensure that allegations of serious misconduct by licensees are pursued in a thorough and timely manner. This is not limited to the allegations relating to Mr. Chaudhary's activities, but also includes the serious complaints described by RECBC in its supplementary affidavit.[98]

Discipline and Enforcement

My discussion of discipline and enforcement considers these topics in relation to both those who are licensed and those who are not licensed under the *RESA*.

Licensees

The *RESA* provides that the superintendent "must" sanction professional misconduct or conduct unbecoming, by ordering one or more remedies from a list of options set out in the statute.[99]

The available financial penalties have increased over time. Before being repealed by the *RESA* in 2005, the *Real Estate Act* provided a maximum fine of $10,000 for corporations, or $5,000 for individuals, for any breach of the Act.[100] The *RESA* originally set maximum fines for professional misconduct or conduct unbecoming,[101] unlicensed activity,[102] or certain acts considered to be seriously detrimental to the public interest,[103] of $20,000 for brokerages and $10,000 for others.

In its June 2016 report, the IAG Report concluded that RECBC needed to respond more forcefully to non-compliance:

> The willingness and ability of licensees to comply with all regulatory requirements goes to their suitability to hold a licence. Council needs to send a stronger message to licensees regarding compliance with all regulatory requirements and ethical standards. This will, in turn, reassure the public that licensees are held to a high standard of conduct and ethics.[104]

In 2016, the *RESA* fine and disciplinary penalty maximums were increased to $500,000 for brokerages and $250,000 for others.[105]

98 Ibid.

99 *RESA*, s 43.

100 *Real Estate Act*, s 40.

101 *RESA*, s 43.

102 Ibid, s 49(2).

103 Ibid, s 50 (now repealed).

104 Exhibit 618, IAG Report, p 26.

105 *RESA*, ss 43(2)(i), 49, 50.

The RESA also creates maximum penalties for the commission of an offence, such as breaches of trust account obligations, interference with an investigation, failure to comply with an order of a regulator, contravening the requirement for a license, or making a false or misleading statement in a compelled record.[106] In 2016, those maximums were increased from $50,000 for a first conviction and $100,000 for a subsequent conviction to $1.25 million and $2.5 million, respectively.[107] Imprisonment for a term of not more than two years is also available.

In February 2021, the regulator expanded the types of contraventions for which administrative penalties are available, creating a scale of penalties according to perceived risk to the public.[108] The change was in response to a perceived gap between letters of advisement, which act as warning letters, and the disciplinary process, which proceeds by way of a resource-heavy and often lengthy hearing process.[109]

Since 2016, the largest discipline penalty issued by RECBC was $20,000, an amount levied on three occasions.[110] The majority of disciplinary fines issued by RECBC since September 2016 were below $5,000. It is worth noting that, in addition to disciplinary fines, those sanctioned often face a requirement to repay high investigation and hearing costs, which are often modest but sometimes total over $50,000.[111]

In evidence before the Commission, Mr. Avren testified that RECBC *does* make orders for disgorgement of benefits received, but that there have not been many of these types of awards. He explained that, because the penalties available since the 2016 amendments are so high, resort to the specific disgorgement section is unnecessary.[112] The regulator should not be shy to use the tools available to it to ensure that regulated professionals do not profit by way of activity that is contrary to the legislation or the rules. I describe below some significant disgorgement orders that were made against unlicensed persons by OSRE. (I recommend elsewhere in this chapter that the Registrar of Mortgage Brokers be empowered to make disgorgement orders.) I consider disgorgement to be a valuable tool in responding to activity that is extremely profitable and yet is contrary to the legislation and rules governing real estate professionals.

106 Ibid, s 119.

107 Ibid.

108 Real Estate Council of BC, "Administrative Penalty Guidelines," online: https://www.recbc.ca/public-protection/decisions/administrative-penalty-guidelines; and https://web.archive.org/web/20210516221031/https://www.recbc.ca/public-protection/decisions/administrative-penalty-guidelines.

109 Evidence of D. Avren, Transcript, February 17, 2021, pp 28–31.

110 BC Financial Services Authority, "Real Estate Decisions – Consent Order" (August 14, 2020), Geoffrey Weston Hays et al. (awarded jointly and severally between two people and a PREC), online: https://www.bcfsa.ca/system/files/decisions/1134/18-12520hays2020prec20marble20-20consent20order20redacted.pdf; BC Financial Services Authority, "Real Estate Decisions – Consent Order" (July 2, 2019), Arlene Christina Chiang & Oakwyn Property Management Ltd. (awarded against brokerage and managing broker that had a previous sanction for an unrelated matter), online: https://www.bcfsa.ca/system/files/decisions/1187/18-421-consent-order-cop-oakwyn-chiang-prec-redacted.pdf.

111 Section 44(1) of RESA allows the regulator the require the licensee to pay the expenses incurred in relation to the investigation and discipline hearing. See, for example, *Re Behroyan*, 2018 CanLII 50247 (BC REC), where the licensee was ordered to pay enforcement costs of $58,708.85.

112 Evidence of D. Avren, Transcript, February 17, 2021, pp 32–33.

Awards issued by RECBC may be appealed to the Financial Services Tribunal.[113] Prior to August 1, 2021, section 55(2) of the *RESA* provided that an appealable decision was stayed by the filing of a notice of appeal.[114] This provision was repealed effective August 1, 2021. As noted by Mr. Avren in his evidence, an automatic stay, permitting a professional to continue to practise despite what might be very serious disciplinary findings, would be contrary to public expectation, and I commend this change.[115] An automatic stay is an unusual feature in professional regulation legislation, though is also present in the *Mortgage Brokers Act*. I will return to this when I review the scheme applying to mortgage brokers.

Unlicensed Activity

If, after a hearing, the superintendent determines a person provided real estate services while unlicensed, the superintendent may issue an order requiring the person do a number of things: cease the activity; carry out remedial actions; repay enforcement expenses; pay a penalty (up to $500,000 for a corporation or partnership, or up to $250,000 for an individual); or require an additional penalty (of up to the amount of remuneration received by the person in the course of their unlicensed activity). If a decision is made to prosecute an individual for unlicensed activity, section 119 of the *RESA* also allows a fine to be imposed for up to $1.25 million ($2.5 for subsequent offence) and/or up to 2 years in jail.

In December 2021, the superintendent issued its largest penalty yet: a $50,000 penalty coupled with a $50,000 disgorgement order against an individual and his property management company for providing unlicensed rental property management services.[116]

Developers

BCFSA has enforcement and disciplinary powers under the *Real Estate Development and Marketing Act* to respond to any non-compliance with that Act. It may investigate the developer, and such an investigation can include inspecting records located on the developer's business premises or obtaining a court order authorizing the search and seizure of records located elsewhere. BCFSA may also hold a hearing to determine if the developer has been non-compliant with the Act.[117]

Should BCFSA determine the developer has been non-compliant, it has a number of orders available to it. It may order the developer to stop marketing certain development units, to carry out a specified activity, to comply with the provisions relating to the Condo and Strata Assignment Integrity Registry, or to pay certain fines or sanctions.[118]

113 *RESA*, s 54.

114 Ibid, s 55(2), repealed by *2021 Finance Statutes Amendment Act*, SBC 2021, c 2, s 79.

115 Evidence of D. Avren, Transcript February 17, 2021, pp 25–27.

116 BC Financial Services Authority, "News – BCFSA Issues $100,000 Penalty for Unlicensed Property Management Activity," online: https://www.bcfsa.ca/about-us/news/news-release/bcfsa-issues-100000-penalty-unlicensed-property-management-activity; *In the Matter of the Real Estate Services Act SBC 2004, c 42 as amended and In the Matter of Yiu Keung (Anthony) Ng and Kitsilano Management Ltd.*, December 3, 2021, online: https://www.bcfsa.ca/media/2714/download.

117 *Real Estate Development and Marketing Act*, ss 25–27.

118 Ibid, s 30.

BCFSA does not have authority to deal with any taxation issues related to the submission of documentation through the Condo and Strata Assignment Integrity Registry – that responsibility lies with the Property Taxation Branch.[119]

In the case of non-compliance with the *Real Estate Development and Marketing Act* by a developer, the maximum administrative penalty available is $500,000 for a corporation and $250,000 for an individual.[120] In addition, offences under the Act attract a maximum penalty of $1.25 million for a first conviction, or $2.5 million for a subsequent conviction, or not more than two years' imprisonment in either case.[121] BCFSA may also order a developer to pay enforcement expenses.[122]

BCFSA also has the power to apply to the BC Supreme Court for an injunction restraining a person from contravening, or requiring a person to comply with, the Act or an order of the superintendent under the Act.[123]

Data Gaps

In his evidence, Michael Noseworthy, superintendent of real estate, emphasized that, for the effective regulation of market conduct, it is important to have access to data on a systemic basis.[124] He accepted that BCFSA has inadequate access to data and data analytical capacity to measure and understand trends for regulating market conduct risk.[125] Data he considered would aid his office included the multiple listing service (MLS) maintained by real estate boards. He described a history of mixed success in obtaining MLS data from local real estate boards.[126] The benefits of greater to access to data would include giving the office a better sense of what is happening in the sectors it regulates, helping to better serve the public, helping to stay up to date, and being more aware of changes that are happening in the market.[127]

Mr. Humayun also spoke to the information and intelligence needs of BCFSA investigators. He identified the following information sources that would assist the regulator in performing its functions:

- purchase and sale agreements collected by the Property Taxation Branch, which would assist in identifying persons involved in unlicensed trading activity;
- more coordinated access to records of the Residential Tenancy Branch, which would assist in identifying unlicensed property management activity;

119 Evidence of R. Humayun, Transcript, February 25, 2021, pp 9–10.
120 *Real Estate Development and Marketing Act*, s 30(1)(d).
121 Ibid, s 30.
122 Ibid, s 31.
123 Ibid, s 35.
124 Evidence of M. Noseworthy, Transcript, February 16, 2021, pp 95–96.
125 Ibid, p 98; Evidence of R. Humayun, Transcript, February 25, 2021, pp 45–54.
126 Evidence of M. Noseworthy, Transcript, February 16, 2021, pp 100–2.
127 Ibid, p 104.

- raw data maintained by the Land Title Survey Authority in order to perform data analysis for the purpose of identifying risks in the market; and
- MLS data maintained by the real estate boards, which are private entities.[128]

MLS data includes details of listings, sales dates, prices, agency relationships, commissions received, and commission splits. At the moment, the regulator can only obtain this information from a brokerage or licensee on demand, and has to trust that the information is received "honestly and properly." Direct access to MLS data would, according to Mr. Humayun, allow the regulator to conduct "more market conduct-based enforcement versus responding to complaints."

To be effective, a regulator needs access to data, in a format amenable to analysis. In determining whether access to the kind of information listed by Mr. Humayun would be attainable, I recognize that there are considerations beyond simply what data would give the regulator the best possible insight into market activities and risk trends. However, I believe the regulator requires the ability to access more data to fulfill its duties. I recommend that the Ministry of Finance consult with BCFSA regarding its data needs and put in place measures to accommodate those needs, in a manner that respects the relevant privacy interests arising in this context.

Recommendation 10: I recommend that the Ministry of Finance consult with the British Columbia Financial Services Authority regarding its data needs and put in place measures to accommodate those needs, in a manner that respects the relevant privacy interests arising in this context.

I also see considerable merit in ensuring that BCFSA gains access to MLS data. The industry has an obvious stake in the regulator's access to information that identifies and intervenes in unlicensed activity, and has a reputational stake in the effective regulation of its members and the investigation of allegations of misconduct by members. I strongly encourage the province's real estate boards and their members to provide BCFSA direct access to MLS data for the purpose of its anti–money laundering work. If such co-operation proves unworkable, I urge the Ministry of Finance to implement regulation that would require the reporting of such information directly to BCFSA for maintenance in its own database.

Having spent time reviewing the overall regulatory structure (primarily governing real estate licensees) and the changes which have been enacted in this area in the recent past, I turn next to the anti–money laundering obligations of real estate licensees and their interactions with FINTRAC.

128 Evidence of R. Humayun, Transcript, February 25, 2021, pp 45–55; Exhibit 658, Letter to the Commission from Chantelle Rajotte, in response to Commission counsel's information request, June 9, 2020.

Part 2: Real Estate Licensees and Anti–Money Laundering Compliance

In this section, I examine the particular vulnerabilities of money laundering in real estate relating to real estate licensees (commonly referred to as "real estate agents"). I also review obligations the *PCMLTFA* places on real estate licensees and anti–money laundering education available to licensees. I then move on to discuss the industry's compliance with its obligations under the *PCMLTFA* and Regulations and the industry's relationship with the federal anti–money laundering regulator, FINTRAC.

Real estate licensees have a poor track record of anti–money laundering reporting and compliance. Despite progress at higher levels (industry organizations and regulators), some licensees continue to display inadequate understanding of how money laundering may occur in real estate and hold on to misplaced beliefs that impact their ability and willingness to adequately meet their anti–money laundering obligations.

Financial Action Task Force Findings about Real Estate Agents in Canada

The Financial Action Task Force (FATF) completed a mutual evaluation report on Canada in 2016 which highlighted the vulnerability of Canada's real estate industry to money laundering.[129] With respect to real estate agents and FINTRAC, FATF made the following key findings:

- Supervision of real estate sector is not commensurate to the anti–money laundering risks in that sector; more supervision is necessary.[130]
- Real estate agents are not aware of their anti–money laundering obligations. Real estate agents are not familiar with basic customer due diligence processes, and particularly are non-compliant with the third-party determination rule.[131]
- Real estate agents "consider that they face a low risk because physical cash is not generally used in real estate transactions … [and] are overly confident on the low risk posed by 'local customer[s],' as well as non-resident customer[s] originating from countries with high levels of corruption." Further, "detection of suspicious transactions is mainly left to the 'feeling' of the individual agents, rather than the result of a structured process assisted by specific red flags."[132]

129 Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate & Response from Real Estate Industry [OR: Real Estate & Industry Response], pp 8–9.

130 Exhibit 601, OR: Real Estate & Industry Response, Appendix 5, FATF, *Anti–Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (Paris: FATF, 2016), p 4.

131 Ibid, pp 80–82. The third-party determination rule requires, in brief, that reporting entities take reasonable measures to determine whether a third party is involved when carrying out certain transactions or activities: FINTRAC guidance, "Third Party Determination Requirements," online: https://fintrac-canafe.canada.ca/guidance-directives/client-clientele/tpdr-eng.

132 Exhibit 601, OR: Real Estate & Industry Response, Appendix 5, pp 80, 85.

- The number of suspicious transaction reports (STRs) made has gradually increased but remains very low.[133]
- More dialogue is necessary between FINTRAC and the real estate industry. FINTRAC needs to develop its sector-specific expertise and increase the intensity of its scrutiny of designated non-financial businesses and professionals in the real estate sector. FINTRAC should update money laundering / terrorist financing typologies and specific red flags to assist in detection of suspicious transactions. FINTRAC does not provide enough sector-specific compliance guidance and typologies, especially in the real estate sector.[134]

I have concluded that, although there has been progress in the industry with respect to compliance, it is still a pressing concern, and it is the principal anti–money laundering vulnerability that needs to be addressed with respect to persons and businesses providing real estate services in the province.

FINTRAC Intelligence on BC Real Estate

In Chapter 15, I set out the reasons for the real estate sector's money laundering vulnerabilities and described the common typologies of money laundering in real estate as identified by the FATF. Here, I describe certain FINTRAC intelligence on money laundering vulnerabilities in Canada and British Columbia in particular.

Overview of FINTRAC's Intelligence Process

Three representatives of FINTRAC described the centre's work relating to the real estate sector in Canada.[135]

There are structures and rules in place that restrict and control the flow of information about real estate (and, for that matter, generally). I begin with a summary of how FINTRAC deals with such information.

FINTRAC deals with both strategic and tactical intelligence. Tactical intelligence relates to a specific individual or entity. In contrast, strategic intelligence identifies behaviours and patterns. The distinction is between the specific (tactical: i.e., Company 123 and Transaction 456) and the general (strategic: i.e., there is a trend involving companies which conduct transactions of this variety).

As I describe in Chapter 7, Canada's FINTRAC regime designates certain persons and organizations as "reporting entities," which have an obligation to report certain information to FINTRAC. When FINTRAC obtains tactical information, it is not shared

133 Ibid, pp 7, 41.

134 Ibid, pp 5, 8, 78, 99.

135 Annette Ryan, chief financial officer and deputy director of enterprise policy, research, and programs; Donna Achimov, deputy director and chief compliance officer; and Barry MacKillop, deputy director of intelligence.

with reporting entities. Instead, tactical intelligence is provided to law enforcement by way of information disclosures. There is a standard that must be met before FINTRAC can disclose tactical information to law enforcement. FINTRAC must suspect, on reasonable grounds, that the information would be relevant to the investigation or prosecution of a qualifying offence. FINTRAC can disclose information to law enforcement at its own instigation, but most often it does so in response to a Voluntary Information Record filed by law enforcement. A Voluntary Information Record is a record by which law enforcement communicates information to FINTRAC about an ongoing investigation, in order to allow FINTRAC to assess whether it possesses any intelligence that meets the test for disclosure back to law enforcement. The language used here is not intuitive. The term "Voluntary Information Record" suggests that, for instance, a police department has decided to voluntarily share information with FINTRAC, to help FINTRAC in its work. In reality, what is occurring is that the police department is communicating a request to FINTRAC: "we are sending you this Voluntary Information Record so that you can research your data holdings and then send us information relating to a case we are investigating." In 2019–20 the three predicate offences which figured most prominently in FINTRAC disclosures to law enforcement were fraud (30%), drug-related offences (31%), and tax evasion (14%).[136]

Unlike tactical information, strategic (general) information can be shared with reporting entities. FINTRAC shares strategic information with industries through operational alerts, which describe general trends or typologies in order to assist reporting entities in identifying suspicious indicators.[137]

Grant Thornton Report

In 2014, FINTRAC commissioned Grant Thornton LLP to prepare a report evaluating risks in various reporting sectors. The Grant Thornton Report[138] rated the real estate sector as having a higher risk for money laundering in comparison to other sectors of the economy.[139] The authors attributed this risk to a lack of engagement in anti–money laundering compliance by "significant portions" of the sector, particularly at the smaller end of the market), and an inadequate appreciation by other sectors, such as banking and securities, that real estate transactions carry a higher money laundering risk.[140]

The Grant Thornton Report also addresses anti–money laundering risks associated with real estate licensees and brokerages. The authors concluded that larger brokerages tended to be more risk averse and had stricter anti–money laundering regimes in

136 Exhibit 733, *FINTRAC Annual Report 2019–20*, pp 2, 10.

137 Evidence of B. MacKillop, Transcript, January 18, 2021, p 183.

138 Exhibit 601, OR: Real Estate & Industry Response, Appendix 9: Grant Thornton LLP, *Reporting Entity Sector Profiles – Money Laundering Terrorist and Financing Vulnerability Assessments* (Toronto: Grant Thornton LLP, 2014) [Grant Thornton Report].

139 As a note of caution, I also observe that Grant Thornton in this 2014 report rated the gambling sector as low risk, as "Canada is not viewed as an attractive market for gambling" and the "Canadian casino sector serves mainly local clients": ibid, Overview, p 10.

140 Ibid, p 7.

place, particularly with respect to customer identification, training, and reporting of suspicious transactions.[141] But, on the other hand, "at the smaller end of the market there is often no quality and ethics infrastructure in place."[142]

The risk of money laundering is intensified because of business pressures:

> The competitiveness of the market and sheer number of agents puts pressure on individual agents to secure deals. Agents operating in the sector who are smaller, more independent have less infrastructure to ensure appropriate [know your customer] and support to do any real due diligence. The smaller agent has more incentive to ignore due diligence / [anti–money laundering] requirements, inherent risk.[143]

High-end residential property and low-end commercial property were found to carry a greater money laundering risk.[144] The purchase of Canadian real estate assets with offshore money and/or by offshore persons was noted as a significant risk factor.[145] The report also highlighted purchases by nominees,[146] noting that "[t]he use of nominees, including professional nominees such as lawyers and accountants, or holding companies," was not uncommon and made it easy to disguise beneficial ownership.[147] Finally, the absence of inquiry by real estate agents into their clients' source of funds was noted as problematic.[148] I will return to this below.

Grant Thornton concluded that a significant vulnerability of the real estate sector was low anti–money laundering compliance. Failures in this area make an already vulnerable sector more so: "The standards of [anti–money laundering] due diligence and compliance [in real estate] are low and are not an effective barrier, even for notorious criminals."[149]

Additional FINTRAC Intelligence

FINTRAC has produced intelligence relating to money laundering risks specific to British Columbia and capital inflows from China.[150] In 2017, following media attention on the issue,[151] FINTRAC's Strategic Intelligence and Data Exploitation Lab published a financial intelligence report on the extent to which the purchase of BC real estate by

141 Ibid, Real Estate Sector Profile, p 17.

142 Ibid, Overview, p 5.

143 Ibid, Real Estate Sector Profile, p 20.

144 Ibid, Real Estate Sector Profile, pp 20–21.

145 Ibid, Real Estate Sector Profile, p 23.

146 Ibid, Real Estate Sector Profile, p 25.

147 Ibid, Real Estate Sector Profile, p 15.

148 Ibid, Real Estate Sector Profile, p 18.

149 Ibid, Real Estate Sector Profile, p 15.

150 Exhibit 628, FINTRAC Memorandum on Issue Money Laundering and Real Estate in British Columbia [Redacted] Banking and Private Lenders (December 13, 2018).

151 Ibid, p 61.

foreign buyers might represent money laundering.[152] The version of this report that the Government of Canada produced to the Commission was heavily redacted. One unredacted portion of the report stated: "most of the current media hype surrounding the issue of foreign-owned real estate in the larger metropolitan areas stems from the 20–30% increase in house prices annually.[153] However, fragments of unredacted text suggest that FINTRAC has observed the movement of the proceeds of foreign corruption into Canadian real estate.[154]

The 2017 financial intelligence report concludes that FINTRAC's operational brief on suspicious indicators for real estate can assist real estate actors in distinguishing between Chinese inflows and real estate-related activity that may be money laundering risks but that "[f]urther guidance is necessary for reporting entities, to assist them in managing their risk related to transactions emanating from China and Hong Kong."[155]

Anti–Money Laundering Responsibilities of Real Estate Licensees

PCMLTFA *Reporting Entities*

The *PCMLTFA* and Regulations provide that the following professionals engaged in real estate transactions in BC are reporting entities: notaries public, real estate agents, real estate developers, and financial institutions.[156] Real estate developers are reporting entities,[157] but their employees, acting as salespeople, are not.[158] Reporting entities are required to designate a compliance officer, conduct a risk assessment of their business and clients, develop a compliance program, and implement the policies and procedures related to that program, including certain baseline requirements such as know-your-client due diligence.[159]

While most responsibilities under the *PCMLTFA* (for example, record-keeping requirements) apply to real estate brokerages as opposed to individual licensees, both brokerages and individual real estate licensees are responsible for submitting suspicious transaction reports to FINTRAC. This responsibility also falls on employees of developers who are involved in sales.[160]

152 Ibid, p 45.

153 Ibid, p 48.

154 Ibid, p 51; Evidence of B. MacKillop, Transcript, March 12, 2021, p 29.

155 Exhibit 628, FINTRAC Memorandum on Issue Money Laundering and Real Estate in British Columbia [redacted] Banking and Private Lenders (December 13, 2018), p 56.

156 *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*PCMLTF Regulations*].

157 Ibid, s 59.

158 For an explanation of how obligations under the *PCMLTFA* fall as between real estate brokerages, salespeople, developers, and employees of developers, see FINTRAC, "Real Estate Brokers or Sales Representative, and Real Estate Developers," online: https://www.fintrac-canafe.gc.ca/re-ed/real-eng.

159 *PCMLTFA*, ss 6–9.8.

160 *PCMLTFA*, s 5(m), s 7; FINTRAC, "Real Estate Brokers or Sales Representative, and Real Estate Developers," online: https://www.fintrac-canafe.gc.ca/re-ed/real-eng.

Darlene Hyde, CEO of BCREA, described the nature of real estate agents' connection to the transactions they are involved in, and why they provide valuable insight for anti–money laundering purposes:

> [T]hey are charged with understanding the motivations for the client in buying or selling a home, so they are charged with knowing a little bit about the principal character in the whole transaction as to their motivations. They help with the transaction itself, the sale, and they also take a deposit on the property. So, they are a critical part of the transaction.[161]

Obligations of Real Estate Reporting Entities

Each brokerage must designate a compliance officer responsible for conducting a risk assessment of the brokerage's business. Based on that risk assessment, the compliance officer must establish, and monitor compliance with anti–money laundering policies and procedures. The compliance officer must also develop a training program and, finally, the compliance officer must conduct a review of the program every two years (or hire an independent reviewer to do so).[162]

While certain anti–money laundering obligations fall on individual licensees or salespeople, the lion's share of the responsibility falls on the compliance officer. Often, the person acting as compliance officer is also the managing broker, who in addition to acting as the compliance officer and managing the brokerage is actively engaged in managing his or her own listings.[163] Many brokerages are small, decentralized organizations. The average brokerage in BC comprises four licensees.[164] Given the decentralized nature of many brokerages, the compliance officer often does not have much insight into the day-to-day activities of agents; the documentation the compliance officer sees is often limited to the initial listing agreement and the ultimate contract of purchase and sale once an offer is accepted. The majority of the engagement with the client, which gives a lens into the key information FINTRAC wants, happens outside the view of the compliance officer. The compliance officer usually has little insight into the client's finances, stated property preferences and objectives, behaviour, and lifestyle.

As of June 1, 2021, both real estate licensees and brokerages are required to take measures to establish the source of a person's wealth if that person has been determined to be a politically exposed person, or a family member or close associate of a politically exposed person.[165] They must also take steps to establish the source of funds if they receive $100,000 or more from a politically exposed person, or a family member or close associate of same.[166] In British Columbia, real estate licensees usually only handle

161 Evidence of D. Hyde, Transcript, February 17, 2021, p 105.

162 Exhibit 620, FINTRAC Overview – Slide Presentation to RECBC (May 2019), p 7.

163 Evidence of E. Seeley and D. Hyde, Transcript, February 17, 2021, pp 49, 120, 148.

164 Evidence of D. Hyde, Transcript February 17, 2021, p 126.

165 *PCMLTFA*, s 9.3(1).

166 *PCMLTF Regulations*, ss 120.1, 122.1.

a small part of the transaction price, the deposit. Also, as of June 1, 2021, real estate professionals are now required to verify the beneficial ownership information of their corporate clients as a part of client identification obligations.[167]

Reporting to FINTRAC

While brokerages are subject to the large cash transaction ($10,000 or more) reporting obligations, most do not accept cash in sufficient quantities to trigger a large cash transaction report (LCTR). That said, FINTRAC does receive some LCTRs from real estate brokerages each year, which suggests that at least some brokerages are still taking cash. Between the 2011–12 fiscal year and early 2021, 84 LCTRs were made by reporting entities in British Columbia with respect to real estate transactions.[168] Industry representatives gave evidence that it is rare that cash is accepted for a deposit,[169] and it is not clear whether these LCTRs were made by brokerages, real estate licensees, or other reporting entities involved in a real estate transaction.

While LCTRs are not likely to figure prominently in real estate brokerages, suspicious transaction reports (STR) likely should. Licensees are responsible for evaluating whether a transaction meets the threshold of "reasonable grounds for suspicion" in which case an STR is required to be submitted to FINTRAC.[170] The compliance officer or managing broker is often involved in the submission of a report to FINTRAC, although a real estate agent may submit a report without assistance.[171] The compliance officer or managing broker is often involved in the submission of a report to FINTRAC, although a real estate agent may submit a report without assistance.[172]

As discussed further below, real estate licensees often have difficulty identifying the circumstances in which an STR should be filed, and reporting in this area has been low.

Industry Compliance with *PCMLTFA* Obligations

Overview of Compliance in the Real Estate Sector

FINTRAC records show widespread and repeated historical failures of the real estate industry in BC to meet its *PCMLTFA* obligations. The volume of STRs that are submitted is low relative to the risks of money laundering in real estate. This indicates either a lack of understanding as to when the submission of an STR is appropriate, or a simple cultural reluctance to fully engage with anti–money laundering obligations.

167 *PCMLTF Regulations*, s 138: There is a 25 percent ownership or control threshold for the disclosure of beneficial ownership.

168 Exhibit 742, Dataset – Financial Transaction Report Counts by Postal Code and Activity Sector (March 3, 2021).

169 Evidence of D. Hyde, Transcript, February 17, 2021, p 91.

170 Exhibit 626, FINTRAC, AML/TF Real Estate Sector Presentation (September 19, 2018), p 19.

171 Evidence of S. Ellis, Transcript, February 26, 2021, p 141.

172 Ibid.

FINTRAC monitors reporting entities' compliance with their *PCMLTFA* obligations by conducting on-site examinations and desk examinations (where the reporting entity submits records for review). If FINTRAC observes a high number of quality issues with a specific reporting entity during an examination, it may conduct a database examination, which is a review of that entity's submitted reports to assesses their quality and timing.[173]

The outcomes of an examination may include an enforcement action such as an administrative monetary penalty.[174] Half of the administrative monetary penalties issued since June 2019 were issued to real estate reporting entities.[175]

One problem that FINTRAC identified with the real estate sector is the sheer number of reporting entities. Whereas there are fewer than 15 financial institutions (the source of the vast majority of reports FINTRAC receives) to liaise with in BC, there are 1,300 real estate brokerages and approximately 26,000 licensees in BC.[176]

Each real estate brokerage is unique in the way it operates: some operate under a team structure, some have employees, and at some, all the agents are contractors. Some brokerages require in-office work, but many now have work environments that are mostly, if not entirely, remote. Some have multiple locations. Many serve a particular clientele or tend to work with a particular type of property. These variations make effective supervision by the 15 staff in FINTRAC's Vancouver office (which is tasked with overseeing British Columbia, Alberta, Saskatchewan, and Yukon),[177] only three of whom are dedicated to the real estate sector, challenging. It also makes it difficult to produce guidance that will be useful to every brokerage.

FINTRAC Compliance Reports

Since at least 2012, real estate has been a priority area for FINTRAC, meaning a large proportion of FINTRAC examinations have been conducted on real estate reporting entities.[178] The sector has been prioritized because of its poor compliance with *PCMLTFA* obligations, low reporting levels, and high vulnerability to money laundering.[179] FINTRAC deputy director and chief compliance officer, Donna Achimov, described a

173 Exhibit 630, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2017) [FINTRAC Compliance Report September 2017], p 9.

174 FINTRAC, "FINTRAC examinations: your responsibilities and what you can expect from FINTRAC," online: https://www.fintrac-canafe.gc.ca/guidance-directives/exam-examen/05-2005/4-eng.

175 FINTRAC, "Public Notice of Administrative Monetary Penalties" (Modified May 12, 2022), online: https://www.fintrac-canafe.gc.ca/pen/4-eng.

176 Evidence of B. Morrison, Transcript, February 16, 2021, p 13; Evidence of D. Hyde, Transcript, February 17, 2021, p 85.

177 FINTRAC, "Director's Briefing Binder – November 2020," online: https://www.fintrac-canafe.gc.ca/transp/transition/tb-ct-2020-eng.

178 Exhibit 628, FINTRAC Memorandum on Issue Money Laundering and Real Estate in British Columbia [redacted] Banking and Private Lenders; Exhibit 448, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2018), p 9.

179 Exhibit 630, FINTRAC Compliance Report September 2017, p 13; Exhibit 629, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2019), p 20.

nationwide challenge with real estate,[180] saying, "[i]n general we know that this sector has been lacking the awareness of how money laundering … relates to them."[181]

FINTRAC reports annually to the federal minister of finance annually on each reporting entity sector's compliance with *PCMLTFA* obligations. These reports have consistently found the real estate sector to be non-compliant on various measures.

For instance, in 2016–17, only 10 percent of the real estate reporting entities who were examined were found to be compliant with the requirement to perform a risk assessment, and less than half were found compliant with verification of client identity requirements. Less than a third of reporting entities were compliant with their obligation to implement policies and procedures, keep records, and conduct a two-year review of their anti–money laundering policies.[182]

In 2018, FINTRAC reported "a misunderstanding across the sector as to how the real estate sector can be used for [money laundering / terrorist financing]" and stressed the need to engage in education to assist the industry to recognize money laundering indicators and to make high-quality and timely STRs.[183] The sector was noted to have "one of the lowest reporting levels."[184]

In 2019, FINTRAC reported that 64 percent of real estate reporting entities assessed were partially non-compliant with their obligation to risk assess clients, and 31 percent were completely non-compliant.[185] FINTRAC also reported instances of unreported STRs, although it stated such occurrences were not frequent.[186]

Some improvement has been recorded. In 2018–19, compliance with client identification requirements improved, with 74 percent of entities examined found compliant with their obligations (as compared to less than half in 2016–17).[187]

FINTRAC cited challenges in its real estate examinations, stating:

> [T]he number of real estate examinations that FINTRAC can feasibly conduct in a given year remains very small, given its examination resources when compared to the thousands of real estate entities that operate across the country.[188]

180 Evidence of D. Achimov, Transcript, March 12, 2021, p 68.

181 Ibid, p 20.

182 Exhibit 630, FINTRAC Compliance Report September 2017, p 13.

183 Exhibit 448, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2018), pp 9–10.

184 Ibid, p 9.

185 Exbibit 629, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (2019), p 20.

186 Ibid, p 21.

187 Ibid, p 20.

188 Ibid, p 21.

The 2020 Compliance Report again noted that priority was given to real estate (37 percent of all exams).[189] Of the entities examined, 40 percent were recommended for follow-up, and 5 percent were recommended for enforcement action. This figure stands in comparison to 3 percent of examinees across all sectors being recommended for enforcement action. The highest level of non-compliance was found in implementation of risk assessments, the use of incomplete or generic policies and procedures, and gaps in client identification and receipt of funds records. The report also recorded concerns about ongoing misunderstanding on the part of some as to how money laundering can occur in a real estate transaction.[190]

There was some agreement in the evidence before me that the risk in real estate was disproportionately located in small brokerages. Ms. Achimov agreed that smaller entities do not have the same infrastructure as large brokerages to allow them to meet their compliance requirements and pointed to FINTRAC's efforts to address the issue by way of guidance on its website and a welcome letter to new real estate agents. According to Ms. Achimov, FINTRAC went to "great lengths" to explain what was required.[191] She was of the view that the situation had improved at the smaller end of the market, and pointed to increases in STRs, and improvements in exam results on deficiencies.[192]

In its 2020 Compliance Report, FINTRAC expressed an intention to continue a focus on large brokerages for examinations, as they represent a greater share of the market.[193] If the highest money laundering risk in real estate sector is at the smaller end of the market, FINTRAC's focus on large brokerages may, in fact, skew toward *overrepresenting* compliance.

Summary of Compliance Statistics

Table 16.1 shows the evolution of the BC real estate sector's compliance with *PCMLTFA* obligations from 2015 through early 2021.[194] It shows the number of entities examined in each fiscal year, and the number of partial ("*P*") and complete ("*C*") deficiencies found for each of the *PCMLTFA* obligations. The table supports the conclusion that there are serious failures on the part of real estate brokerages to meet their anti–money laundering obligations. The table also suggests that there has not been significant improvement over time.

189 Exhibit 1021, Overview Report: Miscellaneous Documents, Appendix 15, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (2020), p 22.

190 Ibid, pp 23–33.

191 Evidence of D. Achimov, Transcript, March 12, 2021, pp 107–8.

192 Ibid, pp 20–21.

193 Exhibit 1021, Overview Report: Miscellaneous Documents, Appendix 15, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (2020), p 24.

194 The Commission arrived at the "% deficient" figure by adding the partial and complete deficiencies and dividing that sum by the scope of the review.

Table 16.1: Summary of Compliance Statistics

	Compliance Officer				Policies And Procedures				Risk Assessment				Ongoing Compliance Training Program				Review Every Two Years			
Deficiencies "*P*"= Partial deficiency, "*C*" = Complete deficiency, "%" = Total deficiencies (partial and complete)																				
Fiscal Period	S	P	C	%	S	P	C	%	S	P	C	%	S	P	C	%	S	P	C	%
2015–16	79		2	3%	78	34	15	63%	79	46	27	92%	36	17	4	58%	78	31	40	91%
2016–17	51	2	2	8%	51	25	10	69%	51	31	17	94%	47	10	12	47%	47	10	28	81%
2017–18	48			0%	48	29	6	73%	48	30	13	90%	48	20	9	60%	46	14	27	89%
2018–19	59	4		7%	59	35	6	69%	59	33	20	90%	58	19	11	52%	57	17	31	84%
2019–20	55	3	1	7%	55	37	4	75%	54	29	12	76%	52	14	6	38%	45	19	17	80%
2020–21	5	1		20%	5	3	1	80%	5		4	80%	5	2	1	60%	3		3	100%
Total	297	10	5	5%	296	163	42	69%	296	169	93	89%	246	82	43	51%	276	91	146	86%

Source: Compiled by Cullen Commission

Notes: "*S*" indicates scope, or the number of entities examined. Missing data compliance report was not made available to the Commission before the completion of this Report.

Suspicious Transaction Reporting Rates

Like compliance, suspicious transaction reporting rates also remain low. FINTRAC has noted that most reporting about the real estate sector comes from larger financial institutions.[195] In February 2015, FINTRAC noted that less than 1 percent of STRs came from the real estate sector.[196] In terms of absolute values, reporting has been trending upward, but some years have seen dips in reporting (see Table 16.2): [197]

195 Evidence of B. MacKillop, Transcript, March 12, 2021, p 96.

196 Exhibit 628, FINTRAC Memorandum on Issue Money Laundering and Real Estate in British Columbia Banking and Private Lenders (December 13, 2018), pp 8, 39.

197 Exhibit 743, Excel spreadsheet re BCREA Request for Information, STR Reporting Sheet.

Table 16.2: Suspicious Transaction Reports from Real Estate Sector

Fiscal Year	STRs in Real Estate – BC	STRs in Real Estate (Nationally)	Total STRs Received by FINTRAC[198]	BC Real Estate % of Total
2015–16	7	32	114,422	0.0061
2016–17	18	90	125,948	0.0143
2017–18	21	115	179,172	0.0117
2018–19	13	100	235,661	0.0055
2019–20	37	138	386,102	0.0096
2020–21	15	n/a	n/a	n/a
Total	111			

Source: Compiled by Cullen Commission.

Note: 2020–21 was a partial year – April to November 2020.

For FINTRAC, Mr. MacKillop agreed that there had been some improvement with respect to STRs, but that there was a "constant need for ongoing awareness and education." Partly due to the sheer number of people working in the real estate sector, understanding of what constitutes a suspicious transaction is not "deep and profound."[199]

Ms. Achimov acknowledged that even the most recent reporting numbers were very low and said "the bottom line … [is we] need this particular reporting entity to submit more reporting."[200] She explained the low reporting, stating:

> There was a pervasive view – and I would argue that that's changing now … that that was the role of the banks and the entities that actually touch the money, and for the longest time one of the myths was … if somebody came in with a gym bag of … old $20 bills, that's money laundering. If I didn't see that, then I didn't have to do anything else.
>
> …
>
> I think there's also in some pockets … some cultural hesitancy in terms of it's not culturally acceptable to ask where your source of money is and how you come by your money, and so, again, that's where we work with the real estate associations and industry itself to make sure that we find ways of working around some of those cultural barriers as well.[201]

198 Ibid.

199 Evidence of B. MacKillop, Transcript, March 12, 2021, pp 7–8.

200 Evidence of D. Achimov, Transcript, March 12, 2021, pp 96–97.

201 Ibid, pp 97–98.

Administrative Monetary Penalties Issued to BC Brokerages

Evidence of serious anti–money laundering compliance failures are also found in FINTRAC administrative monetary penalties. FINTRAC has issued administrative monetary penalties against three BC real estate brokerages in recent years.[202] These penalties were issued in response to violations found during compliance examinations in 2018 and 2019. The first monetary penalty of $59,235 was issued in January 2021 to a brokerage in Vancouver;[203] the second, of $33,371.25, was issued in June 2021 to a brokerage in Chilliwack;[204] and the third, of $255,750, was issued in July 2021 to a brokerage in Vancouver.[205] In all three instances, the brokerages failed to:

- develop and apply written compliance policies and procedures that are kept up to date and, in the case of an entity, are approved by a senior officer;
- assess and document the risk of a money laundering or terrorist financing offence, taking into consideration prescribed factors;
- develop and maintain a written ongoing compliance training program for those employees, agents or mandataries, or persons;
- institute and document the prescribed review; and
- keep prescribed records.

In the third instance, the brokerage also failed to appoint a compliance officer and failed to submit a suspicious transaction report where there were reasonable grounds to suspect that transactions were related to a money laundering offence.[206] These three administrative monetary penalties were of nine issued across all reporting entities in 2021.[207]

Reasons for Non-Compliance and Under-Reporting

In November 2018, BCREA announced it had commissioned Deloitte to study residential and commercial real estate transactions and to identify money laundering

202 FINTRAC, "Public Notice of Administrative Monetary Penalties" (modified May 12, 2022), online: https://www.fintrac-canafe.gc.ca/pen/4-eng.

203 https://www.fintrac-canafe.gc.ca/pen/amps/pen-2021-03-22-eng.

204 https://www.fintrac-canafe.gc.ca/pen/amps/pen-2021-06-11-eng.

205 Ihttps://www.fintrac-canafe.gc.ca/pen/amps/pen-2021-11-04-eng.

206 "FINTRAC Imposes an Administrative Penalty on Pacific Place-Arc Realty Ltd." (November 4, 2021), online: https://www.fintrac-canafe.gc.ca/pen/amps/pen-2021-11-04-eng. The brokerage filed a lawsuit on November 15, 2021, claiming that the provisions of the *PCMLTFA* under which the penalty was issued are unconstitutional. See: "Lawsuit of the Week: Vancouver Real Estate Firm Sues FINTRAC and Federal Government," *Business in Vancouver* (December 10, 2021). See also the BCFSA Notice of Hearing, online: https://www.bcfsa.ca/media/2825/download.

207 FINTRAC, "Public Notice of Administrative Monetary Penalties" (modified May 12, 2022), online: https://www.fintrac-canafe.gc.ca/pen/4-eng.

vulnerabilities in order to address the apparent difficulties its members were having understanding and meeting their reporting obligations.[208]

In its report, *Assessing Money Laundering Vulnerabilities in the BC Real Estate Sector* (the Deloitte Study), Deloitte made four key findings:

1. there is more information available to real estate agents during transactions than most agents realize;
2. the absence of cash does not eliminate the risk of money laundering;
3. the decentralization of the real estate industry has weakened the understanding and implementation of client identification and risk assessment requirements; and
4. there is resistance to the expectation that real estate agents have unique insights to offer Canada's anti–money laundering regime and should be expected to take on the burden of complying with it.[209]

It is apparent to me that some in the industry continue to have misunderstandings and misgivings about the role of real estate professionals in identifying and combatting money laundering. This increases the vulnerability of BC's real estate market to money laundering.

Lack of Evidence of Money Laundering or the Utility of STRs

A significant consequence of the lack of reporting to FINTRAC by real estate reporting entities is that there is no data flowing to FINTRAC to be analyzed, which could then be turned into operational alerts or briefs to help educate industry about when it is appropriate to file STRs.

The result is that industry remains skeptical that STRs are of any value, or that there is in fact under-reporting of suspicious transactions in the real estate sector. Real Estate Brokers' Association (REBA) representative Stephen Ellis pointed to a lack of feedback from FINTRAC identifying situations in which a real estate agent did not submit an STR where later there was found to be "absolute evidence of money laundering."[210] Mr. Ellis stated that he and other managing brokers questioned FINTRAC's conclusion on under-reporting, because that is not what the community was seeing: "It's not something that we see as a significant problem within our industry."[211]

208 Exhibit 601, OR: Real Estate & Industry Response, Appendix 18, BCREA, *Understanding Money Laundering Vulnerabilities* (February 13, 2019); Appendix 15, April van Ert, *BCREA Supports BC Government's Money Laundering Investigations* (November 27, 2018).

209 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, *Deloitte Presentation to BCREA – Assessing Money Laundering Vulnerabilities in the BC Real Estate Sector* (February 22, 2019) [Deloitte Study], p 8.

210 Evidence of S. Ellis, Transcript, February 26, 2021, p 101.

211 Ibid, p 107.

Mr. Ellis described that a lack of evidence of money laundering occurring in real estate has an impact on industry's engagement with its anti–money laundering obligations:

> [I]t's very hard to find any factual evidence of money laundering in real estate, where it occurs, how it occurs, in fact if it did occur. There's lots of suspicion, speculation, assumption, but we don't have any facts. So, when we ask for a specific instance where a real estate representative has been complicit in a money laundering purchase of real estate, at this particular point in time we're not aware of any of that evidence being presented to us. We've certainly asked for it, you know, give us examples, show us specifically how, why, and where, and that has not been demonstrated to us at all at this point.[212]

I pause here to note one aspect of the above passage: the absence of a specific instance of a real estate representative being complicit in a money laundering transaction. A similar comment was made by the BCREA in its closing submissions. It noted that there was no evidence of widespread money laundering at the real estate licensee level, and that "if there was clear evidence of money laundering–related matters in the real estate industry, it would likely be demonstrated by widespread money laundering convictions, investigations, and reports against real estate licensees."[213]

This line of thinking suggests a troubling and fundamental misunderstanding about the money laundering risk in real estate *and* the purpose of suspicious transaction reporting. While money laundering typologies involving real estate can involve *complicit* real estate agents, most are not predicated on the knowing involvement of realtors. STRs are not intended as means to report misconduct of licensees with respect to real estate. They are intended as a means of reporting suspicious transactions, whether or not there is complicity or knowing involvement of a licensee. It can, in fact, be anticipated that, in many instances of money laundering through real estate, the licensees will have no knowledge of the nature of the transaction as a money laundering transaction.

Returning to Mr. Ellis's explanation of how evidence of actual money laundering would assist brokers and licensees in identifying suspicious transactions:

> Q: And how would that information assist you in your work as a compliance officer?
>
> A: … [I]f you take a look at the 27 red flags I would say there's probably ten of them that don't apply. There might be a large number of them that do apply, but there's plausible, reasonable explanation for why did that occurrence is part of a transaction. And so, they're just indicators. They're not showing proof. They're just indicators. So, it's left up to a judgment call of the individual realtor at that point who's dealing with the client to interpret those red flag indicators and apply

212 Ibid, pp 19–20.

213 Closing submissions, BCREA, paras 13–14.

> them to see whether or not a Suspicious Transaction Report should be generated and submitted.
>
> So if there was more descriptive information on exactly what it is that we should be looking at and what we should be recording, it would assist certainly in meeting our obligations for STR obligations.[214]

Mr. Ellis described what managing brokers/compliance officers would like to see:

> Well, evidence that there has been instances where it was not reported and found that it should have been reported and if we can trace that back and say there was absolute evidence of money laundering and if you had gone back to the Suspicious Transaction Report at the outset and followed that trail, we'd like to be able to see how that works … [T]he demonstrated evidence of the lack of a submission to where there was evidence of money laundering in real estate, if we could see that and track that, that would be instructive and helpful.[215]

BCREA echoed this complaint in its closing submissions, contending that there is no evidence of money laundering occurring in BC real estate, as there have not been investigations or prosecutions leading to judicial or regulatory findings of that fact.[216]

On one hand, this highlights the problem posed by the low numbers of money laundering prosecutions across Canada: it results in a lack of data about concrete examples of money laundering that can be used to educate the industry. If there needs to be "absolute" evidence of money laundering, and few cases result in conviction, it will be rare to have such evidence. And without evidence that the STRs filed by industry yield productive results, there is a risk that industry will conclude the task is simply an additional layer of unproductive bureaucratic burden and will be discouraged from making best efforts to comply with the anti–money laundering obligations. There needs to be communication between the anti–money laundering regulator and the industry about the use to which STRs are put, and provisions of examples of instances (anonymized as necessary) where real estate sector STRs were of use to an investigation.

On the other hand, the above comments from industry indicate a persistent misunderstanding of how the sector can be used for money laundering. I set out in Chapter 15 the money laundering vulnerabilities of the real estate sector. It is time for the industry to accept that money laundering through real estate is happening, even if individuals on the ground are not recognizing evidence of it. Industry needs to accept that neither FINTRAC nor law enforcement needs to *prove* that money laundering is happening in real estate. It is.

214 Evidence of S. Ellis, Transcript, February 26, 2021, pp 20, 22–23.

215 Ibid, pp 100–101.

216 Closing submissions, BCREA, paras 13–14.

Equally damaging is an expectation that an STR is submitted only where money laundering is certain. A suspicious transaction report does not reflect the reporting entity's certainty that money laundering is occurring – it reflects the fact that the reporting entity has reasonable grounds to suspect that a transaction is related to the commission or attempted commission of a money laundering offence (or a terrorist activity financing offence).[217] STRs are neither complaints to police, nor "tests" of a licensee's ability to identify actual money laundering. They are pieces of intelligence that are provided to FINTRAC in order to assist it in developing both tactical and strategic intelligence about money laundering in the real estate sector. The hesitation of real estate professionals to submit STRs in the absence of proof of their usefulness or of "actual" money laundering impairs the ability of FINTRAC, and by extension law enforcement agencies conducting investigations, to know what is happening in the sector. Given the amounts of money involved and the varied techniques that can be employed in real estate–based money laundering, it is time for a new attitude.

I say the above while acknowledging FINTRAC's comments that there has been improvement in the sectors, particularly as a result of co-operation with industry groups like BCREA. Below, I will also describe efforts by BCREA to educate brokers about their reporting responsibilities. I do not mean to discount these efforts, or the extent which many professionals in the industry take their anti–money laundering responsibilities seriously. But it remains evident to me that there remain pockets of resistance, and these must be overcome.

A Persisting Focus on Cash

The perception that money laundering in real estate is linked to cash continues to be a barrier to effective anti–money laundering compliance and reporting. The Deloitte Study observed:

> There continues to be a perception by realtors that because they generally do not handle cash, they are therefore not exposed to money laundering, however, the realtor's knowledge of the client purchasing or selling real estate is a crucial piece of information to the real estate transactions process, as it is information that is generally not available to other parties to the real estate process.[218]

The Deloitte Study found that real estate agents, when asked what would constitute high money laundering risk, gave extreme and unlikely examples, such as a client arriving with bags of cash.[219]

BCREA expressed to me that it is not a victim of the cash fallacy and insisted "that concept has been totally left in the dust."[220] I have no doubt that BCREA has internalized

217 *PCMLTFA*, ss 7(a), (b).

218 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19: Deloitte Study, p 30.

219 Ibid, p 18.

220 Evidence of D. Hyde, Transcript, February 17, 2021, pp 90–91.

this, and that the organization is making its best efforts to educate its members of the same (I discuss their education efforts below). Despite these efforts, the mistaken belief that money laundering in real estate means buying houses with bags of cash is one that persists amongst its membership.

In the Commission's interviews with local real estate boards, this theme was repeated. Many interviewees expressed the view that without the presence of physical cash, the transaction could not be money laundering. One board expressed a view that most real estate agents believed their *PCMLTFA* obligations were in place because deposits were believed to be a main source of money laundering, and only recently had FINTRAC provided education to dispel this myth and spread information about the role of real estate agents in disrupting the wider web of money laundering. Most boards expressed a desire for better understanding of how money laundering might be conducted through the real estate sector in the absence of cash transactions.[221]

Education can assist in combatting this misunderstanding. Many survey respondents to the UBC Sauder / RECBC (now part of BCFSA) "Anti–Money Laundering in Real Estate" course did express that the course aided them in understanding the use of cash was only one part of money laundering.[222] It is my hope that improved education from both industry and regulators will help to dispel any remaining belief that money laundering in real estate is about cash.

Confusion Over How to Comply with PCMLTFA *Obligations*

From the evidence, drawing on the Commission's interviews with local real estate boards, a review of BCREA materials including the Deloitte Study, and the testimony of BCREA and REBA representatives, it is clear that some in the industry find their anti–money laundering obligations confusing and cumbersome.

Members of local real estate boards expressed the view that the FINTRAC audit process failed to educate brokerages on how to improve their anti–money laundering system or reporting process beyond "bureaucratic trivia," such as using the right abbreviations and terms. Several real estate boards commented that there was a discrepancy between (a) FINTRAC's educational guidance and (b) its auditors' compliance information; they wanted FINTRAC to provide more education as part of the audit.[223]

Several boards emphasized that most real estate agents and brokers have no background in compliance or anti–money laundering matters. There was a concern that real estate agents lack the expertise, resources, and time to digest and apply the FINTRAC guidance in its current state.[224]

221 Exhibit 601, OR: Real Estate & Industry Response, paras 122–123.

222 Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020), p 26.

223 Exhibit 601, OR: Real Estate & Industry Response, p 45. Ms. Achimov, for FINTRAC, gave evidence that FINTRAC has now started to provide such education and feedback as part of its audit process: Transcript, March 12, 2021, p 69.

224 Exhibit 601, OR: Real Estate & Industry Response, p 42.

All boards expressed a desire for clearer, simpler, more user-friendly guidance from FINTRAC. They said the existing FINTRAC guidance was excessively long, complicated, and theoretical, and that its applicability to the on-the-ground experience of real estate agents and brokers was too opaque. All boards noted significant frustration from members who were struggling to understand their obligations and who did not find the FINTRAC guidance helpful. All boards stressed a need for more accessible content.[225]

Many boards expressed a desire for better standardized forms or a more user-friendly system, such as a mobile or desktop application. They were frustrated that the Canadian Real Estate Association's attempt to produce standardized forms did not solve this problem, as FINTRAC had refused to endorse the forms.[226]

Concerns for Client Privacy / Distaste for Intrusive Questions

There is a perception in the real estate industry that the nature of the real estate agent's role sits uncomfortably with the need to obtain sensitive information about the client, such as financial status or source of funds.

This theme arose frequently in the user feedback survey to the BCFSA anti–money laundering course. One user said they considered the details of financing to be something between the buyer and their lender, and the agent had no way of knowing whether a lender was unregulated. One stated that "I almost feel like it's not really in a realtor's place to ask where client's money is from."[227] Several stated that there were expectations on the real estate agent that he or she should be aware of the client's banking or lending information, and source of funds; this, they said, was unreasonable, and the information not usually known to real estate agents.[228] One licensee stated that "[t]o be asked to investigate such things by the government is unethical."[229]

The Deloitte Study noted that licensees often did not ask questions about the beneficial ownership of property, and would inquire into source of funds only to discover the likelihood the client would close the transaction.[230] Several commented that, as real estate agents, they did not have any role in the financing of a transaction, so no inquiry was necessary.[231]

Deloitte commented that "[a] number of interviewees also indicated that there was a difficulty in asking a number of questions they determined were too personal, such

225 Ibid, pp 42–43.

226 Ibid, p 43; Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020), pp 12, 14, 29.

227 Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020), p 23.

228 Ibid, pp 6, 26.

229 Ibid, p 26.

230 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, Deloitte Study, p 17.

231 Ibid, p 22.

as source of funds/wealth."[232] Others cited privacy law as impeding their ability to ask questions about how a client intended to finance a transaction.

BCREA acknowledged the difficulty. Licensees are concerned about the confidentiality they owe their clients and may hold a perception that "they are betraying the trust that their client places in them … by filing a suspicious transaction report." Efforts are being made to educate licensees that anti–money laundering reporting is an ethical obligation that cannot be defeated by any obligation of confidentiality to the client. [233]

BCREA is right – a licensee has no professional obligation to keep secret the client's potential criminal activity. Real estate agents are the point of access for most people to the real estate market. As such, legislatures have imposed legal and professional duties on them to help maintain the integrity of that market, including by making appropriate inquires and reporting a transaction where they have a reasonable suspicion the transaction is related to the commission or attempted commission of a money laundering offence.

Neither the *PCMLFA* and associated Regulations nor FINTRAC requires that source-of-funds inquires be made. FINTRAC currently directs that source-of-funds inquiries may form part of enhanced measures that a brokerage can put into place to manage high-risk clients and business areas.[234] As a result, real estate professionals have to use their judgment to assess the money laundering risk of a particular client or transaction and decide whether enhanced inquiries are required. It seems to me to be intuitive that, given the reluctance expressed by realtors to ask these types of questions, they will often err on the side of not pursuing the issue.

It seems to me that the simplest way to overcome these scruples and to gain insight into source of funds is to make such an inquiry mandatory. Optimally, this would be a requirement imposed by FINTRAC.

Source of funds is not an ancillary or unrelated question; it goes to the heart of the task real estate agents have been given. Mandating source-of-funds inquires would remove confusion and make clear what is expected. Therefore, I recommend that BCFSA make inquiries with FINTRAC as to whether it will institute such a requirement, and, if the answer is no, then BCFSA should require licensees to ask clients about their source of funds at the outset of the client relationship.

232 Ibid, p 34.

233 Evidence of D. Hyde, Transcript, February 17, 2021, pp 46–47.

234 FINTRAC, "Compliance Program Requirements" (June 1, 2021), online: https://www.fintrac-canafe.gc.ca/guidance-directives/compliance-conformite/Guide4/4-eng#s4.

Recommendation 11: I recommend that the British Columbia Financial Services Authority (BCFSA) make inquiries with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to determine whether it plans to institute a source-of-funds inquiry requirement for licensees. If FINTRAC does not plan to do so, I recommend that the BCFSA require real estate licensees to ask clients about their source of funds at the outset of the client relationship, and record the information provided.

A mandatory requirement will eliminate uncertainty. It also allows real estate professionals to point to the requirement as the reason they are obligated to ask the question. A lack of discretion on the part of the realtor takes some of the discomfort out of asking the question and informs the buyer that they will not receive more favourable treatment at the hands of another professional. Where the client's answer is vague, unusual, or seems unrealistic, given what is known of the client, it may be an indication that an STR is appropriate.

Such a requirement has been implemented in the United Kingdom, where a client will be asked about their source of funds by their estate agent, mortgage broker, and financial institution.[235]

Perception that the Burden on Real Estate Agents Is Unduly Onerous

Real estate agents interviewed for the Deloitte Study expressed frustration and a sense of unfairness at being asked to assess money laundering risk when they had a direct sightline into only 5 to 10 percent of the transaction funds.[236]

Industry members have pointed to other actors they say are better equipped to take on anti–money laundering reporting obligations. The Deloitte Study, interviews with local real estate boards, and feedback from the joint UBC Sauder / RECBC (now part of BCFSA) "Anti–Money Laundering in Real Estate" course reveal a general sentiment that the onus for anti–money laundering should be on banks and lawyers rather than on real estate agents.[237] Some licensees expressed the view that lawyers ought to be responsible for reporting because of the greater role they play in overseeing funds, compared to real estate agents. I address the role of lawyers, who are subject to significant anti–money laundering oversight by the Law Society, in Part VII of this Report.

The Deloitte Study noted discontent at being asked "to do the government's job," particularly when no additional compensation was provided for performing anti–

235 Home Owners Alliance, "Do Estate Agents Need Proof of Funds?" online: https://hoa.org.uk/advice/guides-for-homeowners/i-am-buying/do-estate-agents-need-proof-of-funds/.

236 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, Deloitte Study, p 21.

237 Ibid, p 23; Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020), pp 15, 17, 18, 19, 22, 23, 24, 26, 29.

money laundering related duties.[238] Deloitte noted that many real estate agents expected financial institutions to vet source of funds.[239]

These objections ignore the insight into a transaction and a client's motivations that are available to real estate licensees, and in some cases uniquely to them. While financial institutions do have responsibilities under the *PCMLTFA*, their lens into a transaction is limited. Financial institutions do not have the same amount of face-to-face interaction with clients that real estate licensees do. They are usually not privy to the stated buying preferences of clients, their expressed financial status, or the presence of third parties in a transaction.

Lack of Clarity on Suspicious Transaction Reporting

The real estate board representatives the Commission interviewed expressed much confusion over what would constitute a "suspicious" transaction. BCREA acknowledged this continuing confusion in its closing submissions to the Commission.[240]

Despite FINTRAC's provision of suspicious indicators to assist licensees to identify suspicious transactions, those operating in in the Lower Mainland commented that despite being listed as an indicator of suspicion by FINTRAC, the example of a student purchasing a million-dollar property was not unusual.[241]

Feedback received about the BCFSA anti–money laundering course evidenced continued confusion about the indicators of and threshold for suspicion. One respondent queried whether evasion of capital controls was "always wrong and suspicious"; others requested more emphasis on how to identify suspicious activity, and one contesting whether the indicators listed were actually suspicious.[242] Others, however, stated the course had cleared up much of their confusion.[243]

The Deloitte Study found that some real estate agents appear to be over-reliant on Canadian Real Estate Association forms, employing a "check-the-box" approach without truly understanding the purpose of the documents.[244] The Deloitte Study and FINTRAC's 2019 Compliance Report noted that brokerages failed to tailor the forms to their business, such that brokerages were not adequately reviewing for and identifying high-risk activity.[245] At the same time, local real estate boards and others expressed

238 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, Deloitte Study, p 18, 33; Exhibit 660, UBC / RECBC AML in Real Estate Course Evaluation Report (November 17, 2020), pp 7, 10, 15, 22, 26.

239 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, Deloitte Study, p 21.

240 Closing submissions, BCREA, para 12.

241 Exhibit 601, OR: Real Estate & Industry Response, para 128.

242 Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020), pp 6, 16–17, 23.

243 Ibid, pp 7, 16.

244 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, Deloitte Study, p 27.

245 Ibid, p 27; Exhibit 629, FINTRAC Report to the Minister of Finance on Compliance and Related Activities (September 2019), pp 20–21.

frustration at being told, during FINTRAC assessments, that reliance on Canadian Real Estate Association forms was insufficient.[246] These concerns emphasize the need for caution when producing templates or checklists for use by industry. Although templates and other guides designed to assist real estate professionals meet their obligations may be helpful. Caution should be exercised to avoid producing generic forms that are relied upon to the exclusion of the exercise of judgment. Although no doubt greatly appreciated by industry, forms that help a business meet its anti–money laundering obligations cannot stand in the place of quality education and training.

Ms. Hyde pointed to the threshold for filing STRs as an area that could use improvement:

> The reasonable grounds to suspect is something – again it's an abstract concept and I think giving more flesh to that, reasonable grounds to suspect is good thinking in terms of helping the realtor identify those specific red flags that are going to trigger a suspicious transaction report.[247]

Ms. Hyde expressed a wish for FINTRAC's suspicious indicator guidance to be more geographically targeted.[248] She also suggested that "an app with some drop down menus" would be preferable to the current eight-page document used to make suspicious transaction reports.[249] She highlighted the difficulty of reaching the small business sector, and noted the average brokerage has four real estate agents; to this challenge, she emphasized the need for "very concrete, real language as opposed to bureaucratic language."[250] There are no magic bullets for the issues raised above. To a large degree, what is required is continuing education and training to change the mindsets of real estate licensees, and to change the culture to one that recognizes anti–money laundering responsibilities as foundational professional obligations. Both industry and regulators are alive to this and have responded.

Anti–Money Laundering Education Available to Real Estate Agents

Both regulators and industry have responded with education and training aimed at improving anti–money laundering compliance. FINTRAC has published indicators of suspicious transactions in real estate, as well as a risk-based approach workbook for reporting entities in the real estate sector to assist in developing a compliance program.[251]

246 Exhibit 601, OR: Real Estate & Industry Response, pp 42–45.

247 Evidence of D. Hyde, Transcript, February 17, 2021, p 143.

248 Ibid, p 121.

249 Ibid, p 125.

250 Ibid, p 126.

251 Exhibit 601, OR: Real Estate & Industry Response, Appendix 6, FINTRAC, *Operational Brief: Indicators of Money Laundering in Financial Transactions Related to Real Estate* (Ottawa: 2016); Appendix 8: FINTRAC, "Money Laundering and Terrorist Financing Indicators – Real Estate"; Appendix 7: FINTRAC, "Risk-Based Approach Workbook: Real Estate Sector."

RECBC (now part of BCFSA) implemented an anti–money laundering course for real estate licensees in 2020, which is mandatory for all licensees.[252] BCREA also launched an optional anti–money laundering course targeted at managing brokers and compliance officers in 2020.[253]

FINTRAC Education

To assist reporting entities in knowing when to submit an STR, FINTRAC issues operational alerts, which are intended to update recipients on indicators of suspicious financial transactions and high-risk factors related to new, re-emerging or particularly topical methods of money laundering.[254]

FINTRAC also issues operational briefs that are intended to provide clarification and guidance on issues that impact the ability of reporting entities to maintain a strong compliance regime.

Both operational alerts and operational briefs are published on FINTRAC's website. I understand that a number of industry representatives have complained that these reports were not easily accessible, and that accessing such information required "digging" through the FINTRAC website.[255]

In November 2016 FINTRAC published *Operational Brief: Indicators of Money Laundering in Financial Transactions Related to Real Estate,* designed to assist reporting entities to identify and report suspicious transactions.[256] This brief presents 32 indicators and 12 themes that real estate reporting entities should consider in deciding whether to report a suspicious transaction.[257] The brief was updated in 2019 and then again in 2021.[258]

FINTRAC hosts and participates in conferences with industry and provincial regulators. Ms. Hyde described this participation as a good first step but expressed the view that more direct education was needed, and particularly more active collaboration between the industry, the provincial regulator, and FINTRAC.[259]

252 Exhibit 617, BCFSA, "Anti–Money Laundering in Real Estate" online course materials.

253 Exhibits 623A–623F, Mastering Compliance AML Training for Brokers.

254 FINTRAC, "Operational Alert: Professional Money Laundering Through Trade and Money Services Businesses" (July 18, 2018), online: https://www.fintrac-canafe.gc.ca/intel/operation/oai-ml-eng; FINTRAC, "Operational Alert: Laundering the Proceeds of Crime Through a Casino-Related Underground Banking Scheme" (December 2019), online: https://www.fintrac-canafe.gc.ca/intel/operation/casino-eng; FINTRAC, "Operational Alert: Laundering of the Proceeds of Fentanyl Trafficking" (January 31, 2018), online: https://www.fintrac-canafe.gc.ca/intel/operation/oai-fentanyl-eng.

255 Evidence of S. Ellis, Transcript, February 26, 2021, p 100.

256 Exhibit 601, OR: Real Estate & Industry Response, Appendix 6: FINTRAC, *Operational Brief: Indicators of Money Laundering in Financial Transactions Related to Real Estate*.

257 Ibid, pp 4–6.

258 Exhibit 601, OR: Real Estate & Industry Response, Appendix 8, FINTRAC, "Money Laundering and Terrorist Financing Indicators – Real Estate."

259 Evidence of D. Hyde, Transcript, February 17, 2021, pp 116–17.

These efforts appear to be paying off. Real estate boards interviewed by the Commission commented that they had noticed an improvement in FINTRAC's availability, guidance, and presence at conferences in 2019. Some boards mentioned specific presentations they found very useful. The boards that had attended these events stated that, after the event, members expressed a much better understanding of the purpose behind the FINTRAC reporting and real estate agents' role in monitoring transactions.[260]

BCREA Education

In September 2018, BCREA announced that it had launched an action plan to help licensees and managing brokers better understand and meet their FINTRAC reporting duties.[261] BCREA followed this announcement with several publications intended to assist real estate agents with their anti–money laundering obligations.[262]

In October 2020, BCREA launched a nine-week training program, "Mastering Compliance," designed to assist managing brokers and compliance officers to improve their compliance programs and meet their anti–money laundering requirements.[263] Specifically, the program aims to educate participants on *PCMLTFA* requirements and on how to assess inherent risks, consider risk tolerance, and understand how to mitigate risks.[264]

Ms. Hyde stated that, as of February 2021, approximately 160 of 1,300 managing brokers in British Columbia had taken the BCREA course.[265]

BCFSA Anti–Money Laundering Course

As of April 1, 2020, all licensees in the province are required to complete BCFSA's "Anti–Money Laundering in Real Estate" course in order to renew their licence.[266] Since licences are issued for two-year terms, all licensees ought to have taken the course by April 2022.

The course is a response to the Maloney Report and Dr. Peter German's reports, as well as information received from FINTRAC about the real estate industry's compliance

260 Exhibit 601, OR: Real Estate & Industry Response, pp 42–43.

261 Exhibit 601, OR: Real Estate & Industry Response, Appendix 13, April van Ert, *BCREA Launches FINTRAC Action Plan* (September 1, 2018).

262 Exhibit 601, OR: Real Estate & Industry Response, Appendix 14, Matt Mayers, *Real Estate Transparency to Build Public Confidence* (November 1, 2018); Appendix 15, April van Ert, *BCREA Supports BC Government's Money Laundering Investigations (* November 27, 2018); Appendix 16, BCREA, *The Role of REALTORS® in Helping the Government Stop Money Laundering* (December 2018); Appendix 17, Marianne Brimmell, *Getting to the Bottom of FINTRAC Compliance* (January 16, 2019); Appendix 28, April van Ert, *Signs You Should File a Suspicious Transaction Report* (September 3, 2020).

263 Exhibit 601, OR: Real Estate & Industry Response, Appendix 26, Marianne Brimmell, *Get Ready for Mastering Compliance: Anti–Money Laundering Training for Brokers* (August 13, 2020); see also Appendix 27, BCREA, *Mastering Compliance: Anti–Money Laundering Training for Brokers Program*.

264 Evidence of D. Hyde, Transcript, February 17, 2021, pp 87–88.

265 Ibid, p 84.

266 Exhibit 601, OR: Real Estate & Industry Response, Appendix 12, Real Estate Council of BC, *Anti–Money Laundering in Real Estate* (April 1, 2020).

problems. Erin Seeley, past chief executive officer of RECBC and now senior vice-president of policy and stakeholder engagement of BCFSA, testified that the Real Estate Council intended, by "putting resources at the earlier stage of education and professional guidance" to "broaden [the] culture of compliance and understanding and address some of those deficiencies."[267]

The six-module course reviews money laundering typologies and the international anti–money laundering regime. It explains the role of real estate in money laundering in BC, how real estate licensees may unwittingly participate in transactions with a risk for money laundering, and how they can assist in deterring and detecting money laundering. It provides concrete examples of transactions that carry a high risk or may be suspicious.[268] The course also covers obligations of real estate agents under the *PCMLTFA* in a detailed but simple way and explains why these obligations fall upon real estate agents. An entire module is devoted to suspicious transaction reporting and debunks the "bags of cash" myth.[269]

Ms. Seeley noted that much of the previously existing training targeted managing brokers, and this course was intended, at least in part, to fill a gap by providing licensees with practical tools to identify red flags.

Unfortunately, licensees who have taken the course reported persisting concerns with the reporting regime, including:

- a fear of retaliation from the purchaser/seller for reporting a transaction to FINTRAC;
- lacking the kind of information about a client's source of funds or wealth that would allow an agent to identify who and what are suspicious;
- general confusion over what money laundering is and what it looks like;
- disagreement or confusion over what counts as suspicious;
- what to do when red flags arise and when to report;
- frustration with asking realtors to take on more responsibility to combat money laundering – several suggested this responsibility be shifted to lawyers;
- the view that the content was irrelevant to them; and
- a desire for tools such as template reporting forms, compliance programs, and suspicious indicators.[270]

267 Evidence of E. Seeley, Transcript, February 16, 2021, p 145.

268 Exhibit 617, RECBC, "Anti–Money Laundering in Real Estate" online course materials, Module 3, slides 45–72.

269 Exhibit 617, RECBC, "Anti–Money Laundering in Real Estate" online course materials, Module 5, slides 118–64.

270 Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020).

I am encouraged by the high quality of BCFSA's course. Similarly, the BCREA course for managing brokers and compliance officers is a positive step toward educating the industry.[271] It is my hope that, as real estate agents become familiar with these resources, compliance with *PCMLTFA* requirements will improve and reporting will increase. It will be critical for BCFSA – which can compel licensees to take its courses – to continue to provide quality, up-to-date anti–money laundering education and guidance to industry. The AML Commissioner may prove a useful resource to consult with, given that office's expertise.

Improving Anti–Money Laundering Compliance and Suspicious Indicator Reporting

Real estate licensees need more assistance in understanding when to file STRs. Without clear and direct instruction, real estate licensees on the ground will continue to under-report. Real estate licensees have a front-line view into the initial stages of a real estate transaction, including the decision-making and personal attributes of the client, the client's expressed priorities and intentions for the property, and in some cases, the client's real estate purchasing behaviour over time. Licensees must be empowered to play a more engaged role in BC's anti–money laundering framework in order to fill the information gap left by their historic under-reporting.

Use of Technology to Assist Licensees and Brokerages

Real estate licensees work in a very different environment than employees of banks. They are largely independent contractors, working outside the traditional office environment, often without direct managerial and administrative supports. This is particularly so at the smaller end of the market. To succeed in meeting their anti–money laundering obligations, real estate licensees need to be supported in the environment in which they work.

Although I have concluded that the primary cure for the industry's difficulties with respect to compliance is education, assistance could be provided by developing aids that recognize the environment in which realtors operate.

Industry, ideally with assistance from FINTRAC, or even led by FINTRAC, would do well to focus on developing technological aids for realtors, such as a mobile application for meeting anti–money laundering obligations and particularly the submission of STRs. Such an application could remind realtors of what the suspicious indicators in a transaction are, walk them through identifying any indicators in the particular transaction before them, and then assist the user in determining whether a report should be filed. The information submitted by the licensee can be made available to the compliance offer, allowing another level of oversight and an opportunity to identify transactions that should be the subject of an STR.

271 Exhibits 623A–F: Mastering Compliance AML Training for Brokers.

Such an application could also help realtors overcome confusion about the required threshold for making a report. As noted above, some licensees have expressed reluctance to file STRs in the absence of concrete and obvious evidence of money laundering. That, of course, is not the threshold. The threshold is "reasonable suspicion."[272]

While artificial intelligence cannot (and should not) replace the expertise and judgment of licensees who understand their market and client base, it is clear that for many, more direct guidance is needed.

FATF recently highlighted the success of electronic tools developed for the real estate sector in Belgium and Slovakia. In Belgium, a collaboration between a private technology developer, the financial intelligence unit, and the regulator of real estate agents resulted in an "AML tool" designed to guide and advise real estate agents in fulfilling their anti–money laundering obligations digitally. FATF observed that the tool has been efficient in assessing and mitigating money laundering risks. Critically for the success of the AML tool, it is approved by the regulator, and if the agent or real estate office uses it as intended, the user is determined to be compliant with their anti–money laundering obligations. A "workflow" tool in Slovakia simplifies and digitalizes the workstream of real estate agents, and allows for electronic identification of clients, risk assessment and automatic identification of the level of risk, and an automated indication of next steps, for example, whether additional information about source of funds is required. [273]

In Chapter 18, I recommend that the Ministry of Finance conduct a "red flag" analysis of suspicious indicators in British Columbia real estate, with one purpose being to determine what suspicious indicators are reliably indicative of money laundering or other criminal activity. The results of such research could be useful both in educating industry and in informing the design of a mobile application that appropriately flags suspicious transactions.

In practice, the responsibility for ensuring compliance with the *PCMLTFA*, including with the obligation to file STRs, generally falls to the compliance officer. The Maloney Report included a recommendation that the onus for compliance with the Act should be placed directly on individual real estate licensees.[274] As I review below, the burden on compliance officers is significant, and I note the logic of the recommendation. It is my hope that making it easier for licensees to fulfill their suspicious transaction reporting obligations with tools like a well-designed mobile application will help to shift anti–money laundering responsibilities back to individual licensees.

272 Exhibit 626, FINTRAC'S AML/TF Real Estate Sector Presentation (September 19, 2018), p 19.

273 Financial Action Task Force, "Public Consultation on the FATF Risk-Based Guidance to the Real Estate Sector" (March 2022) pp 20–21, online: https://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-consultation-guidance-real-estate.html.

274 Exhibit 330, Maloney Report, p 78.

The Burden on Compliance Officers

The managing broker role is one created by the *Real Estate Services Act*, separate from the anti–money laundering regime.[275] The compliance officer role is one mandated by the *PCMLTFA* and associated Regulations.[276] In practical terms, however, because the managing broker carries out the regulatory requirements of oversight and supervision of the brokerages' day-to-day operations, the managing broker also regularly also takes on the compliance officer role.[277]

Managing brokers are responsible for managing regulatory responsibilities of agents, sometimes upwards of 50 agents, for both federal and provincial regulators, involving multiple pieces of legislation and their regulations, and the regulator's bylaws.[278]

Compliance officer obligations can be a significant part of the managing broker's responsibilities. These responsibilities include establishing and updating anti–money laundering policies and procedures, developing a brokerage risk assessment, training licensees on their reporting requirements, reviewing the compliance program periodically, and supervising licensees for compliance.[279] Managing brokers and compliance officers, on top of their supervisory and compliance responsibilities, may also be active as licensees engaged in selling real estate.[280]

Some managing brokers manage very large offices – there is no limit on the number of licensees that can be under their supervision.[281] Brokerage sizes in BC vary wildly: the median size is just four licensees, but there are brokerages with hundreds of licensees.[282] It has been the experience of the regulator that larger brokerages generally have more sophisticated systems that provide for oversight and that supervision, and anti–money laundering compliance issues occur more frequently with smaller brokerages, where there is less support through technology and supervision.[283]

The task that falls to managing brokers (and hence compliance officers) has also been rendered more complex by the evolution of the industry. Individual salespeople are far more likely to be independent contractors than employees in the brokerage office.

There may also be an economic disincentive to rigorous supervision and investigation by managing brokers.[284] Licensees (and their brokerages) get paid when sales are made.[285] When sales are slowed or stopped, conversely, remuneration

275 *RESA*, s 6.

276 *PCMLTF Regulations*, s 156(1).

277 Evidence of E. Seeley, Transcript, February 16, 2021, pp 156–58; Evidence of S. Ellis, Transcript February 26, p 16.

278 Evidence of S. Ellis, February 26, 2021, pp 15–17.

279 Ibid, pp 16–17, 71–74.

280 Ibid, p 25.

281 Evidence of E Seeley, Transcript, February 16, 2021, p 158.

282 Ibid, p 162.

283 Ibid, pp 160–61; Evidence of D. Avren, Transcript, February 16, 2021, p 163.

284 Evidence of D. Avren, Transcript, February 16, 2021, pp 169–72.

285 Evidence of E. Seeley, Transcript, February 16, 2021, pp 176–78.

is negatively affected. Supervisory activity that impedes sales, and the earning of commissions, is contrary to the business (if not the regulatory) model of brokerages. That a licensee earning commission can potentially make much more than a managing broker who is compensated by way of salary (which is derived from commission splits or fees that the licensees pay to the brokerage) also complicates the supervisory dynamic.[286] Deloitte, in the report commissioned by BCREA, recommended that, where possible, the roles of managing broker and FINTRAC compliance officer should be clearly defined and separated.[287] BCREA argued that this recommendation is "impractical" as it would add cost and complexity for brokerages.[288] REBA agreed that, in a province where the average brokerage size is only four licensees, hiring a separate compliance officer is neither practical nor feasible for most brokerages.[289] I tend to agree that, especially for small brokerages, this may be an impractical solution.

The role of managing brokers was the subject of a review by the Office of the Superintendent of Real Estate of the role of managing brokers, published in December 2020.[290] That review produced five recommendations for strengthening the role of the managing broker, including these relevant to the present discussion:

- enhancing education and qualification requirements for managing brokers, including increasing the minimum experience requirement from two years to three;[291]
- developing enhanced resources for managing brokers to promote compliance, including providing better regulatory guidance aimed at managing brokers and supplying templates or frameworks for brokerage policy manuals;[292] and
- more rigorous brokerage licensing and ownership requirements, including by implementing a compliance plan requirement.[293]

I agree with these recommendations and discuss them further below.

Enhance Qualifications for Managing Brokers

The managing broker has a great deal of responsibility for anti–money laundering compliance (and other regulatory oversight responsibilities) and should have experience in the industry. Two years, in my view, is insufficient to qualify a licensee to become a broker. I encourage the Province, in consultation with the industry,

286 Ibid, pp 183–85; Evidence of S. Ellis, Transcript, February 26, 2021, p 32.

287 Exhibit 601, OR: Real Estate & Industry Response, Appendix 19, Deloitte Study, p 40.

288 Ibid, Appendix 20, Darlene Hyde, Letter to Expert Panel on Money Laundering, re British Columbia Real Estate Association Submission to Expert Panel," BCREA (March 4, 2019).

289 Evidence of S. Ellis, Transcript, February 26, 2021, p 116.

290 OSRE, "Review of the Role of Managing Brokers in BC's Real Estate Framework" (December 2020), online: https://www.bcfsa.ca/media/1817/download.

291 Ibid, p 9.

292 Ibid, p 10.

293 Ibid, p 11.

to consider greater prerequisite qualifications for managing brokers, including education and experiential requirements.

Greater Support Needed for Compliance Officers

In this environment, compliance officers require resources for both the risk assessment and the policies and procedures requirements that are straightforward and unambiguous, and can be integrated into the brokerage's systems without undue complexity. One user, in the feedback survey to the RECBC (now BCFSA) Anti–Money Laundering in Real Estate course, asked "[W]here can we get an example of a small / tiny brokerage Compliance Program template, to customize and implement?"[294]

An electronic anti–money laundering tool of the type described above, and used successfully in Belgium and Slovakia, would go a long way to streamlining and simplifying the anti–money laundering obligations of managing brokers.

Absent such a tool – or while one is under development – the creation of templates to assist managing brokers conduct risk assessments and anti–money laundering policies and procedures would be helpful.

Templates that are suited to the BC real estate environment and that are specific to the market in which the brokerage operates, both in terms of geographic location (whether a large urban centre, a vacation hotspot, or a rural area) and market segment (e.g., commercial real estate, expensive residential single family homes, rental / investment property) will go a long way toward this goal. I encourage industry and regulators to work together to create such templates.

The usefulness of any template or technological tool will have maximum impact, and uptake, if FINTRAC is involved and approves of the final product, providing some assurance to the industry that use of such tools is not inconsistent with their compliance obligations.

Of course, the use of templates must not replace the use of independent judgment and professional experience. If templates or technology tools are introduced, they must be presented with commentary that clearly communicates that templates and technology should not be relied on to the exclusion of a managing broker's own judgment and knowledge of their particular market and the anti–money laundering risks it may present.

Make the Existence of a PCMLTFA *Compliance Program a Prerequisite to Licensing a Brokerage*

A brokerage license is issued by the Superintendent of Real Estate (in effect, BCFSA).[295] Brokerages should not be allowed to begin conducting business without demonstrating to the regulator that they have an anti–money laundering compliance plan in place.

294 Exhibit 660, UBC / RECBC, AML in Real Estate Course Evaluation Report (November 17, 2020), p 21.
295 *RESA*, ss 3(1), 5(1)(a), 9(1).

While BCFSA cannot be responsible for ensuring that a given anti–money laundering compliance plan is acceptable to FINTRAC, it can ensure, as a condition of licensing, that a brokerage has a compliance plan in place. Such a plan should contain, at a minimum, the following: anti–money laundering policies and procedures; a risk assessment of the brokerage's intended business and client / market segment; client verification and identification forms; and a plan for both anti–money laundering training and a two-year review of the brokerage's anti–money laundering policies.

Recommendation 12: I recommend that the British Columbia Financial Services Authority use its rule-making authority to mandate that brokerages demonstrate the existence of an anti–money laundering compliance plan as a condition of licensing.

Indicators of Suspicion

In Appendix 16A, located at the end of this chapter, I outline indicators of suspicion that real estate agents and professionals may wish to consider when assessing money laundering risks at different stages of a real estate transaction.

Part 3: Mortgage Brokers

History

I earlier addressed the prevalence of money laundering in real estate and commented on particular vulnerabilities arising with mortgage lending typologies. I now focus on this risk area because I view it as seriously in need of reform. In the remainder of this chapter, I outline the regulatory regime for mortgage brokers and set out specific reforms that will go a long way to addressing gaps that currently exist. In doing so, I offer two case studies based on evidence before me, which offer important insights about money laundering involving mortgage brokers.

Mortgage lending and origination became a regulated industry in BC in 1972, with the passage of the provincial *Mortgage Brokers Act*, RSBC 1996, c 313 (*MBA*). The original focus of the Act was consumer protection, in particular protection against unconscionable interest rates and fees.

In 2019, the Expert Panel on Money Laundering in BC Real Estate (Professors Maloney, Somerville, and Unger) described the *MBA* as antiquated. The panel identified areas where the Act had not kept pace with national and international consumer protection standards, changes in the financial services market, and issues such as money laundering in the real estate market.[296] The Expert Panel recommended that

296 Exhibit 330, Maloney Report, pp 79–80; Ministry of Finance, Mortgage Brokers Act Review: Public Consultation Paper (January 2020) [MBA Review Consultation], p 1, online: https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/real-estate-in-bc/mortgage-brokers-act-consultation-paper.pdf.

the *MBA* be replaced with new legislation. In response to this recommendation, in January 2020, the provincial Ministry of Finance began a public consultation process to elicit feedback on the modernization of the *MBA*.[297] While this chapter goes on to describe the current obligations established by the legislation and the structure and function of the regulator, I pause to say that the entire regime is presently in the midst of review. Representatives of BCFSA, in particular, readily acknowledged that the Act as it currently stands is woefully out of date. Because the Act is currently under review, it is an opportune time for reforms. Below I will suggest changes that I consider critical to advancing anti–money laundering objectives.

Registrar of Mortgage Brokers

The Registrar of Mortgage Brokers administers the *Mortgage Brokers Act*. The Registrar is located within BCFSA. The Registrar's office regulates over 5,000 mortgage brokers and brokerages in British Columbia.[298] The Registrar has a number of functions, including registration, oversight of registrants (compliance and examination), and enforcement. The Registrar is responsible for keeping a register of every mortgage and submortgage broker registered under the *MBA*.[299]

The Registrar is appointed by the board of directors of BCFSA.[300] The duties of the Registrar are mainly carried out by the Deputy Registrar of Mortgage Brokers. The day-to-day functions of the Registrar are carried out by the Director of Mortgage Brokers. The Registrar employs 14 staff members.[301] This includes a team responsible for the registration of mortgage and submortgage brokers, as well as a five-person investigative team and a four-person compliance team responsible for examinations.[302]

Registration Requirements

The *MBA* defines a mortgage broker as a person who does any of the following:

a) carries on a business of lending money secured in whole or in part by mortgages, whether the money is the mortgage broker's own or that of another person;

b) holds himself or herself out as, or by an advertisement, notice or sign indicates that he or she is, a mortgage broker;

c) carries on a business of buying and selling mortgages or agreements for sale;

297 MBA Review Consultation, p 1.

298 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, p 39.

299 MBA, s 3(1); see also Evidence of C. Carter, Transcript, February 16, 2021, pp 30–31.

300 MBA, s 1.1.

301 Exhibit 606, BCFSA Organizational Chart (updated November 30, 2019), p 11; Evidence of C. Carter, Transcript, February 16, 2021, pp 31–32.

302 Exhibit 606, BCFSA Organizational Chart, p 11.

d) in any one year, receives an amount of $1,000 or more in fees or other consideration, excluding legal fees for arranging mortgages for other persons;

e) during any one year, lends money on the security of 10 or more mortgages;

f) carries on a business of collecting money secured by mortgages[.][303]

Surprisingly, the *MBA* does *not* require anyone engaging in these activities to register as a mortgage broker. As a result, if a person fits into one of the six descriptions above, they are not *always* required to register as mortgage broker. What the Act prohibits – unless the person is registered under the Act – is for a person to "carry on business as a mortgage broker or submortgage broker."[304] As such, there is some misalignment. The activities defined as mortgage brokering in section 1 of the *MBA* do not match up exactly with the activities that are prohibited without registration. A person is allowed to engage in the activities listed in section 1, unregistered, up to the point that it constitutes "carrying on business."[305]

Furthermore, the definition of "mortgage broker" is *not* restricted to those who connect borrowers with lenders (known as "origination"). It also includes lenders who secure their loans by way of mortgages.

Despite the broad range of activity encompassed by the definition of "mortgage broker" in the *MBA*, only two categories of registration exist: one for *individuals* (referred to by the Act as **submortgage brokers**) and one for *brokerages* (referred to in the Act as **mortgage brokers**). There are no separate registration categories for lenders and originators, nor are there separate conduct requirements or qualification criteria.[306]

The registration process involves setting qualification criteria, against which staff conduct a suitability review for each applicant. For example, brokers must meet certain education requirements to be eligible for registration.[307] A certified criminal record check is required as part of this suitability review.[308] The office takes a closer look at lender applicants than originator applicants, including the owners and directors of corporate entities.[309]

303 *MBA*, s 1.

304 *MBA*, s 21(1)(a).

305 Ibid; see discussion at paras 68–85 of *AZTA Management Corporation v Croft Agencies Ltd*, 2014 BCSC 1462.

306 Evidence of C. Carter, Transcript, February 16, 2021, pp 33, 35–36.

307 BC Financial Services Authority, "Registrations – Mortgage Brokers Education Requirements" (accessed January 20, 2021), online: https://www.bcfsa.ca/pdf/mortgagebrokers_Registered/Edu.pdf.

308 BC Financial Institutions Commission, Information Bulletin MB 11-002, "Individual Registration Applications Suitability Reviews and Criminal Record Checks" (May 2011), online: https://www.bcfsa.ca/media/1535/download.

309 Evidence of C. Carter, Transcript, February 16, 2021, pp 37–38.

The Registrar conducts a suitability review of each applicant for registration by verifying the applicant's credentials, reviewing open-source material, and assessing the individual's past criminal and regulatory history with other regulators. A number of "red flags" may arise on a suitability review, which will lead to a more in-depth review of an applicant.[310]

Obligations of Mortgage Brokers

The *MBA* sets out a number of obligations for mortgage brokers and submortgage brokers, including:

- prohibiting a person from withholding, destroying, concealing, or refusing any information or records required by the Registrar for inquiry;[311]
- prohibiting a mortgage broker or submortgage broker from making any false, misleading, or deceptive statements;[312]
- requiring the mortgage broker to disclose any conflicts of interest the mortgage broker or any of their associates or related parties may have to investors and lenders,[313] and to borrowers;[314]
- not being party to a mortgage transaction that is harsh and unconscionable or otherwise inequitable;[315] and
- not to engage in conduct "prejudicial to the public interest."[316]

Financial professionals who give advice or sell financial products, as a general matter, have a number of obligations. Some are commonplace, such as the duty of loyalty to the client or the obligation to conduct "know your client" due diligence. But the *MBA* does not impose such obligations on mortgage brokers.[317] Not does it require mortgage brokers to inquire into the source of funds being used.

Designated Individuals

Each mortgage broker (i.e., a brokerage) that is a corporation, partnership, or sole proprietorship must have a registered submortgage broker who acts as its "designated individual." The designated individual role involves oversight over those engaged

310 Ibid.
311 *MBA*, s 6(7.5).
312 Ibid, s 14(1).
313 Ibid, s 17.4.
314 Ibid, s 17.3.
315 Ibid, s 8(1)(g).
316 Ibid, s 8(1)(i).
317 Evidence of C. Carter, Transcript February 16, 2021 pp 43, 76.

in mortgage lending at that firm or office. The designated individual must ensure that employees who are involved in arranging mortgages are properly registered, aware of regulatory obligations, and appropriately supervised. They must ensure that the brokerage's financial records are accurate and up to date, and that year-end financial filings are provided on time and in the form required. They must make sure that registration information is accurate and timely and that applications submitted through the mortgage broker e-filing system are complete and accurate.[318]

To qualify as a designated individual, a submortgage broker must have been registered for a minimum of two years and have no prior record of regulatory misconduct under the *MBA* or otherwise.[319]

A designated individual – which is analogous to a managing broker in the real estate licensee context – is not a legislated role. It does not involve a separate registration. The obligations of a designated individual arise only from policy as developed by BCFSA.

Enforcement and Penalties

The office of the Registrar of Mortgage Brokers includes a team responsible for handling complaints, examinations, and investigations. As of August 1, 2021, RECBC and OSRE have been incorporated within BCFSA. I was informed by Blair Morrison, chief executive officer of BCFSA, that the investigative capacities of each organization – BCFSA, RECBC, and OSRE – are being consolidated with the intention of "prioritizing the development of a common market conduct framework to enable a proactive response to key regulatory risks."[320]

The Registrar of Mortgage Brokers investigates contraventions of the *MBA* and its regulations (including BCFSA policies), for both registered mortgage brokers and unregistered mortgage brokering activity. The Registrar receives complaints from the public and from other industry professionals. When a complaint arrives, it triggers a review process, which includes assessment of the role of individuals involved, including any designated individual responsible for overseeing those named in the complaint.[321]

The Registrar has the power to investigate mortgage and submortgage brokers who may be in violation of their obligations under the Act or against whom a sworn complaint has been made.[322]

There are two branches of disciplinary proceedings that the Registrar can pursue when a mortgage or submortgage broker is suspected to have violated their obligations under the *MBA*. The first is to apply administrative penalties against the broker. The

318 BC Financial Services Authority, "Mortgage Broker Resources - Registrations" (accessed 20 January 2021), p 2, online: https://www.bcfsa.ca/pdf/mortgagebrokers_Registered/Registrations.pdf.

319 Ibid.

320 Exhibit 1051, Affidavit of Blair Morrison, sworn September 13, 2021 [Affidavit of B. Morrison], paras 7–8.

321 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, p 41.

322 *MBA*, s 5.

second is to pursue a provincial offence. This "provincial offence" option requires a referral to the BC Prosecution Service. The issuance of administrative penalties is much more common than a referral for a provincial offence.[323]

After giving the registered party an opportunity to be heard, if the Registrar is of the opinion that the mortgage or submortgage broker has violated their obligations under the Act, he or she may (a) suspend the person's registration, (b) cancel the person's registration, (c) order the person to cease a specified activity, or (d) order the person to carry out specified actions that the Registrar considers necessary to remedy the situation.[324]

If a mortgage broker contravenes any of the obligations listed in the *MBA*, they have committed an offence under the Act. They are subject to prosecution and, upon conviction, penalties. Depending on which section of the Act the mortgage broker has contravened, the penalties for an offence include fines that range from $2,000[325] to $200,000, and/or imprisonment for not more than two years, depending on the severity of the offence.[326] The more serious offences, including carrying on business while unlicensed, carry a maximum fine of $100,000 for a first offence, plus the possibility of jail time.[327] Less serious offences are punishable with a fine, but no possibility of jail time.[328]

It is also an offence under the *MBA* for a person who is not registered as a mortgage or submortgage broker to carry on a business as a mortgage broker.[329] The Registrar has the power to investigate such persons. If, in his or her opinion, that person has been carrying on such business without being registered under the Act, the Registrar has the power to order the person to (a) cease a specified activity, (b) carry out specified actions that the Registrar considers necessary to remedy the situation, or (c) pay an administrative penalty of not more than $50,000. If convicted of an offence for the same misconduct, a fine not exceeding $100,000 (for a first offence) and a term of imprisonment of up to two years is available.[330]

In addition to assessments initiated by complaints, the compliance team also conducts proactive examinations. As of February 2020, approximately 50 percent of mortgage broker case files were proactive examinations.

Where appropriate, examinations and complaints may lead to an investigation. In the 2018–19 fiscal year, the Registrar opened 181 complaints, conducted 83 suitability reviews and 37 examinations, and concluded 61 investigations.[331]

323 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, pp 42–43.

324 *MBA*, s 8(1).

325 Ibid, s 22(3)(b).

326 Ibid, s 22(2)(b)(ii).

327 Ibid, s 22(2)(b).

328 Ibid, s 22(3).

329 Ibid, s 21(1)(a).

330 Ibid, s 8(1.4).

331 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, p 42.

The largest administrative monetary penalty available to the Registrar is $50,000, an amount that has been issued on four occasions: once in 2004,[332] twice in 2018,[333] and once in 2021.[334]

As of the fall of 2020, two investigations into misconduct by the Registrar had resulted in charges of a provincial offence. Those investigations occurred in 2004 and 2010 and involved allegations of repeated unlicensed activity.[335]

Mortgage Brokers and FINTRAC

Mortgage brokers are not designated as reporting entities under the *PCMLTF Regulations*. Mortgage brokers are therefore not required to submit suspicious transaction reports (or any other reports) to FINTRAC.

Case Study: Jay Chaudhary

Jay Chaudhary is a former registered mortgage broker who was suspended by the Registrar of Mortgage Brokers in 2008 for conducting business in a manner prejudicial to the public interest. Specifically, Mr. Chaudhary was alleged to have knowingly submitted false information to lenders on behalf of his clients in order to secure financing for them.[336] In 2019, he was the subject of a cease-and-desist order from the Registrar, in which it was alleged that he carried on these activities after 2008 as an unregistered mortgage broker. Mr. Chaudhary gave evidence before the Commission. He was remarkably forthright. Most of what is set out below was relayed by Mr. Chaudhary himself.

After his 2008 suspension, Mr. Chaudhary did not seek to have his registration reinstated but instead continued with his mortgage brokering activities unregistered. From 2009 through mid-2018, when his activities were disrupted by an investigation, and later a cease-and-desist order by the Registrar, he is alleged to have arranged almost half a billion dollars in residential mortgages and earned approximately $6 million in fees and

332 *In the Matter of the Danh Van Nguyen and Express Mortgages Ltd.*, October 15, 2004, online: https://www.bcfsa.ca/media/204/download.

333 *In the Matter of Dennis Percival Rego, Shank Capital Systems Inc. and Arvind Shankar*, January 15, 2018, online: https://www.bcfsa.ca/media/252/download: $50,000 penalties ordered separately as against two individuals.

334 *In the Matter of Dean Frank James Walford and In the Matter of Loan Depot Canada, Decision on Penalty and Costs*, 2021 BCRMB 1, December 22, 2021, online: https://www.bcfsa.ca/media/2788/download.

335 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, p 43.

336 Exhibit 653, *In the Matter of the Mortgage Brokers Act and Jay Kanth Chaudhary, Suspension Order*, October 16, 2008, pp 2–9.

commissions.[337] That is a startling amount, both the volume of financing but also the remarkable profits made from this unregistered activity.

While there was no evidence before the Commission that Mr. Chaudhary conducted his activities in furtherance of a money laundering scheme, his story illustrates a very serious money laundering vulnerability in the real estate sector.

When he was a registered mortgage broker, Mr. Chaudhary would alter and submit applications for residential mortgages for his clients. The alterations he made were designed to make the applications acceptable to lenders. Mr. Chaudhary said he did not charge a fee to his clients for making such alterations (at that time); instead, he simply took his share of the commission payable by the lender. The fraudulent alterations would mostly be made to documents demonstrating income and assets, such as job letters, bank statements, and notices of assessment.[338] He used widely available computer software tools to help him make the dishonest changes.[339] These manual falsifications could remain undetected because lenders who receive the applications have no direct access to the Canada Revenue Agency (CRA) for confirmation: they depend on the honesty of mortgage brokers and borrowers. There is no obvious way to detect documents that have been tampered with.[340]

While Mr. Chaudhary said he was not concerned that any of his clients were involved in illegal activities, there was some evidence that applicants who sought Mr. Chaudhary's services were involved in mortgage fraud schemes that had attracted the attention of law enforcement.[341]

In 2008, a complaint from a bank employee spurred an investigation by the Registrar. As a result, Mr. Chaudhary was suspended in October 2008. Mr. Chaudhary agreed in his evidence before the Commission that he falsified applications to lenders.[342]

When his suspension ended, Mr. Chaudhary did not apply to reinstate his registration. Instead, at some point in 2009, he started processing mortgage loan applications again, this time with the necessary assistance

337 Exhibit 655, *In the Matter of the Mortgage Brokers Act and Jay Kanth Chaudhary, Cease and Desist Order*, May 23, 2019 [Cease and Desist Order], para 67.

338 Evidence of J. Chaudhary, Transcript, February 24, 2021, pp 29–30.

339 Ibid, pp 30–31.

340 Evidence of M. McTavish, Transcript, February 22, 2021, p 105.

341 Evidence of J. Chaudhary, Transcript, February 24, 2021, pp 43–44; Exhibit 654, Investigation Report on Client Files of Jay Chaudhary, pp 10–11.

342 Evidence of J. Chaudhary, Transcript, February 24, 2021, pp 17–18.

of registered mortgage brokers.[343] He used the same methods to alter applications according to the client's needs.[344]

The changes that he made were sometimes significant. In respect of one mortgage application reviewed, Mr. Chaudhary agreed it was likely that he falsified the applicant's tax documents to show an income of $279,726 instead of the $34,428 reported to CRA, and falsified bank statements to show $810,000 in savings in the same applicant's account, rather than the $250,000 actually available.[345] He agreed he had made changes to other documents that were just as significant.[346]

Compensation to Mr. Chaudhary was provided by a split of the registered mortgage broker's fees paid by the lenders, as well as, by this point, by fees paid by clients directly to Mr. Chaudhary. He charged 1 percent of the mortgage amount directly to the client.[347] The mortgage broker who processed the application for Mr. Chaudhary would receive their commission from the lender and then, typically, pay Mr. Chaudhary his 25–30 percent of that commission, often in cash.[348] Ultimately, Mr. Chaudhary used the services of a number of mortgage brokers to process his falsified applications.

Mr. Chaudhary said that, by 2018, he was using the services of four registered mortgage brokers to process transactions. When asked if the mortgage brokers were aware that he was falsifying supporting documents for loan applications, Mr. Chaudhary responded, "90 percent, yes."[349] Some of the brokers, he said, would have seen the changes he made to supporting documentation.[350] To Mr. Chaudhary's recollection, none of these brokers ever expressed concern to Mr. Chaudhary about what he was doing. None, to his knowledge, reported him to the Registrar.[351] When asked why he thought that was the case, he responded:

> [T]hey were making commissions. And, you know, with hardly ever doing anything because most of the work was done by me[;] they would just be inputting information and getting

343 Ibid, pp 51–52 and 61–62; Evidence of M. McTavish, Transcript, February 22, 2021, pp 118–19.
344 Evidence of J. Chaudhary, Transcript, February 24, 2021, pp 64–65.
345 Ibid, pp 88, 91–92.
346 Ibid, p 89.
347 Ibid, p 59.
348 Ibid, p 62.
349 Ibid, pp 64–65.
350 Ibid, pp 65–66.
351 Ibid, p 67.

> approvals. So, the ease of transaction and the amount of money they're making was good.[352]

Other professionals besides mortgage brokers were necessary to this scheme, including a referral network of licensed real estate professionals. Real estate licensees referred their own clients to Mr. Chaudhary, who paid them fees in return.[353] Mr. Chaudhary believes that these licensees knew what he was doing, and at least two were aware of his suspension, because he had informed them of it himself.[354] At the time he gave evidence before the Commission, Mr. Chaudhary believed that one of the two realtors who had been made expressly aware of his status was still licensed in British Columbia. The other is deceased.[355]

Several realtors, according to Mr. Chaudhary, personally used his services to obtain financing for properties they otherwise could not afford.[356] The use of Mr. Chaudhary's unregistered mortgage broker services by real estate licensees was confirmed by representatives of RECBC.[357] The network of professionals referring work to Mr. Chaudhary grew from four or five realtors[358] to 15 or 20.[359] Mr. Chaudhary thought that, of those 15 to 20 realtors who referred him business, about 80 percent were still licensed at the time he gave evidence before the Commission.[360]

Real estate licensees, like registered mortgage brokers, had a significant financial incentive to use Mr. Chaudhary's services: they earned commissions when their client successfully purchased property. Whether they referred clients to Mr. Chaudhary knowing of his practice of falsifying documents, or simply turned a blind eye to what Mr. Chaudhary was doing, this network of financially incentivized professionals gave Mr. Chaudhary access to a client base that kept him in business, very profitably, for over a decade. A cease-and-desist order issued by the Registrar on May 23, 2019, summarizes the staggering number of mortgages he is alleged to have facilitated over this period:

> [F]rom 2009 to mid 2018, Mr. Chaudhary worked on 875 files, generated $5,283,347 in client fees and $642,344 [in] referral fees

352 Ibid.
353 Ibid, pp 26, 59.
354 Ibid, p 52–54.
355 Ibid, p 56.
356 Ibid, pp 64-65.
357 Evidence of M. Scott, Transcript, February 25, 2021, pp 95–97.
358 Evidence of J. Chaudhary, Transcript, February 24, 2021, p 24.
359 Ibid, p 58.
360 Ibid, p 59.

> paid by the registered submortgage brokers who submitted the applications to lenders on his behalf, and arranged $511,558,206 in mortgage loans.[361]

To Mr. Chaudhary's knowledge, none of the real estate licensees in his network reported his activities to their own regulator or to the Registrar.[362] This was so even though he recalled some real estate licensees asking him directly if he was a registered mortgage broker – to which he would respond in the negative. Such disclosures never cost him referrals.[363] As was the case before he was suspended, Mr. Chaudhary's clients included licensees who, he believed, were aware of the fraudulent alterations he was making to loan applications.[364]

I pause to point out that discovering whether a mortgage broker is appropriately licensed is not at all difficult: the Registrar maintains of list of registrants on its public-facing website. A simple query on that website would have allowed anyone working with Mr. Chaudhary (whether under his own name or one of the pseudonyms he testified that he used) to easily determine that he was *not* registered.

Mr. Chaudhary's explanation for why he used pseudonyms helps to explain the apparent complicity of real estate licensees. He said a pseudonym was necessary to protect him from real estate licensees who would consider him "competition":

> [T]he realtors that I work with probably [have] an upper hand … because the clients would probably end up going to them because they know the realtors have this individual who can get them the mortgage… whereas the realtors that do not have the services of individuals like us will – might have difficulty getting their clients approved.[365]

Mr. Chaudhary's dishonesty gave his clients and associates an unfair competitive advantage. One of the consequences of Mr. Chaudhary's fraudulent services was keeping honest purchasers out of the market. Such conduct creates an uneven playing field and distorts the market, in the sense that buyers who would *not* qualify for lending, did. In addition, this resulted in a deception and an appreciable risk for lenders, who were misled as to the truth of the financial wherewithal of the buyer.

361 Exhibit 655, Cease and Desist Order, p 12 and para 67.
362 Evidence of J. Chaudhary, Transcript, February 24, 2021, p 24.
363 Ibid, pp 74–75.
364 Ibid, pp 94–95.
365 Ibid, p 91.

The type of unregistered – and fraudulent – mortgage brokering activity admitted to by Mr. Chaudhary is evidently not uncommon. In evidence before me were a number of cease-and-desist orders of the Registrar of Mortgage Brokers, setting out allegations of such activity against various individuals, as well as notices of hearing directed at the registered mortgage brokers who allegedly assisted them.[366] A former investigator for the Registrar stated that unregistered mortgage brokering activity, often coupled with falsified documentation, was a top area of investigation for the Registrar in his time there.[367] Mr. Chaudhary gave evidence that he was aware, through his own clients, of a number of unregistered persons offering mortgage brokering services in the Lower Mainland.[368]

Factors that Allowed Mr. Chaudhary to Operate

Mr. Chaudhary provided his views on why he was able to operate undetected for so long.

While he was a registered mortgage broker, Mr. Chaudhary claimed that the brokerage he worked through failed to apply supervision or oversight to his brokering activities. The review of the application packages he submitted to lenders did not go beyond checking that all required documents were present.[369] It would have been apparent, on a review of the documents themselves, that there were suspicious inconsistencies in the applications. For instance, notices of assessment submitted by Mr. Chaudhary were purported to have been issued by the "Canada Customs and Revenue Agency," not the "Canada Revenue Agency," as it was then known.[370] As far as Mr. Chaudhary was aware, no one at the brokerages he worked through ever reached out independently to a borrower in order to confirm the accuracy of their information as it appeared on documents. Such inquiries could, he said, have caught some of the falsified applications.[371]

As Mr. Chaudhary recognized, the success of his scheme depended on the fact that all the professionals involved profited:

> [T]he clients were happy, the banks [had] no default, they were making their interest … I don't think any one of my clients

366 Exhibit 604, Registrar of Mortgage Brokers Discipline Orders Overview Report [OR: Mortgage Brokers Discipline Orders].

367 Evidence of M. McTavish, Transcript, February 22, 2021, pp 102–4.

368 Evidence of J. Chaudhary, Transcript, February 24, 2021, p 93.

369 Ibid, pp 33–34.

370 Ibid, pp 34–35.

371 Ibid, pp 35–36.

> defaulted. I don't remember. I didn't hear [of] any. So, realtors make their commission. Mortgage brokerages make their commission. I make my commission. All the parties involved, the notaries, whole industry.
>
> Q: So nobody's motivated to stop it?
>
> A: That's right.[372]

So long as registered mortgage brokers are willing to work with unregistered persons, Mr. Chaudhary is of the view that it will be very difficult to detect and stop the kind of activity he was involved in. The only strategy that he contemplated could be successful would be collaboration between CRA and lenders.[373] As noted, lenders do not currently have direct access to CRA information or to confirmation from CRA as to the contents of loan applications. Mr. Chaudhary recommended stronger oversight of submortgage brokers by brokerages, especially of new brokers, and strict consequences – perhaps even loss of license – for real estate licensees who do not report unregistered brokers.[374]

Consequences to Mr. Chaudhary

Mr. Chaudhary was the subject of a cease-and-desist order in May 2019, as described above. In the course of the hearing, his counsel indicated that he was the subject of scrutiny by the CRA, [375]presumably as a result of his unregistered mortgage brokering activities. He does not appear to have faced any other legal consequence for his actions.

Mr. McTavish for BCFSA gave evidence that he brought the Chaudhary file to the leadership of the RCMP's "E" Division, but that the RCMP ultimately declined to take on the matter. To his recollection, the reason given was that the matter did not fall within their mandate.[376]

372 Ibid, pp 103–4.

373 Ibid, p 106.

374 Ibid, pp 107–8.

375 Ibid, p 54.

376 Evidence of M. McTavish, Transcript, February 22, 2021, pp 148–49; Exhibit 651, Case Note: Meeting with RCMP, Re J. Chaudhary (April 3, 2019).

The Money Laundering Vulnerability

Despite Mr. Chaudhary's evidence that he falsified approximately 70 percent of the loan applications he processed between 2009 and 2018, he also stated that he was unaware of any of the borrowers having defaulted on their loans.[377] While this may be happy circumstance for the lenders who unknowingly advanced loans to unqualified borrowers and faced the risk of default, it raises the question of how these unqualified borrowers were able to service the loans.

While there was no direct evidence that Mr. Chaudhary's clients were servicing their loans with the proceeds of crime, mortgage fraud such as that carried out by Mr. Chaudhary allows individuals with illicit incomes to obtain mortgages.[378] It allows a criminal (say a profitable drug dealer) to qualify as if he had a $500,000 annual income, even though his tax return would only show an income of $30,000. In turn, this allows the borrower to translate illicit funds into equity in real property by making payments on the loan with dirty money.

Mr. Chaudhary understood that a borrower defaulting on a loan arranged through falsified documents could lead to uncomfortable scrutiny of the borrower's application and by extension of the mortgage broker involved. He therefore took care to ensure, by other means, that a borrower was able to service the loan.[379] Sometimes this meant taking into account the assistance of the borrower's family members, and often it meant taking into account income that the client had earned but not declared to tax authorities.[380] Sometimes, he said, he simply took into account what the borrower was currently paying in rent – if it was more than the service payments on the loan, he was confident they wouldn't default.[381] Mr. Chaudhary claimed that he never considered that a borrower's funds came from illegal activity.[382]

The Realtors and Mortgage Brokers Who Assisted Mr. Chaudhary

Mr. Chaudhary could not have carried on his unlicensed activity without the active assistance of a network of professionals, both real estate licensees and mortgage brokers.

The complaints about Mr. Chaudhary's unregistered activity were made, according to the cease-and-desist order made against him, between July 2017 and March 2018. An investigation followed, culminating in a search of premises controlled by Mr. Chaudhary in February 2019. The cease-and-desist order was issued on May 23, 2019.[383]

Mr. Chaudhary stated in his evidence that each of the mortgage brokers who assisted him had been suspended. Notices of hearing and, in one case, a consent order issued

377 Evidence of J. Chaudhary, Transcript, February 24, 2021, pp 68–69.
378 Ibid, pp 72–74.
379 Ibid, pp 69–72.
380 Ibid, pp 72–74.
381 Ibid, pp 71–72.
382 Ibid, p 74.
383 Exhibit 655, Cease and Desist Order.

against registered mortgage brokers are in evidence before me. These mortgage brokers are alleged to have engaged, or in some cases have admitted to engaging, in conduct prejudicial to the public interest by "fronting" for Mr. Chaudhary. One broker had her licence revoked and has agreed to never seek reinstatement in British Columbia.[384] None are currently registered as mortgage brokers in British Columbia.

But the case is different with respect to the real estate licensees in Mr. Chaudhary's network. I heard evidence from representatives of RECBC who confirmed they had received referrals from the predecessor to BCFSA, FICOM, with respect to 26 licensees who were connected with Mr. Chaudhary, starting in June 2019.[385] According to a senior investigator for RECBC, 12 licensees were alleged to have arranged their own personal mortgages through Mr. Chaudhary, which raises the question of whether these licensees used Mr. Chaudhary's services knowing that he would falsify their financial information. Seven of those 12 real estate licensees are also alleged to have referred Mr. Chaudhary's services to their own clients.[386]

Based on the review of the evidence conducted by RECBC, it appeared that real estate licensees who referred clients to Mr. Chaudhary had received referral fees from him.[387]

Of the 26 real estate licensees identified by FICOM, at the time evidence was heard in February 2021, 11 were under investigation, five were awaiting referral for investigation, and 10 were "flagged in the system." But no investigations were completed, and no disciplinary proceedings had been commenced.[388] This is despite the fact that, on review of the referral, RECBC determined that the allegations were credible and that it takes the view that knowingly referring clients to an unregistered mortgage broker would be contrary to the rules of conduct governing real estate licensees and a serious matter for discipline.[389] In a subsequently tendered affidavit, a representative of BCFSA (into which RECBC was incorporated on August 1, 2021) advised that it had retained an outside investigator to assist in the investigation of the Chaudhary matters.[390] To date, no disciplinary action has been taken. In fact, no notices of hearing have been issued against any of the individuals referred for alleged

384 Exhibit 604, OR: Mortgage Brokers Discipline Orders, Appendix A, BCFSA, *In the Matter of the Mortgage Brokers Act and in the Matter of Mana Erfani, Consent Order* (August 2020); Appendix G, British Columbia, *In the Matter of the Mortgage Brokers Act and Shane Christopher Ballard, Notice of Hearing* (October 2019); BCFSA, *Notice of Hearing in the Matter of Kasra Erfani Mohseni*, February 1, 2021, online: https://www.bcfsa.ca/media/291/download; BCFSA, *Notice of Hearing In the Matter of Ksenia Ivanova*, January 27, 2021, online: https://www.bcfsa.ca/media/288/download.

385 Evidence of D. Avren, Transcript, February 17, 2021, p 9; Evidence of M. Scott, Transcript, February 25, 2021, pp 93–94; Exhibit 661, Letter from FICOM to RECBC, re Real Estate Licensees working with Jay Kanth Chaudhary (June 7, 2019): The referral was in respect of 28 individuals, but according to RECBC, it was determined that two were not licensed.

386 Evidence of M. Scott, Transcript, February 25, 2021, pp 95–97.

387 Ibid, p 100.

388 Evidence of D. Avren, Transcript, February 17, 2021, pp 9–10.

389 Evidence of M. Scott, Transcript, February 25, 2021, pp 100–4.

390 Exhibit 1050, Affidavit of Michael Scott, sworn September 13, 2021 [Affidavit of M. Scott], para 26.

involvement in Mr. Chaudhary's scheme.[391] With the exception of two individuals who voluntarily withdrew from the industry by not seeking renewal, the real estate licensees referred by FICOM to RECBC (24 real estate licensees) in connection with the Chaudhary matter remain in the industry.[392]

RECBC witnesses explained that referrals were prioritized for investigation based on the alleged conduct of the real estate licensees, in particular, whether the behaviour related to their own personal mortgage activities.[393] Mr. Chaudhary's evidence was that he made alterations to mortgage applications for real estate licensees, some of whom he stated were aware of what he was doing, because he told them so.[394] In my view, it seems more likely that a real estate licensee who personally obtained a mortgage through Mr. Chaudhary would be better positioned to (a) know Mr. Chaudhary was unregistered, (b) understand that they were financially unqualified to obtain the amount of financing they needed, and (c) know that Mr. Chaudhary had altered their financial documents. This raises serious questions about the ethics and integrity of the real estate licensees involved and their fitness to retain their licences as realtors. It also raises questions about the speed with which these allegations are being addressed.

Following the testimony given by RECBC representatives in February 2021, BCFSA provided, in writing, further context for RECBC's complaints handling process and investigations.[395] This evidence was provided by BCFSA because, by that time, RECBC had been incorporated into that agency. The responsibility for both real estate licensees and mortgage brokers now rests with BCFSA.

At the time the Chaudhary matters were referred to RECBC, the regulator already had an inventory of 150 matters that it had triaged "as serious and worthy of investigation."[396] Some of these involved allegations of a very serious nature, including fraud and dishonesty.[397] RECBC was confronted, Mr. Scott attested, with a "variety of complex and publicly sensitive social issues such as undisclosed conflicts of interest, fraud, fake offers, and allegations of sexual misconduct by real estate licensees."[398]

RECBC also found itself facing a continually increasing number of complaints, caused in part by increased activity in the real estate sector and in part by RECBC's own efforts to educate the public about its function and to create means, such an anonymous tip line, to make the process of reporting questionable conduct easier.[399] At the same time, RECBC says it had limited resources to manage complaint volumes. Attracting

391 Evidence of D. Avren, Transcript, February 17, 2021, pp 9–10; Evidence of M. Scott, Transcript, February 25, 2021, pp 116–17.

392 Evidence of M. Scott, Transcript, February 25, 2021, pp 116–17.

393 Ibid, pp 95–97.

394 Evidence of J. Chaudhary, Transcript, February 24, 2021, pp 94–95.

395 Exhibit 1050, Affidavit of M. Scott; Exhibit 1051, Affidavit of B. Morrison.

396 Exhibit 1050, Affidavit of M. Scott, para 24.

397 Ibid, para 8.

398 Ibid, para 7.

399 Ibid, para 14.

and retaining investigators with experience in financial crimes or real estate is difficult, although from 2018 to July 31, 2021, RECBC was able to increase its staff responsible for investigations from 10 to 25.[400]

In March 2021, RECBC asked OSRE to conduct a review of the complaints handling processes of comparative administrative bodies.[401] That report highlighted the importance of retaining skilled and knowledgeable intake and investigative staff. Doing so is critical to the success of handling complaints. I commend the initiative to undertake comparative research and, more importantly, to implement that research to improve the means by which complaints are handled and resolved.

RECBC urges me to conclude that it managed the complaints it received and allocated scarce resources appropriately, applying its expertise as a regulator of real estate professionals. It states that it was dealing with complaints that it considered to be more serious in nature than those concerning the Chaudhary-affiliated realtors.[402]

It is difficult, on the limited evidence available to me, to second-guess how RECBC prioritized the complaints it received. I remain concerned, however, by the fact that so many of the professionals who assisted Mr. Chaudhary, at least some of whom must have known what he was doing, even today remain licensed to provide real estate services in British Columbia. The conduct at issue is sufficiently serious that allowing it to go uninvestigated for such a lengthy period of time is unacceptable. If it is the case that RECBC was appropriately prioritizing the complaints it received based on the resources it had available to investigate complaints, then it is clear that the resources allocated were insufficient. The current unified real estate regulator, BCFSA, must be able to move with dispatch when real estate professionals are identified as being involved in fundamentally dishonest activities that create money laundering risks. Accordingly, I recommend that the Province allocate sufficient resources to BCFSA to ensure that it has the capacity to address allegations of serious misconduct in a timely way.

Recommendation 13: I recommend that the Province allocate sufficient resources to the British Columbia Financial Services Authority to ensure that it has the capacity to address allegations of serious misconduct in a timely way.

RECBC did not have an express anti–money laundering mandate, although it is apparent from its evidence that it was aware of the issue of money laundering through real estate and had provided education and professional development assistance to its members in this regard. The creation of an anti–money laundering mandate for BCFSA would allow for the prioritization of investigations with a fraud and possible money laundering component. The existence of a clear mandate in this regard would also, I

400 Ibid, para 13.

401 Ibid, para 21 and exhibit B, OSRE, *Complaints Handling Processes in Professional Regulation* (March 2021).

402 Closing submissions, Real Estate Council of British Columbia, para 14.

expect, allow BCFSA to more readily and rapidly identify matters that justify the use of extraordinary resources – as I understand RECBC had done by assigning the Chaudhary matters to an outside investigator in the summer of 2021.[403] For these and other reasons, I recommend in Chapter 20 that BCFSA be given a clear and enduring anti–money laundering mandate.

As noted, the investigations of the real estate professionals who were alleged to have aided Mr. Chaudhary in his frauds – and to have taken advantage of those frauds financially themselves – did not demonstrate speed or effectiveness. It appears these investigations were impeded by the disjointed regulatory structure in place when the matter arose. The originating complaint about Mr. Chaudhary was made to the Registrar of Mortgage Brokers in the summer of 2017. That investigation culminated in a search of Mr. Chaudhary's premises in February 2019, followed by a cease-and-desist order against him in May 2019. Notices of hearing against implicated registered mortgage brokers followed in relatively rapid succession. By contrast, a referral of the allegedly implicated realtors to RECBC did not occur until June 2019. Had the regulators of both professions (real estate licensees and mortgage brokers) been operating under one roof, as they are now, it is possible that the investigations could have played out in parallel, at speed. Because the functions of the Registrar, OSRE, and RECBC are now all executed by BCFSA, it is unnecessary for me to offer a recommendation to remedy the historic lack of coordination that arose from the disjointed regulatory landscape. BCFSA has given evidence that it is prioritizing the development of a common market conduct framework to respond to regulatory risks,[404] and the Chaudhary matter is an illustration of why such a coordinated response is a welcome and necessary improvement.

Mr. Chaudhary's case illustrates the money laundering risk that can arise when an unscrupulous actor engages in mortgage brokering (registered or unregistered). Another instance about which I heard evidence makes a much more direct link between mortgage brokering activity and the laundering of the proceeds of crime.

Case Study: Suspicious Mortgages

The Commission heard evidence from witnesses who had a role in investigating certain transactions involving a registered mortgage broker. I should note that this individual was given notice of the evidence that would be led, and he did not take any position or participate in these proceedings. Out of fairness to him, I will also note at the outset that the investigations and findings described below resulted in neither criminal charges nor professional disciplinary action against him.

403 Exhibit 1050, Affidavit of M. Scott, para 26.

404 Exhibit 1051, Affidavit of B. Morrison, paras 8–10.

This matter came to the attention of the Registrar of Mortgage Brokers in 2012, following a police search of premises in which an acquaintance of Grant Curtis, a registered mortgage broker, resided. The search was in relation to an investigation unrelated to mortgage brokering. At the residence, police found a number of documents about arranging mortgages. Mr. Curtis's name appeared on these documents. The documents were referred to the Registrar (which at the time sat within FICOM) and the matter was assigned to Michael McTavish, then an investigator with the Registrar.[405]

On review of transactions processed by Mr. Curtis, Mr. McTavish noted recurring and unusual circumstances. For instance, several of the borrowers had connections with criminal activity. The mortgage broker himself was new to the business but was doing a high volume of mortgage transactions. This by itself was not suspicious, but in connection with the apparent criminal associations of many of the borrowers, and other unusual features of the transactions, it raised concerns. Indeed, the concerns were serious enough that the file was referred to the RCMP on the hypothesis that some of the mortgage transactions may have been used to facilitate organized criminal activities.[406]

The unusual features noted by Mr. McTavish in his review included:

- several borrowers with apparent criminal associations;
- tenancy agreements completed prior to purchase and with unconventional commencing / ending dates or rental periods (e.g., for a year and a day rather than a year);
- tenants with no evident connection to the property (e.g., an ICBC search did not connect the tenant to the property purportedly being rented);
- the property was later sold within a short period of time, with little or no capital gain on the sale;
- self-employed borrowers with vague descriptions of business activities and little to no corroborating presence on the internet or in corporate registries;
- inconsistencies on tax documents provided to support borrowers' incomes, such as different font sizes and styles;
- very short closing dates;

405 Evidence of M. McTavish, Transcript, February 22, 2021, pp 126–28.
406 Ibid, pp 128–32.

- reported assets at odds with the ages and reported incomes of the borrowers;
- significant amounts of cash reported to be sitting in savings or chequing accounts;
- borrowers with multiple properties and high property turnover rates;
- the presence of an intermediary referral source on many of the transactions; and
- gifted down payments from sources with no clear relationship to the borrower.[407]

The review conducted by Mr. McTavish led him to conclude that it would be difficult to make out misconduct on the part of the mortgage broker within the scope of the regulator's authority, and that, even if misconduct were made out, it would not be sufficient to revoke the broker's registration.[408] In Mr. McTavish's view, there was insufficient adducible evidence on the connections between the broker and the borrowers, and the borrowers' criminal connections, for the Registrar to take regulatory action.[409] Based on the issues he noted in his review, Mr. McTavish determined that what he was seeing was likely a criminal rather than a regulatory matter. He referred it to the RCMP.[410]

The Commission heard from Corporal Karen Best of the RCMP, who was assigned to the investigation of Mr. Curtis and those associated with him in August 2013. At the time, Corporal Best was in the RCMP's Federal Serious and Organized Crime (FSOC) unit. In September 2014, her unit was merged with two other units and its focus shifted from financial investigations to drug investigations.[411] After the structural change, she was directed to focus on drug-related investigations, but she carried on to summarize her findings of the Curtis matter as and when she could.[412] Corporal Best completed what she characterized as a summation of her findings in the spring of 2016.[413]

Corporal Best was able to add to the information available to FICOM with police sources, including background information on connections

407 Ibid, pp 132–35, 137–41; Exhibit 650, FICOM Investigative Services, Review of Sample of Mortgage Transactions Case file INV11.343.48836_Redacted, pp 6–7.

408 Evidence of M. McTavish, Transcript, February 22, 2021, pp 142–44; Exhibit 650, FICOM Investigative Services Grant Brian Curtis: Review of Sample of Mortgage Transactions, p 2.

409 Evidence of M. McTavish, Transcript, February 22, 2021, p 144.

410 Ibid, pp 129, 143.

411 Evidence of K. Best, Transcript, February 23, 2021, pp 8–10, 18–19.

412 Ibid, pp 23–24.

413 Ibid, p 25.

that Mr. Curtis and his referral source had with a self-professed money launderer, Sulaiman Safi.[414] From the RCMP Integrated Market Enforcement Team, she was able to learn that "a significant number" of the properties brokered by Mr. Curtis were suspected or documented marijuana grow operations.[415] Mr. Curtis's referral source was also discovered to be the subject of a number of criminal fraud investigations.[416]

The intelligence supported the theory that what was being observed was mortgage fraud in furtherance of a money laundering scheme.[417] Two common purposes of mortgage fraud can be identified: that of the fraudster, who simply wants to abscond with the funds once the loan is advanced, and that of the money launderer, whose objective is to make payments on the mortgage and thereby integrate funds that are the proceeds of crime into the legitimate economy.[418] Corporal Best concluded that, while the transactions reviewed displayed indicators of money laundering, it would be difficult to establish the source of funds in order to prove an offence.[419] The report concluded:

> The probe conducted by FSOC indicates that organized crime groups in the Lower Mainland may have been using secondary mortgage financing in order to launder funds and that this practice may still be occurring.[420]

The report prepared by Corporal Best was forwarded to her direct supervisor in March 2016, and it was sent on to the head of FSOC's Financial Integrity Unit some six months later. Shortly thereafter, she was informed that the report was being forwarded to an analyst for intelligence purposes, but that the file was closed. No further investigation of the matter was undertaken.[421]

The subject mortgage broker, it appears from other evidence before me, carried on his activities as a registered mortgage broker until at least May 2019, when he was the subject of a notice of hearing by the Registrar. That notice of hearing, which to my knowledge has not been resolved, alleges that Mr. Curtis engaged in "fronting" for another individual.[422]

414 Ibid, pp 32–33, 55–60; *R v Crawford*, 2013 BCSC 932.

415 Evidence of K. Best, Transcript, February 23, 2021, pp 32–33.

416 Exhibit 652, Affidavit #1 of Karen Best Sworn Feb. 12, 2021 [Affidavit #1 of K. Best], exhibit B, pp 27–35.

417 Evidence of K. Best, Transcript, February 23, 2021, pp 64–65; Exhibit 652, Affidavit #1 of K. Best, exhibit B, p 114.

418 Evidence of K. Best, Transcript, February 23, 2021, pp 34–37.

419 Ibid, pp 68-69; Exhibit 652, Affidavit #1 of K. Best, exhibit B, p 116.

420 Exhibit 652, Affidavit #1 of K. Best, exhibit B, p 116.

421 Evidence of K. Best, Transcript, February 23, 2021, pp 72–80.

422 Exhibit 604, OR: Mortgage Brokers Discipline Orders, Appendix K, British Columbia, *In the Matter of the Mortgage Brokers Act and in the Matter of Grant Brian Curtis* (April 2019).

Regulatory Issues and Legislative Gaps

The two case studies above illustrate regulatory and operational issues with real estate professionals, as well as vulnerabilities to fraud and money laundering within that industry. I also heard from witnesses on both the regulatory side and the industry side of mortgage brokering as to their perceptions of the weaknesses in the current regime. They agreed that the current legislation, which is under review, is outdated and fails to address the realities of the industry today.[423] They also identified significant regulatory and legislative gaps preventing effective oversight of the profession. These gaps contribute to the vulnerability of the sector to money laundering. In this section, I consider specific gaps and vulnerabilities in the regulation of mortgage brokering and make recommendations to address these vulnerabilities.

The context for the discussion below is that the regulation of the industry is in a state of transition in British Columbia. The *Mortgage Brokers Act*, enacted in 1972, is under review. The Ministry of Finance has undertaken a public consultation in that regard.[424] BCFSA has recently undergone structural changes such that it now has oversight of a broader spectrum of actors in the real estate industry. Not only mortgage brokers, but now also real estate licensees and developers, will be regulated by BCFSA. As Mr. Morrison, chief executive officer of BCFSA testified, this integration will allow the regulator to look at the real estate sector at large as a "holistic integrated regulator."[425] My observations below should be understood in the context of this ongoing change.

Confusion About Activity Requiring Registration

As I noted above, the very definition of "mortgage brokering" in the *MBA* is confusing. It is not aligned with the activities that give rise to the obligation to be registered. This could lead to unregistered persons unknowingly engaging in activities that are supposed to be performed only by registered persons. Furthermore, the situation leaves open a gap for unregistered persons to engage in activities that ought to be restricted to registered persons.[426] Mr. Carter, Deputy Registrar of Mortgage Brokers, explained:

> [T]he Act defines mortgage brokers in a number of different ways, and the definitions can be challenging to administer. I'll give you just one example of that and it relates to private lending. So there is one section that says essentially you qualify for registration if you are carrying on the business of lending money secured by mortgages. There's then another section in the same section of the legislation that talks about being required to be registered if you, in any given year, lend on the security of more than ten mortgages. What that creates is a bit of an interpretation challenge, and what I mean by that is it's conceivable that you're in the business of lending money on the secured on less than ten mortgages. Carrying on a

423 See, for example, Evidence of C. Carter, Transcript, February 16, 2021, p 33.

424 Ibid, pp 41–42.

425 Evidence of B. Morrison, Transcript, February 16, 2021, pp 12–14.

426 Evidence of C. Carter, Transcript, February 16, 2021, pp 42–43.

> business depends on a whole range of different legal indicia, and the two requirements, the two triggers, the two aspects of the definition are not helpful when it comes to administering the legislation.[427]

I agree. I have concluded that mortgage brokering activities are vulnerable to money laundering. To manage this risk, it is critical for the regulator to (a) know who is engaging in mortgage brokering in the province, and (b) ensure that those people are adequately screened, qualified, and overseen by the regulator. I recommend that the Province amend the *Mortgage Brokers Act* definition of "mortgage broker" to harmonize it with the requirement for registration.[428] At a minimum, the act of loan origination, and the ability to earn fees from such activity, should be activities that are restricted to registered mortgage brokers.

Recommendation 14: I recommend that the Province amend the *Mortgage Brokers Act* definition of "mortgage broker" to harmonize it with the requirement for registration.

Information Available to the Registrar on Applications for Registration

The investigative summary prepared by Corporal Best is an exhibit before the Commission.[429] The summary includes information that Corporal Best obtained from police sources that were not available to the Registrar when it considered Mr. Curtis's application for registration. For example, the summary relays details of Mr. Curtis's association with three police investigations, including a suspected stock market fraud, an extortion matter, and cannabis cultivation.[430] The RCMP also had access to a report from FINTRAC detailing certain suspicious transactions Mr. Curtis had been involved with, which led a FINTRAC analyst to conclude that some transactions engaged in by Mr. Curtis (unrelated to his mortgage brokering) were "consistent with money laundering."[431] Some of these matters pre-dated Mr. Curtis's registration in 2008. Mr. Curtis was not charged in relation to any of these matters.

It seems likely to me that some of the information available to the RCMP, but not available to the Registrar, would have been highly relevant to the Registrar's consideration of Mr. Curtis's licensing application. The Registrar requires a prospective registrant to provide a certified criminal record check, which will disclose convictions and outstanding criminal charges. At the very least, the Registrar would benefit from an extended criminal background check that flags connections to organized crime and

427 Ibid, pp 40–41.

428 Evidence of S. Gale, Transcript, February 22, 2021, pp 39–40.

429 Exhibit 652, Affidavit #1 of K. Best, exhibit B.

430 Evidence of K. Best, Transcript, February 23, 2021, p 49; Exhibit 652, Affidavit #1 of K. Best, exhibit B, pp 18–19.

431 Evidence of K. Best, Transcript, February 23, 2021, pp 50–51; Exhibit 652, Affidavit #1 of K. Best, exhibit B, pp 24–25.

charges relating to financial crimes or fraud in making a determination of a person's suitability for registration. Given what I have concluded is the vulnerability of mortgage brokering to fraud, which in turn may enable money laundering, it is important for the Registrar to have access to this type of information. The Registrar already requires that applicants for registration disclose such charges, but the criminal record check that is required discloses only convictions and outstanding charges.[432] I recommend that the Registrar make it a requirement that applicants for registration provide an extended criminal and police background check, showing not only convictions and outstanding charges but also past charges relating to financial misconduct, as well as police database information about the person. To the extent that any changes are required to the *Criminal Records Review Act*, RSBC 1996 c 86, to effect this change, I recommend that the Province undertake those amendments.

Recommendation 15: I recommend that the Registrar of Mortgage Brokers make it a requirement that applicants for registration provide an extended criminal and police background check, showing not only convictions and outstanding charges but also past charges relating to financial misconduct, as well as police database information about the person.

Information Available in Respect of a Submortgage Broker's Activities

Mr. McTavish testified that he obtained the files respecting loans originated by Mr. Curtis from one of the lenders under provincial jurisdiction (itself registered under the Act). From Mr. McTavish's written report, it is apparent that this was done in order to avoid alerting those involved about the investigation.[433] It is understandable that, at times, the Registrar will be concerned about alerting a brokerage or a submortgage broker about an ongoing investigation by demanding documents directly from the brokerage. This could tip someone off and result in the loss of evidence.

The Registrar's access to information about the activities of mortgage brokers and the transactions they have been involved in is limited. I heard, for instance, that the *MBA* does not allow the Registrar to summon documents directly from a federally regulated bank.[434] The *MBA* currently authorizes the Registrar to summon and enforce the attendance of witnesses and compel them to give evidence on oath, and to produce records or property, similar to the power of a court in the trial of a civil action. Failure to attend or refusal to produce make a person liable for contempt. However, the *MBA* goes on to exempt "a bank or an officer or employee of a bank" from the operation of

432 Financial Institutions Commission, Information Bulletin MB 11-002, "Individual Registration Applications Suitability Reviews and Criminal Record Checks" (May 2011), online: https://www.bcfsa.ca/media/1535/download.

433 Exhibit 650, FICOM Investigative Services: Grant Brian Curtis, Review of Sample of Mortgage Transactions, p 2.

434 Evidence of C. Carter, February 16, 2021 p 89.

these provisions.[435] It is difficult to reconcile this exemption with the effective regulation of mortgage brokers who conduct business extensively with banks. This carve-out may reflect a cautious approach to jurisdiction, but, if so, it seems to me to be excessively cautious. I urge the provincial government to revisit the carve-out of banks and their employees from the Registrar's powers of compulsion while the provincial Ministry of Finance conducts its review and modernization of the *MBA*.

A lack of information was identified by both the regulator and Samantha Gale, chief executive officer of the Canadian Mortgage Brokers Association – British Columbia (CMBA-BC), as a gap in the ability to understand and therefore adequately oversee what is happening in the industry.[436] In Ontario, Ms. Gale said in her testimony, brokerages submit an annual report to the regulator. That annual report gives the total number and dollar value of mortgages brokered in the prior year.[437] This is sometimes described as an "annual information return." The Financial Services Regulatory Authority of Ontario (FSRA) uses such information "to assist FSRA in its risk assessment and oversight of mortgage brokerages and administrators."[438] No similar requirement exists in British Columbia. Mr. Carter said that such information would provide the regulator with a window into the systemic risks within the system and in the sector.[439] Lack of insight into industry trends can hamper the regulator's ability to understand where risks arise, and then to target resources appropriately. The Province's *Mortgage Brokers Act* Review Public Consultation Paper proposes and supports the modernization to be gained with an annual information return.[440] I agree. I recommend that, in its revision of the *MBA*, the Province include a requirement that brokerages submit annual information returns to give the Registrar better insight into industry trends and risks.

Recommendation 16: I recommend that, in its revision of the *Mortgage Brokers Act*, the Province include a requirement that brokerages submit annual information returns to give the Registrar of Mortgage Brokers better insight into industry trends and risks.

Another example of an information gap is a lack of a quick and direct means for the Registrar to see all of the transactions that a mortgage broker has facilitated. There is no registry of mortgage brokerage transactions, nor are mortgage brokers noted on mortgage documents filed with the Land Title and Survey Authority. In order to review a sub-broker's transactions, the Registrar must obtain the transaction information from either the brokerage itself – which might alert the sub-broker of the Registrar's interest

435 *MBA*, ss 6(3), (4), (5).

436 Evidence of S. Gale, Transcript, February 22, 2021, pp 35–36.

437 Ibid.

438 Financial Services Regulatory Authority of Ontario, "Annual Information Returns," online: https://www.fsrao.ca/industry/mortgage-brokering/annual-information-returns.

439 Evidence of C. Carter, Transcript, February 16, 2021, pp 44, 76, 87–88.

440 MBA Review Consultation, p 17.

– or from lenders who fall within the Registrar's jurisdiction. Discovering the extent of a broker's origination activity is difficult. This is problematic, because some of the red flags of fraud and money laundering involving mortgage brokers only become apparent or rise to a level of significance when viewed in the context of a number of transactions.

As earlier noted, there is no authority on the part of BCFSA to seek records from banks. Mr. McTavish, speaking from his experience with investigations at the Registrar, identified that type of information as being useful in identifying fronting activities.[441]

In Chapter 18, I recommend the inclusion of information about the identity of mortgage brokers and other real estate professionals involved in a real estate transaction in Land Title and Survey Authority filings. This information, if organized in data fields and searchable, would provide the Registrar with easily accessible, complete information about a broker's transactions.

Rule-Making Capacity

Mr. Morrison pointed to a number of changes in the powers and structure of BCFSA that give it an advantage over its predecessor, FICOM. One of those changes is the ability to make rules.[442] That power, however, does not yet extend to mortgage brokers. Such a power in respect of mortgage brokers would allow the Registrar to respond more nimbly to issues and market conditions as they arise.[443] I recommend that the Province give BCFSA rule-making authority in respect of mortgage brokers.

Recommendation 17: I recommend that the Province give the British Columbia Financial Services Authority rule-making authority in respect of mortgage brokers.

No Managing Broker Role

One feature of modern mortgage broker legislation that is missing from the current British Columbia legislation is the role of a managing broker, described by Mr. Carter as "a locus of accountability for oversight and regulatory compliance within a brokerage."[444] Ms. Gale, for CMBA-BC, identified this as the most significant gap in the legislation.[445] At the moment, this role is assumed by a "designated individual," a policy creation of the Registrar.[446] However, there is no separate licensing category in the legislation for such a person, and there is no enhanced educational or training requirement (as contrasted

441 Evidence of M. McTavish, Transcript, February 22, 2021, pp 120–21.

442 Evidence of B. Morrison, Transcript, February 16, 2021, pp 22–23.

443 Ibid, pp 28–29.

444 Evidence of C. Carter, Transcript, February 16, 2021, p 34.

445 Evidence of S. Gale, Transcript, February 22, 2021, p 37.

446 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, pp 40–41.

with the managing broker of a real estate brokerage).[447] Given this observation made by Ms. Gale (which I accept) that effective supervision and oversight of sub-brokers is critical to detecting and preventing mortgage fraud, I conclude that it is important that the managing broker's responsibilities and training requirements be clearly defined. I recommend that the Province amend the *MBA* to create a managing broker role with clearly defined responsibilities.

Recommendation 18: I recommend that the Province amend the *Mortgage Brokers Act* to create a managing broker role with clearly defined responsibilities.

It is apparent from the case studies above that submortgage brokers are well positioned to observe fraudulent activity and should receive clear guidance from the Registrar about what fraud looks like, as well as when and where to report it. Mortgage brokers should also receive guidance through education from the regulator and industry about when to report suspicious activity to their managing brokers. And managing brokers should receive guidance as to when to report suspicions to an appropriate authority. They should report to BCFSA who can provide access to the AML Commissioner upon request or, in appropriate circumstances, refer the matter to the dedicated provincial money laundering intelligence and investigations unit.[448]

I support the Registrar providing guidance by articulating a threshold of suspicion at which a mortgage broker ought to be withdrawing from a proposed transaction. I recommend that the Registrar require education for both managing brokers and sub-brokers, focusing on the detection and reporting of fraud and money laundering in the industry.[449]

Recommendation 19: I recommend that the Registrar of Mortgage Brokers require education for both managing brokers and sub-brokers, focusing on the detection and reporting of fraud and money laundering in the industry.

Enforcement and Inadequacy of Penalties

The evidence with respect to Mr. Chaudhary indicated very clearly that unregistered brokers cannot successfully operate without the complicity of other professionals, whether those professionals are the registered brokers "fronting" for the unregistered

447 Evidence of S. Gale, Transcript, February 22, 2021, p 37.

448 I recommend the creation of the AML Commissioner in Chapter 8 of this Report, and in Chapter 41, I recommend that the Province create a new provincial money laundering intelligence and investigation unit.

449 I understand that CMBA-BC and BCFSA are currently coordinating to create an anti–money laundering course to educate submortgage brokers, which I support. It is likely that such a course can provide a foundation for education to managing brokers: see Evidence of S. Gale, Transcript, February 22, 2021, p 68; Exhibit 647, CMBA-BC Anti–Money Laundering Course Module.

broker or real estate licensees referring clients. Mr. Chaudhary's evidence also made it clear why these networks are difficult to disrupt: they are very profitable for everyone involved. The risk / reward calculus for professionals who knowingly engage in such schemes must change.

The financial penalties available to the Registrar are a starting point. At present, the maximum penalty available in administrative proceedings against a mortgage broker is $50,000. This is an inadequate deterrent. It fails to match the potential profitability of unregistered or fraudulent activity.[450] This is stark in the case of Mr. Chaudhary, who, according to the cease-and-desist order made against him, amassed nearly $6 million in fees over the course of nearly a decade of unregistered brokering activities.[451] The availability of enhanced financial penalties, and an order of disgorgement of profits, together with the tools to enforce it, would provide a more meaningful consequence and a deterrent to unregistered brokering. Both Ms. Gale and Mr. McTavish expressed the view that the current regulatory scheme provides the Registrar inadequate tools to deal with unregistered brokers. Making available more significant penalties and the disgorgement of illicit profits would start to address that gap.[452] I recommend that the Province amend the *MBA* to allow for larger financial penalties, up to $250,000, to align with penalties available under the *Real Estate Services Act*, SBC 2004, c 42 (*RESA*).

Recommendation 20: I recommend that the Province amend the *Mortgage Brokers Act* to allow for larger financial penalties, up to $250,000, to align with penalties available under the *Real Estate Services Act*.

In addition to providing for larger deterrent penalties, I endorse the use of orders for the disgorgement of profits outlined above. I recommend that the Province amend the *MBA* to give the Registrar the power to make an order of disgorgement of profits for registered mortgage brokers found to have engaged in misconduct and for unregistered persons engaged in mortgage brokering activities.

Recommendation 21: I recommend that the Province amend the *Mortgage Brokers Act* to give the Registrar of Mortgage Brokers the power to make an order of disgorgement of profits for registered mortgage brokers found to have engaged in misconduct and for unregistered persons engaged in mortgage brokering activities.

Witnesses spoke of the need for a cultural shift to a mindset of compliance in the industry. I agree. Part of that shift may be achieved by education and training requirements. However, professionals in the real estate industry should have a positive

450 Evidence of C. Carter, Transcript, February 16, 2021, p 44.

451 Evidence of M. McTavish, Transcript, February 22, 2021, p 122.

452 Evidence of S. Gale, Transcript, February 22, 2021, pp 63–64; Evidence of M. McTavish, Transcript, February 22, 2021, pp 97–99.

obligation, set out in the legislation, to report unregistered mortgage brokering, falsification of documents, and other indicia of suspicious activity to the regulator.[453] The regulator can impress on the profession the seriousness of failing to report by imposing appropriately serious consequences, including suspension and loss of licence or registration. In an industry where the financial incentives are oriented toward obtaining financing and closing a deal, the risk / reward calculation of participating in or turning a blind eye to abuses must be adjusted by the deterrents available and by diligence on the part of the regulator to use them. My comments in this regard apply equally to registered mortgage brokers and real estate licensees. I recommend that BCFSA impose a positive obligation on real estate licensees to report suspected unregistered mortgage brokering to it.

Recommendation 22: I recommend that the British Columbia Financial Services Authority impose a positive obligation on real estate licensees to report suspected unregistered mortgage brokering to it.

There are other legislative measures that might, incidentally, address some of the fraud and money laundering risks identified in this Report by imposing express conduct requirements on brokers. Those include the imposition of a legislated duty to act in the best interests of a client or investor; to act fairly, honestly and in good faith; and to fulfill "know your client" or client identification obligations.[454] Such measures would be useful both for setting clear expectations of conduct and for detecting suspicious indicators associated with some forms of money laundering. For instance, the use of a nominee may become apparent when a broker fulfills their client identification obligations. I understand that some of these amendments to the legislation are being considered already[455] and I urge their adoption.[456]

I noted earlier in this chapter the recent amendments to *RESA* that eliminated an automatic stay of a disciplinary order where a licensee files an appeal of an order of the Registrar to the Financial Services Tribunal. I mentioned there that such a stay provision remains in force in the *MBA*.[457] In my view, there was good reason to eliminate this provision from *RESA*, and there is good reason to eliminate it in the *MBA* and to ensure that it is not recreated in any new legislation replacing the *MBA*.

453 Evidence of M. McTavish, Transcript, February 22, 2021, p 158. An issue identified with respect to real estate licensees and the obligation to report was that the reporting requirement was limited to advising the managing broker, with no further requirement on that individual to report on to the regulator: see Evidence of E. Seeley, Transcript February 17, 2021, p 3.

454 Evidence of C. Carter, Transcript, February 16, 2021, pp 43–44.

455 MBA Review Consultation, pp 9–10, 11, 15; Exhibit 605, Overview Report: Mortgage Brokers Act Consultation.

456 The review referenced in the footnote above acknowledges that a conflict may arise between the duty of loyalty to a lender and to a borrower. The Ministry of Finance is best positioned to navigate this potential conflict as it proceeds with its review of the MBA and its eventual replacement.

457 *MBA*, s 9(2).

Recommendation 23: I recommend that the Province amend the *Mortgage Brokers Act* to eliminate the automatic stay pending appeal found in section 9(2) of the Act.

There is an overarching need for professionalization of the mortgage brokers industry. I am hopeful that the reforms I have supported will go a good distance toward accomplishing this.

Engagement of Law Enforcement

The Curtis and Chaudhary matters both highlight a problem of successfully attracting the attention of law enforcement to financial crimes arising in a regulatory setting. As demonstrated in each of these cases, there is a limit to the authority of the Registrar, as well as its capacity and ability, to investigate and address conduct that appeared, on its face, to be criminal in nature. It is acknowledged in the literature, and supported by the evidence before me, that the laundering of proceeds of crime into and through real estate is a prevalent and desired method of money laundering.

Money laundering in real estate cannot be achieved without the assistance – sometimes knowing – of regulated professionals. Regulators in the real estate sector must be armed with the ability to detect money laundering and fraud. Just as important, they must have a law enforcement agency to which they can effectively direct information when they perceive that a matter may involve criminality. A provincial law enforcement agency with a clear anti–money laundering mandate could take up such investigations at the point where regulatory jurisdiction, mandate, and/or capacity ends.

In Chapter 41, I recommend the creation of a provincial law enforcement intelligence and investigation unit with a focus on proceeds of crime and money laundering. The effectiveness of such a body will depend, in part, on strong relationships with provincial regulators in the financial sector, including real estate. The effective sharing of information and insights will permit the identification of money laundering vulnerabilities within each regulator's area of responsibility. As such, I recommend that BCFSA work with the new dedicated provincial money laundering intelligence and investigation unit to develop an information-sharing partnership.

Recommendation 24: I recommend that the British Columbia Financial Services Authority work with the new dedicated provincial money laundering intelligence and investigation unit to develop an information-sharing partnership.

Incorporating Mortgage Brokers as Reporting Entities in the PCMLTFA

Finally, the Maloney Report and the German report (*Dirty Money 2*) both recommended that mortgage brokers be made reporting entities pursuant to the

PCMLTFA.[458] The evidence I have heard regarding the role of mortgage brokers in real estate transactions, their direct knowledge of a client's financial circumstances, and their ability to observe suspicious behaviours first-hand, compel me to support this recommendation and to repeat it here. Mortgage brokers would be useful reporting entities under the *PCMLTFA*, both in terms of information that mortgage brokers can provide about suspicious transactions, and with respect to the training, record-keeping, and education that FINTRAC oversight would entail. I recommend that the provincial Minister of Finance urge her federal counterpart to make mortgage brokers reporting entities under the *PCMLTFA*.

Recommendation 25: I recommend that the provincial Minister of Finance urge her federal counterpart to make mortgage brokers reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Mortgage Brokers and Indicators of Suspicion for Fraud and Money Laundering

As set out, I heard evidence about actual or suspected fraudulent transactions involving mortgage brokers. I find that transactions of this nature carry with them at least a risk of money laundering. As such, I flag the following indicators of suspicion. I expect this list of indicators may assist relevant industry actors – such as lenders, real estate licensees, and mortgage brokers – in identifying transactions that carry such a risk. This will further their understanding as to when a report ought to be made to the regulator, or when a mortgage broker ought to withdraw from a transaction entirely.

- **Altered documents**: alterations are generally made for the purpose of inflating declared income and assets. Indicators of alteration include inconsistent font types and sizes; typos; the use of incorrect or outdated names for government agencies (e.g., "Canada Customs and Revenue Agency" instead of Canada Revenue Agency"); and mathematical inconsistencies in tax documents.
- **Declared assets and income that are inconsistent with the age and occupation of the borrower**: whereas there may be legitimate instances where a younger borrower has significant assets, this may be an indicator that declared assets have been inflated.
- **Unusual assets for the borrower profile**: there may be legitimate reasons for a younger or lower income borrower to have a luxury asset such as a boat, but this is one factor that may contribute to an overall assessment of suspicion.
- **Assets that are sitting in unproductive accounts**: bank statements showing large amounts of liquid assets sitting in low-interest chequing or savings accounts. This

458 Exhibit 330, Maloney Report; Exhibit 833, Peter M. German, *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019 [*Dirty Money 2*].

may indicate either a falsified bank balance, or a recent transfer of funds that requires inquiry as to origin.

- **Gifts from unconnected sources**: the gifting of funds from family members may not be unusual to assist borrowers make a down payment, particularly on the purchase of a first home. However, gifts from unrelated persons or business associates are more unusual.
- **Unusual tenancy agreements**: the existence of a tenancy agreement for the subject property between the borrower and a tenant, before closing or before funding has been secured, may indicate a false tenancy agreement drafted in order to show a source of income. Other odd features of the agreement, such as unusual length of term (a year plus a day instead of a year), or renters whose existence cannot be confirmed by internet searches, may give rise to suspicion. After the fact, the inability to connect a supposed tenant with the property at issue (by internet search, ICBC records, etc.) may be an indicator that the tenancy agreement was a sham.
- **Borrower gives vague description of self-employment, or is evasive as to the nature of their business**.
- **Borrower reports being self-employed but the business has little or no footprint**: the business from which the borrower claims to derive income has little or no internet footprint, gives only a PO box as an address, or cannot be located on the BC or Canada companies' registry.
- **Borrower has known or reported criminal affiliations**: a person with a criminal past may legitimately purchase property and seek financing for such a purchase. However, the existence of criminal affiliations, along with other indicators, may create suspicion.
- **Borrower owns multiple properties with a high turnover rate**.
- **Short closing dates**.
- **Improbable success**: the mortgage broker gives assurances that they can successfully secure financing for the borrower where others have failed.
- **Requesting referral or other fees for assisting a borrower in acquiring financing**: mortgage brokers are typically compensated by lenders when a transaction is successful. Observing compensation made by the borrower may signal something is amiss.

It was apparent from the evidence before me that certain patterns indicative of suspicion may only become apparent on review of a particular broker's practice, or of a number of transactions in which a particular mortgage broker was involved. Such patterns include:

- Sudden or unexplained jumps in income by a submortgage broker, which may be an indication that a broker is "fronting" for an unregistered person.
- Several borrowers have criminal histories or reported criminal affiliations.
- Multiple properties were resold quickly.
- Properties that are the subject of a submortgage broker's transactions are often later found to be grow-ops or otherwise associated with criminal activity.
- Inability to confirm income or asset information by one or more borrowers who obtained a mortgage through the submortgage broker.
- Repetition of one or more of the suspicious indicators listed above in the submortgage broker's portfolio. Indicators that seem normal or explicable in individual instances may become improbable or suspicious when repeated.
- Unusual referral sources, such as repeated referrals from persons outside the real estate industry or from persons with criminal histories and affiliations.

Appendix 16A: Suspicious Indicators for Real Estate, by Transaction Phase

Below, I have rearranged the indicators in FINTRAC's 2016 operational brief and 2019 update so that the indicators are organized according to transaction phase. I hope this reorganization is of some practical assistance to real estate licensees in identifying suspicious transactions as they move through the client relationship.

For Property / Strata Managers:

1. Client is known to have paid large remodelling or home improvement invoices with cash, on a property for which property management services are provided.

Initial Contact / Listing Contract

Individuals:

1. When you ask for identification information (e.g. name, address, email, phone number, or birthday), the client:
    a. refuses or tries to avoid providing it;
    b. provides info that is misleading, vague, or incorrect;
    c. provides different information for different transactions;
    d. balks, and alters the transaction;
    e. appears to be collaborating with others to avoid providing ID info; or
    f. provides only a PO box or gatekeeper's address, or disguises a post office box as a civic address.
2. You receive identification documents from the client, but:
    a. the documents seem incorrect, counterfeited or false; or
    b. you have difficulty authenticating the client's identity documents.
3. Client appears to be collaborating with others to avoid providing identification.
4. You do not meet the client; your contact is a "gatekeeper" or agent for the client such as a lawyer, notary, accountant, or other.
5. You notice that multiple clients / parties to past transactions use the same mail or email addresses, phone numbers, or other identifiers, even though these parties do not appear to be related.
6. On a Google search, you notice that your client's name was identified by the media, law enforcement, and/or intelligence agencies as being linked to criminal activities.

7. Client is a citizen of (not just appears ethnically connected to) or currently residing in a country listed on a watchlist (e.g., countries under financial prohibition provisions, including Belarus, Eritrea, Iran, Libya, Nicaragua, North Korea, People's Republic of China, Russia, South Sudan, Syria, Ukraine (linked to Russia's ongoing violations of Ukraine's sovereignty and territorial integrity), Venezuela, Yemen, and Zimbabwe).[459]

Companies or entities:

1. Company seems to have no business operations (is a shell company).
2. Company has a very complex ownership structure.
3. Company seeks to purchase property unrelated to its business (e.g., a graphic designer company seeking to purchase a warehouse).
4. Company is resident in or operating out of a country on a watchlist (see above).

Reviewing Properties Together

General Information

1. Client seems nervous.
2. Client makes statements about involvement in criminal activities.
3. The client has provided you untrue information on at least one occasion.
4. The client refuses or is reluctant to provide information, gets defensive, or asks questions about avoiding FINTRAC reporting.
5. Transaction is carried out on behalf of persons who don't seem to have the necessary financial resources, including minors or incapacitated persons.

Property Details

1. Client presents confusing details about the transaction or doesn't seem to know why the property is being purchased/sold.
2. Client doesn't seem to care about price, just wants a property in a particular location or wants to complete the transaction in a big rush.

Client's Financial Means

1. When you ask how the client will be financing the property, the client:
   a. refuses to identify a source of funds;
   b. provides info that is false, misleading, or substantially incorrect;

459 Government of Canada, "Types of Sanctions," online: https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/types.aspx?lang=eng.

c. provides info that seems unrealistic or that cannot be supported by documents; and/or

d. appears to be living beyond their means.

2. The transaction is inconsistent with the client's apparent occupation, financial standing, or usual pattern of activity.

3. There is a sudden change in the client's financial profile, pattern of activity, or transactions.

Submission of Offer

Person Submitting Offer

1. Client appears to be or states they are acting on behalf of someone else.

2. Someone other than the person named on the offer conducts the majority of the transaction activity, which seems unnecessary or excessive.

3. Client uses a different name on the offer than is on the deposit you receive.

4. Client refuses to put own name on documents.

Client Unusually Disinterested

1. Size or type of transaction is atypical of what you expect from this client.

2. You notice suspicious features of the transaction and the client refuses or is unable to answer questions related to the transaction.

3. Client purchases property without viewing it.

4. Client seeks to complete the transaction quickly without good cause.

5. Client puts in offer without expressing interest in:

   a. property characteristics;

   b. property risks;

   c. price; or

   d. commissions.

6. Client offers unusually high bid relative to current value / industry standard.

Transacting Parties

1. Client buys back a property that he or she recently sold.
2. You notice the same property has changed ownership multiple times in a short period of time, especially if transferred between related parties.
3. A property is resold shortly after purchase at a much different price, even though the market values in the area haven't changed that much.
4. On a Google search, you notice that the other party to the sale (not your client) was identified by the media, law enforcement, and/or intelligence agencies as being linked to criminal activities.

Accepting Deposit

1. Client seems to be aware of FINTRAC's requirements for reporting, and seeks to avoid causing you to report.
2. Client asks you how to sell property below market value but with an additional "under the table" payment.
3. Client seeks to pay deposit:
    a. in cash;
    b. using a payment form that is unusual for that client;
    c. with virtual currency like bitcoin;
    d. in multiple transfers of $10,000 or less;
    e. by way of a series of complicated transfers, more complex than necessary;
    f. with a cheque or bank draft from a third party that isn't a spouse or parent; or
    g. of an unusually high amount;
4. Client uses multiple accounts at several financial institutions for no apparent reason.
5. While conducting the transaction, the client is accompanied, overseen, or directed by someone else.
6. You suspect the client is using personal funds for business purposes, or vice-versa.
7. The company that pays the deposit appears to be a shell company (i.e. appears to have no business operations).
8. Funds appear to come from a jurisdiction on a watchlist, or from a person/entity resident in or operating out of a jurisdiction on a watchlist.

Closing of Transaction

1. The client defaults on the transaction shortly after paying the deposit, and/or seems not to care about losing the deposit.
2. At the last minute, the client wishes to switch the name in the contract.
3. The client purchases property in someone else's name (not their spouse or parent).
4. Transaction involves a person who lives in, or an entity that operates out of, a jurisdiction on a watchlist
5. When you ask about the financing of the transaction, you learn the buyer has a loan / financing from:
    a. multiple unknown investors;
    b. a private lending institution (i.e. not a financial institution);
    c. a company that has no relationship to the client; or
    d. a company operating outside of Canada.

Post-Closing

1. Buyer of income-generating property shows no interest in generating profit by renting out vacant units or adjusting rent value to match market value.
2. You notice the property that was just sold is listed shortly afterwards, despite no appearance of any renovations.

Chapter 17
Private Lending

Money laundering risks involving mortgage lending are by no means restricted to the mortgage broker industry, the focus of the last chapter. They arise more broadly with other forms of lending involving real estate. The intergovernmental, governmental, and academic commentary are consistent in concluding that mortgages may be used as a tool for laundering money through real estate. In this chapter, I examine how private lending can be used to launder proceeds of crime in British Columbia.

First, I provide relevant background information and describe money laundering typologies involving mortgages. I then outline the regulation and legislation applicable to mortgage lending, and types of mortgage lenders.

Second, I summarize a study, a data analysis performed for the Commission. That study, and a description of its methodology, was received into evidence as Exhibit 729.[1] It sought to (a) estimate the size of the unregulated or unregistered mortgage lending sector in BC; (b) estimate how much capital is invested with mortgage investment corporations (MICs) in BC and the geographic origins of that capital; and (c) identify lenders that meet one of the definitions of a mortgage broker under the *Mortgage Brokers Act* but yet have not registered with the Registrar of Mortgage Brokers (Registrar). The report also assessed data quality and accessibility, particularly with respect to Land Title and Survey Authority (LTSA) data, and its impacts on a user's ability to perceive anomalous lending activities, such as patterns of activity associated with money laundering typologies. I draw from that report to make conclusions about where money laundering vulnerabilities exist in the private lending sector.

1 Exhibit 729, Affidavit of Adam Ross, made on March 9, 2021 [Ross Affidavit], exhibit B, White Label Insights, *Private Lending in British Columbia* (March 9, 2021).

Third, I discuss the private lending activities of Paul Jin, which provide insights into the money laundering vulnerabilities associated with private lending.[2]

Finally, I conclude with a number of recommendations that will address identified money laundering vulnerabilities.

Part 1: Background

Definitions

The term "traditional lenders" – also commonly referred to as conventional lenders or financial institutions – is understood to encompass banks, credit unions, *caisses populaires*, loan and trust companies, and life insurers. Private lenders, on the other hand, are a diverse group encompassing all non-traditional lenders, including individuals, mortgage investment entities, and a variety of businesses, holding companies, and non-profits.

I use the term "unregulated" in this chapter to describe private lenders whose lending activity does not require them to be registered with any regulatory body. I use the term "unregistered" in this chapter for private lenders that are not registered with either the Registrar of Mortgage Brokers or the BC Securities Commission, but who meet at least one of the criteria for registration with those regulators.

Typologies: Money Laundering Through Mortgages

The literature – including academic literature, publications by law enforcement and financial intelligence units, and media reports – establishes mortgages as a high-risk typology for the laundering of the proceeds of crime.[3] The typologies identified can be broadly divided into two categories: the borrowing side of the mortgage transaction (borrower typologies) and the lending side (lender typologies).

2 Exhibit 1052 (previously marked as EX K), Overview Report: Paul Jin Debt Enforcement Against BC Real Estate (May 13, 2021).

3 Louise Shelley, "Money Laundering into Real Estate" in Michael Miklaucic and Jacqueline Brewer (eds), *Convergence: Illicit Networks and National Security in the Age of Globalization* (Washington, DC: National Defense University Press, 2013); Government of Australia, Australian Transaction Reports and Analysis Centre, *Strategic Analysis Brief: Money Laundering Through Real Estate*, (2017) [AUSTRAC], p 7, online: https://www.austrac.gov.au/sites/default/files/2019-07/sa-brief-real-estate_0.pdf; Exhibit 4, Overview Report: Financial Action Task Force,, Appendix Q, *Concealment of Beneficial Ownership* (July 2018), pp 64–65, online: https://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf; Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate & Response from Real Estate Industry, Appendix 1, Financial Action Task Force, *Money Laundering & Terrorist Financing Through the Real Estate Sector* (June 29, 2007) [FATF 2007]; Exhibit 7, Stephen Schneider, *Money Laundering in Canada: A Quantitative Analysis of RCMP Cases* (July 2004), pp 34–35; Brigitte Unger et al, *Detecting Criminal Investments in the Dutch Real Estate Sector* (January 19, 2010), online: https://www.politieacademie.nl/kennisenonderzoek/kennis/mediatheek/PDF/86218.pdf; Joras Ferwerda, *Money Laundering in the Real Estate Sector: Suspicious Properties* (Massachusetts: Edward Elgar, 2011); Gordon Hoekstra, "BC Civil Forfeiture Case Alleges Drug Money Laundered in Real Estate," *Vancouver Sun*, January 17, 2019, online: https://vancouversun.com/news/local-news/b-c-civil-forfeiture-case-alleges-drug-money-laundered-in-real-estate/.

Borrower Typologies

Repayment of mortgages with proceeds of crime: by taking out a mortgage, a criminal borrower can use legitimate (or laundered) funds to finance part of a property purchase and then repay the loan using proceeds of crime. Subsequent mortgages can be taken out using the property as collateral to launder more money. Cash proceeds of crime can be deposited with financial institutions and will not trigger an obligation to make a large cash transaction report if the deposits are under $10,000. Those funds can then be used to make mortgage payments. This typology may also be used during the layering and integration phase of money laundering, without actual cash. Early repayment and large lump sum payments can expedite the laundering process.[4]

Leveraging proceeds of crime to purchase property: in the same way that legitimate buyers can make leveraged purchases, criminal buyers can use mortgages to acquire property that they would otherwise be unable to afford (or which would draw unwanted attention if they were to acquire it outright[5]). In doing so, money launderers can scale up by acquiring multiple properties or higher value real estate. When properties are sold, the proceeds are used to repay mortgages and launder the deposits and down payments. In the interim, the criminal borrower can increase his equity in a property by making mortgage payments with proceeds of crime (as above), though the main objective is to launder the deposit or down payment by flipping the property.[6] A 2004 study of RCMP files found that, out of 83 money laundering cases linked to real estate, 78 percent involved a mortgage that was repaid with proceeds of crime.[7] Analysis done for the *Dirty Money 2* report found that of 154 properties targeted by the Civil Forfeiture Office since 2006, 92 percent (142) were mortgaged.[8] The analysis found that properties targeted by the Civil Forfeiture Office – which *Dirty Money 2* used as a proxy for properties through which money has been laundered[9] – were more likely to have multiple mortgages registered against them, with lenders repaid more quickly than average.[10]

4 Exhibit 729, Ross Affidavit, exhibit B p 11; see also Evidence of K. Best, Transcript, February 23, 2021 pp 35–38; Exhibit 652, Affidavit #1 of Karen Best Sworn February 12, 2021, p 6.

5 Sean Hundtofte and Ville Rantala, "Anonymous Capital Flows and US Housing Markets" (University of Miami Business School Research Paper No. 18-3, 2018), pp 9–10: All-cash (i.e., unfinanced) purchases of real estate have attracted the attention of regulators and reporting entities as being at high risk for money laundering.

6 British Columbia Real Estate Association, "The Role of REALTORS® in Helping the Government Stop Money Laundering" (December 2018), online: https://www.bcrea.bc.ca/wp-content/uploads/2018-12moneylaunderinginfographic-1.pdf. The deposit for a property needs to have been already placed in the financial system in order to be used for a transaction, as payment in cash (i.e., hard currency) is no longer accepted for real estate purchases. Laundering the deposit falls within the layering / integration stages of the money laundering process.

7 Exhibit 7, S. Schneider, *Money Laundering in Canada: A Quantitative Analysis of RCMP Cases*, pp 34–35.

8 Exhibit 833, Peter M. German, *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019 [*Dirty Money 2*], p 109.

9 Although this was the proxy employed by the authors of *Dirty Money 2*, I note here that the *Civil Forfeiture Act*, SBC 2005 c 29, also authorizes the Civil Forfeiture Office to pursue assets as instruments of crime, and that a Civil Forfeiture Office proceeding does not necessarily indicate that a property was targeted as proceeds of crime.

10 Exhibit 729, Ross Affidavit, exhibit B, pp 11–12.

Lender Typologies

Lending proceeds of crime: like legitimate capital, proceeds of crime can be loaned and secured by real estate. Loans can be registered on title as mortgages or be secured through promissory notes or contracts. They can be made directly by an individual or through a nominee or legal entity. Payments received on those loans, including any interest earned on the investments, can then be declared as legitimate income. Laundering through mortgage lending either needs to take place after the placement stage (i.e., when the money is already in the financial system) or the funds need to be used for purposes other than acquiring property, as it is difficult to buy real estate with cash in Canada.[11] Mortgages do not only finance property purchases but can be advanced in cash to pay for renovations, building work, or expenses unrelated to real estate.[12]

Investing proceeds of crime with third-party lenders: mortgage investment entities present another opportunity for laundering proceeds of crime through real estate. In this typology, a criminal would place funds with another private lender such as a mortgage investment corporation, which would lend against real estate. In this type of arrangement, the criminal would not be involved in originating loans or collecting on debts. It is a passive investment generating returns that can be reported as legitimate income. Institutional private lenders that raise outside capital are regulated and subject to statutory anti–money laundering obligations such as "know-your-client" due diligence. As such, proceeds of crime would generally need to be placed with a financial institution before being invested with a mortgage investment entity, and the investor would be subject to some scrutiny. Nonetheless, this typology would afford the prospective money launderer with a means of putting illicit income into real estate, while also generating income in apparently legitimate funds.[13]

The Loan-Back Scheme

Lending and borrowing typologies can be bridged in what is known as a "loan-back" scheme, whereby a criminal borrows and repays his own funds.[14] This method typically involves the use of a corporate entity acting as the lender, which is ultimately controlled by the borrower. The corporate entity is usually registered in an opaque jurisdiction – where shareholders and/or directors are not disclosed or where nominees are permitted – in order to conceal the link to the borrower. Less sophisticated loan-back schemes may use individual nominee lenders instead of corporate entities.[15]

11 Law Society of British Columbia, Discipline Advisory, "Know Your Obligations Before Accepting Cash," (November 8, 2013), online: https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/discipline-advisories/november-8,-2013/: The PCMLTFA and associated Regulations require real estate agents and financial institutions to report suspicious activity and large cash transactions to FINTRAC. Since 2004, the Law Society of has precluded its members from accepting cash payments amounting to more than $7,500 limit for cash payments that can be accepted by its members.

12 Exhibit 729, Ross Affidavit, exhibit B, p 12.

13 Ibid, p 12.

14 Exhibit 601, Appendix 1, FATF 2007, pp 7–8.

15 Exhibit 729, Ross Affidavit, exhibit B, p 13.

Professor Stephen Schneider's 2004 study of RCMP money laundering cases found that 20 of 83 cases (24%) involved loan-back schemes under which the criminal would set up a "fake" mortgage to lend against a property he owned either directly or indirectly through a company or nominee.[16]

Regulatory and Legislative Structure

PCMLTFA *and Associated Regulations*

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*) and associated Regulations impose obligations on individuals and entities in prescribed sectors with respect to due diligence, anti–money laundering training and reporting to FINTRAC.[17] In the context of mortgage lenders in Canada, the *PCMLTFA* and associated Regulations cover banks, credit unions, *caisses populaires*, trust and loan companies (collectively, "financial entities"), life insurers, and securities dealers. These lenders are "reporting entities" under the *PCMLTFA* and associated Regulations. This status imposes obligations – including conducting know-your-client due diligence; maintaining anti–money laundering compliance programs; keeping records; and reporting suspicious and large cash transactions to FINTRAC.[18]

The *PCMLTFA* and associated Regulations do not apply to individuals, most private companies – including mortgage investment corporations[19] – and non-profit entities (i.e. charities, foundations, and endowments) that engage in mortgage lending.

Provincial Legislation and Regulation

The private mortgage lending industry in BC is regulated under the provincial *Mortgage Brokers Act* (*MBA*)[20] and the *Securities Act*.[21] Though neither of those laws explicitly addresses money laundering, the *MBA*, *Securities Act*, and supporting regulations do apply oversight and rules of conduct to those mortgage lenders. Of particular relevance to private lenders:

- The *MBA* applies to any person who "carries on a business of lending money secured in whole or in part by mortgages," who "in any one year, lends money on the security of 10 or more mortgages," and/or who "carries on a business of buying and selling

16 Exhibit 7, S. Schneider, *Money Laundering in Canada: A Quantitative Analysis of RCMP Cases*, p 33.

17 FINTRAC, "Securities Dealers" (modified July 12, 2021), online: https://www.fintrac-canafe.gc.ca/re-ed/sec-eng.

18 FINTRAC, "Reporting Entities" (accessed April 15, 2021), online: https://www.fintrac-canafe.gc.ca/re-ed/intro-eng.

19 FINTRAC, "FINTRAC Policy Interpretations" (accessed March 2, 2021), online: https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2-eng?s=2. FINTRAC takes the position that MICs issuing only their own shares to investors are not considered securities dealers and are not reporting entities under the *PCMLTFA* and associated Regulations.

20 *Mortgage Brokers Act*, RSBC 1996, c 313, s 1.

21 RSBC 1996, c 418; Canadian Securities Administrators, "CSA Staff Notice 31-323: Guidance Relating to the Registration Obligations of Mortgage Investment Entities" (February 25, 2011) [CSA Notice], online: https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy3/31323_CSA_Staff_Notice2.pdf.

mortgages or agreements for sale."[22] The *MBA* definition therefore captures not only those brokering transactions between borrowers and lenders but also includes an array of lenders themselves, including mortgage investment corporations.

- The *Securities Act* and associated regulations place know-your-client obligations on mortgage investment entities[23] that are registered with the BC Securities Commission, though those obligations do not include source-of-fund checks or anti–money laundering focused due diligence.[24]
- From August 2010 through February 2020, mortgage investment entities were not required to register with the BC Securities Commission as investment fund managers, advisers and/or exempt market dealers. This was due to a temporary exemption that was renewed repeatedly until 2019, when mortgage investment entities were given a one-year grace period to register with the securities regulator.[25]
- The regulators tasked with enforcing the *MBA* and the *Securities Act* – the Registrar / BCFSA and the BC Securities Commission, respectively – do not have an anti–money laundering mandate. The Registrar and BCFSA are concerned with consumer protection and maintaining the stability of BC's financial services industry.[26] For its part, the BC Securities Commission's mandate concerns investor protection and preserving the integrity of capital markets.[27]

In addition, the *Business Practices and Consumer Protection Act* applies to mortgage lending in BC to the extent that the Act covers unfair practices and disclosure of the cost of consumer credit, including interest rate calculations and fees.[28]

22 *MBA*, s 1.

23 CSA Notice, p 1: MIE is a term used by securities regulators, which encompasses MICs and other lenders "whose purpose is to directly or indirectly invest substantially all of its assets in debts owing to it that are secured by mortgages, hypothecs or in any other manner on real property."

24 BC Securities Commission, "Expiry of BC Instrument 32-517 Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities and Registration Requirements for Persons Relying on BCI 32-517 on February 15, 2019" (January 21, 2019), online: https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/PolicyBCN/BCN-201901-January-21-2019.pdf; BC Securities Commission, "Companion policy 31-103 CP: Registration Requirements, Exemptions and Ongoing Registrant Obligations" (February 2012), p 37, online: https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/HistPolicies/HistPolicy3/31103CP_CP_Feb2012.pdf.

25 BC Securities Commission, "Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities – BC Instrument 32-517" (August 15, 2018) online: https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy3/32517-BCI-August-15-2018.pdf. That exemption took effect in BC on December 3, 2010.

26 BC Financial Services Authority, "What We Do – Mandate and Values" (accessed December 14, 2020), online: https://www.bcfsa.ca/index.aspx?p=about_us/mandate.

27 BC Securities Commission, "About - Mission, Values & Overall Benefits" (accessed December 14, 2020), online: https://www.bcsc.bc.ca/about/what-we-do/mission-values-benefits.

28 *Business Practices and Consumer Protection Act*, SBC 2004 c 2, Part 5; Mortgage Brokers Association of BC, Cathy Swallow, "Business Practices and Consumer Protection Act: What Does It Mean To You?" (February 2007), online: http://www.mbabc.ca/wp-content/uploads/2011/01/disclosure_seminar_feb_2007.pdf.

Types of Private Mortgage Lenders

Background

According to figures published in October 2021 by Canada Mortgage and Housing Corporation (CMHC), 93 percent of the $1.73 trillion in residential mortgages in Canada is financed by banks, credit unions, and *caisses populaires* – each of which have anti–money laundering reporting and due diligence obligations under the *PCMLTFA* and associated Regulations.[29] Most of the remaining residential mortgages are funded by lenders who are not reporting entities.[30]

Mortgages provided by private lenders typically involve rates higher than those charged by financial institutions. But they offer more flexibility or more lenient terms, such as relaxed standards for the borrower's debt load, employment history, or citizenship status. As such, these mortgages are attractive to would-be borrowers who do not qualify for loans with regulated financial institutions.[31]

Private lending is increasing across Canada, driven in part by mortgage "stress test" regulations rolled out by the federal Office of the Superintendent of Financial Institutions (OSFI) in January 2018 (known as the B-20 rules).[32] The B-20 rules apply to lenders regulated by OSFI, and impose a "stress test" requiring borrowers to demonstrate an ability to withstand shocks such as income interruption or rising interest rates. The B-20 guidelines also require rigour in a lender's verification of a borrower's income. A private lender who is not subject to the B-20 guidelines, on the other hand, may be satisfied simply by the security of a mortgage registered on title where there is sufficient equity in the property.

For the purposes of this chapter, mortgage lenders are categorized by reference to the extent to which they are regulated.

Lenders with PCMLTFA *Obligations*

This category of lenders includes traditional lenders that have obligations under the *PCMLTFA* and associated Regulations, including banks, credit unions, and *caisses populaires*, which do approximately 93 percent of mortgage lending in Canada.[33]

29 CMHC, "Residential Mortgage Industry Report" (October 2021) [CMHC 2021], p 3, online: https://assets.cmhc-schl.gc.ca/sites/cmhc/professional/housing-markets-data-and-research/housing-research/research-reports/housing-finance/residential-mortgage-industry-report/2021/residential-mortgage-industry-report-2021-10-en.pdf?rev=e269b608-9ebc-4e28-ae3e-1629f9a5a674. A further 5 percent of residential mortgages are financed by mortgage finance companies, which comply with OSFI guidelines in order to qualify for securitization programs and funding from banks. However, they are not explicitly covered by anti–money laundering regulations and reporting is voluntary.

30 Ibid.

31 Ibid; CMHC 2021; Shop The Rate, "When You Should Consider a Private Mortgage" (updated September 16, 2019), online: https://shoptherate.ca/blog/mortgages/when-you-should-consider-a-private-mortgage; Chrissy Kapralos and Caitlin Wood, "Loans for Newcomers to Canada" (updated December 3, 2021), Loans Canada, online: https://loanscanada.ca/loans/loans-for-newcomers-to-canada/.

32 OSFI, "Residential Mortgage Underwriting Practices and Procedures – Guideline B-20" (updated February 18, 2021), online: https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b20-nfo.aspx.

33 CMHC 2021, p 3.

Regulated Lenders with no PCMLTFA *Obligations*

These lenders are not (currently) directly covered by the *PCMLTFA* and associated Regulations but have other regulatory obligations, either because they voluntarily uphold OSFI standards (in the case of mortgage finance companies) or because they are covered under provincial regulations (registered mortgage brokers, including mortgage investment corporations, and issuers / arrangers of syndicated mortgage investments).

As recently observed by the Financial Action Task Force in a public consultation on a revised guidance document for money laundering through real estate, mortgage lenders are well positioned to observe indicators of suspicion:

> While mortgage lenders that are separate from banks may not have the same visibility into account and payment information that banks do, these lenders do have insight into key beneficial ownership and financial details provided by those seeking mortgages. *This arrangement makes mortgage lenders a key player in the [anti–money laundering / counterterrorist financing] efforts for the sector as real estate agents and other professionals providing similar services will not be in a position to access this information and evaluate it for any ML/TF [money laundering / terrorist financing] risk.* Additionally, mortgage lenders' ability to approve mortgages puts them in an effective position to immediately address any ML/TF risk by choosing not to approve certain mortgages that may be indicative of ML/TF activity. [Emphasis added.][34]

Each of the mortgage lenders described here is, to some degree, vulnerable to facilitating, unwittingly or otherwise, money laundering by way of the typologies described above, either by lending out funds that are the proceeds of crime, or by providing financing to borrowers who are dealing in the proceeds of crime.

Shortly before the release of this report, the federal government released the 2022 budget. The 2022 budget proposes extending anti–money laundering obligations to "all businesses conducting mortgage lending in Canada" within the next year.[35] I commend this proposed change and have taken it into account in the recommendations made in this chapter.

The federal budget does not set out precisely how this will take place, and what obligations private mortgage lenders will be subject to. Depending on the specific obligations imposed on private lenders by the federal amendments, the provincial government may well still have a role to play in managing the money laundering risks associated with private lending. In particular, the provincial government will need to be

34 Financial Action Task Force, "Public Consultation on the FATF Risk-Based Guidance to the Real Estate Sector" (2nd Draft Guidance Paper for considering and agreement to public consultation) (April 2022), para 110, online: https://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-consultation-guidance-real-estate.html.

35 Government of Canada, Federal Budget 2022, "Chapter 1: Making Housing More Affordable" (updated April 7, 2022), online: https://budget.gc.ca/2022/report-rapport/chap1-en.html#wb-cont.

attentive to whether the anti–money laundering due diligence and reporting obligations of private lenders extends to investors as well as borrowers. Later in this chapter, I make a recommendation that the Province create a new regulator of private mortgage lenders. I recommend that the Province create a positive obligation on mortgage lenders to make source-of-funds inquiries of investors providing capital for the lending business, if such obligations are not included in the federal reforms and specifically in private mortgage lenders' new obligations under the *PCMLTFA* and associated Regulations.

Recommendation 26: I recommend that the Province create a positive obligation on mortgage lenders to make source-of-funds inquiries of investors providing capital for the lending business, if such obligations are not included in the federal reforms to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and associated Regulations.

This obligation can be addressed by way of the new legislation addressing private mortgage lending that I recommend later in this chapter.

Mortgage Investment Corporations

Mortgage investment corporations are private lenders whose borrower base does not typically qualify for loans from traditional lenders. Mortgage investment corporations issue equity to outside investors and lend out the capital raised as mortgage loans. FINTRAC does not consider mortgage investment corporations to be securities dealers, and most do not meet the criteria for any other type of reporting entity under the *PCMLTFA* and associated Regulations.[36]

As issuers of securities, mortgage investment corporations are regulated by provincial securities commissions and are expected to comply with relevant securities legislation where they operate (e.g., the *Securities Act*). In BC, mortgage investment corporations must also be registered under the *MBA* and are regulated by BCFSA.

While mortgage investment corporations are subject to some regulation, neither the BC Securities Commission nor the Registrar of Mortgage Brokers have an anti–money laundering mandate. For its part, the BC Securities Commission regulates capital raising and dealings with investors. The BC Securities Commission's focus is on "protecting investors and the integrity of BC's capital markets."[37] The Registrar and BCFSA are concerned with consumer protection and the stability of the province's financial services sector.[38]

36 FINTRAC, "FINTRAC Policy Interpretations" (accessed March 2, 2021) online: https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2-eng?s=2. This reflects the situation prior to the implementation of the Budget 2022 commitment to bringing private mortgage lenders into the *PCMLTFA*.

37 BC Securities Commission, "Mission, Values & Overall Benefits," online: https://www.bcsc.bc.ca/about/what-we-do/mission-values-benefits.

38 BC Financial Services Authority, "Mandate and Values," online: https://www.bcfsa.ca/index.aspx?p=about_us/mandate.

Mortgage investment corporations that are registered with the BC Securities Commission (as well as their registered managers and advisers) have responsibilities with respect to know-your-client due diligence. That know-your-client process is intended to determine "whether trades in securities are suitable for investors … [to] protect the client, the registrant and the integrity of the capital markets."[39] Ascertaining the source of funds and mitigating money laundering risk are *not* objectives of due diligence under the *Securities Act*.

Mortgage investment corporations are predominantly active in the residential property market. By law, at least half of their assets must be invested in residential mortgages or insured deposits.[40] A 2015 study commissioned by CMHC found that 74 to 83 percent of mortgage investment corporation lending was for residential mortgages.[41] Mortgage investment corporations also lend against other classes of property, however, and are a common source of financing for real estate development.[42]

For borrowers, MIC-funded mortgages often serve as bridge financing until other more favourable loans can be obtained. Most mortgage investment corporations provide loans for terms of six to 24 months, with the median term for a MIC-funded mortgage being one year, as opposed to five years for banks and credit unions.[43] Interest rates for MIC-funded mortgages tend to be higher than those of traditional lenders, with average rates of 9 to 10 percent. These higher rates reflect the risk profile of borrowers, who tend to be self-employed, real estate investors, and borrowers with short-term liquidity issues.[44] There are money laundering risks on the lending side of the operation of mortgage investment corporations, as there is less scrutiny of borrower source of funds and a borrower's ability to service debt. Mortgage investment corporations are not obligated, for instance, to apply the B-20 "stress test" that applies to lenders regulated by OSFI.

39 Exhibit 603, Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia, para 72; Appendix O, BCSC BC Notice 2019/01 Expiry of BC Instrument 32-517 Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities and Registration Requirements for Persons Relying on BCI 32-517 on February 15, 2019 (January 21, 2019); Exhibit L, Companion Policy 31-103 CP Registration Requirements, Exemptions and Ongoing Registrant Obligations, p 35; Appendix P, Companion Policy 31-103 CP Registration Requirements, Exemptions and Ongoing Registrant Obligations (February 2012), p 37.

40 *Income Tax Act*, RSC 1985, c1 (5th Supp), s 130.1(6).

41 CMHC, Fundamental Research Corp, "Growth and Risk Profile of the Unregulated Mortgage Lending Sector" (October 9, 2015), online: https://www.baystreet.ca/articles/research_reports/fundamental_research/Unregulated-Mortgage-Lenders-Oct-2015.pdf.

42 Ibid.

43 Benjamin Tal, CIB Economics, "Mortgage Stress Test: The Operation Was a Success, but …" (April 16, 2019) (accessed February 9, 2021) [CIBC 2019], online: https://economics.cibccm.com/economicsweb/cds?ID=7069&TYPE=EC_PDF; CMHC, "Research Insight: Mortgage Investment Corporations Update" (December 2018) (Manager: Richard Gabay and Michael Oram), online: http://publications.gc.ca/collections/collection_2019/schl-cmhc/NH18-33-10-2018-eng.pdf.

44 Janet McFarland, "Non-Bank Lenders Attract Wave of Money, CMHC Report on Mortgages Says," *Globe and Mail*, July 16, 2019, online: https://www.theglobeandmail.com/business/article-non-bank-lenders-attract-wave-of-money-cmhc-report-on-mortgages-says/.

Mortgage investment corporation loans tend to have lower loan-to-value ratios[45] than mortgages issued by banks, credit unions and monoline lenders. According to a CMHC report, the average loan-to-value ratio for mortgage investment corporations was 58.6 percent in the first quarter of 2021.[46]

According to CMHC, mortgage investment corporations account for 1 percent of total residential mortgages nationwide – around $13 to 14 billion[47] – and there are approximately 200 to 300 mortgage investment corporations operating in Canada. CMHC estimates that 78 percent of mortgage investment corporation mortgages are in BC and Ontario, with the majority concentrated in the Vancouver and the Toronto areas.[48]

BC Securities Commission filings for 119 mortgage investment corporations that have filed reports with the regulator since 2011 indicate that these corporations raised approximately $6.7 billion for mortgage lending between 2011 and 2019.[49] There are money laundering risks on the investment side of mortgage investment corporations, as they do not have source-of-funds obligations requiring them to ascertain the origin of funds they receive as investments.

Mortgage Finance Companies

Mortgage finance companies, often referred to as "monoline lenders," are non-depository financial institutions whose only line of business is underwriting and administering mortgages. Unlike mortgage investment corporations and syndicated lenders, mortgage finance companies securitize their mortgages and sell them to banks (whereas mortgage investment corporations and syndicated lenders keep the loans on their own books). Mortgage finance companies, insurance and trust companies accounted for approximately 5 percent of residential mortgage loans in Canada as of 2021.[50]

CMHC refers to mortgage finance companies as being "quasi-regulated" because, although they are not directly captured by the *PCMLTFA*, they rely on public mortgage securitization programs and funding methods that require them to comply with regulations[51] and guidelines such as those published by OSFI on deterring and detecting money laundering.[52] Money laundering risk related to mortgage finance companies is limited on the lending side, because they obtain most of their funds through public securitization programs and wholesale funding from banks.[53] In order to qualify for those sources of capital, mortgage finance companies adhere to the same underwriting

45 Loan-to-value determines the maximum amount of a secured loan, in reference to the market value of the property or asset that is being pledged as collateral.

46 CMHC 2021, p 20

47 Ibid, p 20.

48 Ibid, p 27.

49 Exhibit 729, Ross Affidavit, exhibit B, para 40.

50 CMHC 2021, p A12.

51 Ibid, p 16.

52 Ibid, p 15.

53 Ibid, p 17.

standards as banks and other OSFI-regulated lenders, which reduces money laundering risk from borrowers because there is generally considerable scrutiny of borrowers' source of funds and creditworthiness. Mortgage finance companies do not have statutory anti–money laundering obligations under the *PCMLTFA* and associated Regulations (though they may nevertheless voluntarily submit information regarding suspicious transactions to FINTRAC).

Syndicated Mortgage Investments

Syndicated mortgage investments involve multiple investors pooling funds to finance a real estate project or purchase. Syndicated mortgage investments enable investors to spread risk and finance loans that might otherwise be too large for one party to fund on their own. Unlike investment in a mortgage investment corporation, where investors own shares in the lender, with a syndicated mortgage investment, the lenders take a position on each loan.[54]

Syndicated mortgage investment lenders include banks, credit unions, and institutional investors, as well as individuals. Syndications can also be used to pool funds from wider groups of retail investors. Syndicated lending can be used as an alternative to bank financing for commercial real estate investments or development projects, with funds often going toward early-stage costs such as permits and planning expenses. Where larger numbers of co-lenders are involved, syndicated mortgage investments are often managed by an administrator, who may also be the lead lender.[55]

In BC, syndicated mortgage investments are either "qualified" or "non-qualified."[56] Qualified syndicated mortgage investments involve co-lending by institutional investors and/or loans where multiple parties pool funds to finance a specific residential mortgage. Their issuers (i.e., lenders) and arrangers (i.e., administrators and arranging co-lenders) are largely exempt from BC Securities Commission regulations (requiring them to file investment prospectuses and register as securities dealers, respectively), providing they meet certain requirements.[57] They may nevertheless be required to register as mortgage brokers under the *MBA*. On the other hand, issuers and arrangers of non-qualified syndicated mortgage investments *are* regulated by the BC Securities Commission and are required to file offering memoranda and register as dealers, respectively.[58]

54 Exhibit 729, Ross Affidavit, exhibit B, para 44.

55 Ibid, para 45.

56 BC Securities Commission, "Commission Rule 45-501 (BC) Mortgages" (September 28, 2009) [BCSC Rule 45-501], online: https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/HistPolicies/HistPolicy4/45501_BCI.pdf.

57 BC Securities Commission, "Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and Changes to Companion Policy 45-106CP Prospectus Exemptions and Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations related to Syndicated Mortgages" (August 6, 2020) [CSA Notice 2020].

58 BC Securities Commission, "Annex F – Local Matters (British Columbia)" (August 6, 2020), online: https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-4/45106-Local-Matters-August-6-2020.pdf.

Securities administrators have amended the regulatory regime for syndicated mortgages, including enhanced reporting and controls such as mandating independent appraisals of properties prior to issuing syndicated mortgage investments.[59] Amendments to syndicated mortgage rules by the BC Securities Commission (and its counterparts in other provinces) [60] went into effect on March 1, 2021.

Presently, there is no reliable way to identify syndicated mortgage investments through publicly available LTSA records. In some cases, known as direct participation, each syndicated mortgage investment co-lender is identified on the Form B charge registration document and has a direct relationship with the borrower. In other cases, an administrative agent is listed as the charge holder, and co-lenders register their interest through a loan agreement or commitment letter. In those cases of indirect participation, there is often no record with LTSA to indicate that a loan is syndicated.[61]

Information on the identity of mortgage lenders *should* be available through LTSA. The absence of such information is a barrier to the regulation and oversight of mortgage lenders. An absence of visibility into mortgage lenders may also encourage mortgage lending activity by those wishing to invest illicit funds in the real estate market. I recommend that the Province amend Form B so that all legal owners of mortgage charges are reported, and that this information be available through the land titles registry.

Recommendation 27: I recommend that the Province amend Form B (the form for registration of a mortgage under section 225 of the *Land Title Act*) so that all legal owners of mortgage charges are reported, and that this information be available through the land titles registry.

An additional measure to increase the visibility of interests in real property, is to ensure that mortgages fall within the Land Owner Transparency Registry regime. I recommend that Province amend the definition of "interest in land" in the *Land Owner Transparency Act* to include mortgages, in order to ensure that the beneficial owners of a charge cannot obscure their ownership.

59 Canadian Securities Administrators, "CSA Second Notice and Request for Comment: Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations Relating to Syndicated Mortgages and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions and Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations" (March 15, 2019), online: https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Regulatory-Instruments/2019/03/5452130-v1-CSA_Notice_re-Syndicated_Mortgages_Proposed-Amendments-45-106-_-31-103.ashx.

60 BC Securities Commission, "Annex F: Local Matters (British Columbia)" (August 6, 2020), online: https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-4/45106-Local-Matters-August-6-2020.pdf.

61 Exhibit 729, Ross Affidavit, exhibit B, p 21.

Recommendation 28: I recommend that Province amend the definition of "interest in land" in the *Land Owner Transparency Act* to include mortgages, in order to ensure that the beneficial owners of a charge cannot obscure their ownership.

Non-Mortgage Investment Corporation Mortgage Brokers

As I mentioned in Chapter 16, the *MBA* requires registration not just for those performing loan origination services – what the public typically associates with the term "mortgage brokering" – but also for some mortgage *lending* activity. This is not intuitive. Several witnesses suggested that the *MBA* requires amendment to make it clearer who is required to register. I return to this issue below, in the context of discussing the results of Adam Ross's review of LTSA filings for the purpose of identifying mortgage lenders who are not registered with the Registrar of Mortgage Brokers.

Unregulated and Unregistered Lenders

Unregulated lenders include lenders whose mortgage lending activity does not require them to register with any regulatory body as a lender, as well as those who are specifically exempt from registering. **Unregistered lenders** are those that appear to meet at least one criterion for registration under the *MBA* or *Securities Act,* but who have not registered.

These unregulated or unregistered lenders include:

- **Individuals**: private individuals account for slightly more than half of private mortgage lending, according to figures from Ontario.[62] Individual lenders can be arm's-length investors or associates of the borrower. One analysis from Ontario estimates that intra-family loans account for 10 percent of mortgage lending by individuals.[63] While individual lenders and borrowers may know one another, in other instances they may be paired by a broker and have no direct interaction. While some individual lenders in BC are registered with BCFSA as mortgage brokers or sub-brokers, the vast majority are not (see the next section of this chapter).
- **Private legal entities:** privately held corporations, societies, and other legal entities also feature as mortgage lenders. Legal entities may be established with the specific purpose of mortgage lending, or they may register mortgages alongside other business activities or investments. They are a diverse group. They include: sellers of properties that issue vendor take-back mortgages;[64] small businesses whose owners

62 CIBC 2019, p 3.

63 Ibid.

64 Dalia Barsoum and Enza Venuto, "Ins and Outs of the Vendor Take-Back Mortgage," *Canadian Real Estate Magazine,* August 27, 2012, online: https://www.canadianrealestatemagazine.ca/news/ins-and-outs-of-the-vendor-takeback-mortgage-184019.aspx.

prefer to lend through their company for tax reasons;[65] and a multitude of others. In BC (and much of Canada), private legal entities are not required to publicly identify their shareholders or beneficial owners, so in most cases there is no information about the individuals behind these lenders.[66]

- **Crowdfunding**: this relatively new real estate investment mechanism allows investors to partially fund individual projects, typically through online platforms. Real estate is a growing application for the financing model.[67] There are very few real estate crowdfunders operating in Canada.

In BC, crowdfunding in real estate has been regulated by the BC Securities Commission since May 2015, with a $1,500 cap on each deal per individual investor, a $500,000 annual limit for each fundraiser, and a $250,000 limit on each project.[68] Crowdfunders are required to register as exempt market dealers.[69] Shortly before the release of this Report, in April 2022, the federal government announced its intention to bring crowdfunding platforms into the scheme of the *PCMLTFA*.[70]

Part 2: Land Title and Survey Authority Data Analysis

How much private lending occurs in British Columbia? The Commission sought to answer this question. Using charge and title data from the LTSA, BC Assessment Roll data, reports of exempt distribution filed by mortgage investment corporations with the BC Securities Commission, and the names of mortgage brokers and sub-brokers registered with the Registrar/BCFSA, a report prepared for the Commission sought to quantify the extent of private lending in British Columbia. This would assist in understanding how much private lending is unregulated, or conducted by persons

65 Bakertilly Publications, "Should You Put Your Investments into a Corporation?" *Bakertilly*, October 15, 2005, online: https://www.bakertilly.ca/en/btc/publications/should-you-put-your-investments-into-a-corporation; Jamie Golombek, "Small Business Owner Dilemma: Invest in an RRSP, or Do The Investing Through Your Corporation?" *Financial Post*, February 10, 2017, online: https://financialpost.com/personal-finance/taxes/small-business-owner-dilemma-invest-in-a-rrsp-or-do-the-investing-through-your-corporation.

66 Exhibit 729, Ross Affidavit, exhibit B, para 51(b); BC Ministry of Finance, B.C. Consultation on a Public Beneficial Ownership Registry (January 2020) (Chair: Carol James), online: https://engage.gov.bc.ca/app/uploads/sites/121/2020/01/386142-BCABO-Consultation-Document-For-Release.pdf.

67 Ernst & Young, *Real Estate Crowdfunding: Introduction to an Alternative Way of Investing* (March 2019) online: https://vdocuments.mx/real-estate-crowdfunding-ernst-young-global-real-estate-crowdfunding.html.

68 BC Securities Commission, "Private Placements – Guidance on Crowdfunding" (accessed October 18, 2017), online: https://web.archive.org/web/20170511003455/https://www.bcsc.bc.ca/For_Companies/Private_Placements/Crowdfunding.

69 In February 2022, the federal government invoked the *Emergencies Act* to address circumstances arising from protests and blockades in respect of COVID-19 vaccination mandates (particularly in Ottawa). Pursuant to its authority under the *Emergencies Act*, the federal government issued the *Emergency Economic Measures Order*, SOR/2022-22. That order extended the scope of the PCMLTFA to crowdfunding platforms and the payment processors they use, requiring them to register with FINTRAC and to report suspicious and large value transactions. With the revocation of the *Emergencies Act* at the end of February 2022, the registration and reporting requirements were lifted.

70 Government of Canada, Federal Budget 2022, "Chapter 5, Canada's Leadership in the World" (updated April 7, 2022), online: https://budget.gc.ca/2022/report-rapport/chap5-en.html#2022-3.

who ought to be but are not registered with the Registrar. This section summarizes those findings and comments on the implications for money laundering through real estate.[71] The report was authored by Adam Ross, an analyst and investigator specializing in anti–money laundering, corruption, fraud, and white-collar crime.

Summary of Findings

The study conducted for the Commission provides insight into the types of lenders registering mortgages in British Columbia. This analysis assists in understanding the scope of unregulated and unregistered private lending in British Columbia, and hence the size of the potential risk for money laundering that may exist.

The study looked at mortgage charges to determine how much mortgage activity can accurately be described as unregulated and unregistered private lending.

The study reviewed active and cancelled mortgage charges registered against active residential property titles in British Columbia between January 1, 1999, and December 31, 2019, as well as mortgage charges registered against titles that were cancelled between January 1, 2014, and December 31, 2019. The data, obtained from LTSA, included the names of mortgagees (lenders) and the dates of registration or discharge. The value of a mortgage is not available from LTSA filings, and so it was not possible to assess how much mortgage funding was provided by different types of lenders.[72]

The review of mortgages found that 96.10 percent of mortgages in the LTSA data set analyzed (2,848,798 out of 2,964,393 mortgages) are issued to registered or regulated lenders. Of those:

- 93.04 percent (2,757,935 mortgages) are with OSFI-regulated lenders;
- 55.54 percent (1,646,511 mortgages) are with issuers, registrants and/or exempt market dealers regulated by the BC Securities Commission; and
- 5.32 percent (157,735 mortgages) are with lenders registered with BCFSA.[73]

As the totals above suggest, many mortgage lenders are regulated by both OSFI and the provincial regulators, while others are registered with both BC Securities Commission and the Registrar/BCFSA.

This figure – over 96 percent – shows that the vast majority of mortgages involve regulated or registered lenders.

71 Exhibit 729, Ross Affidavit, exhibit B: A more complete discussion can be found here.

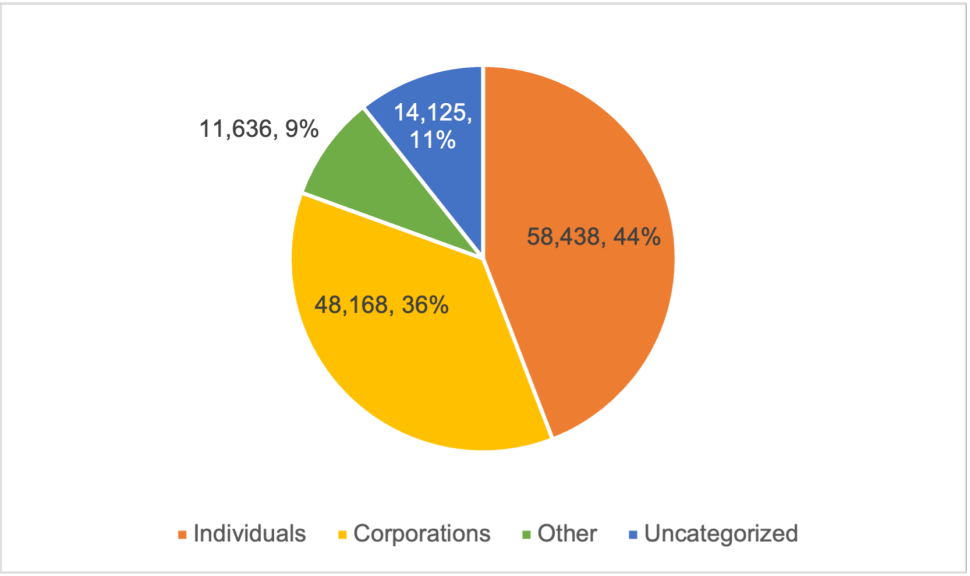
72 Ibid, exhibit B, para 55.

73 Ibid, exhibit B, para 57.

The study found 115,595 mortgages (3.9%) involved lenders *not* registered with any regulatory body. Of those, 58,438 (50.55%) were individuals. In 22 percent of that subset, the lender and borrower shared a surname, suggesting a loan between family members. 48,168 (41.67%) of lenders in the unregistered / unregulated category were corporate entities (2,706 of which were numbered companies). A small number of these mortgages (10%) were held by institutions such as government agencies and universities. Approximately 12 percent of mortgages had no names in the charge owner field.[74]

The chart below (Figure 17.1) provides a visual representation of mortgages provided by unregulated or unregistered lenders. There is some double-counting due to mortgages with multiple lenders.[75]

Figure 17.1: Mortgages Provided by Unregulated or Unregistered Lenders



Source: Exhibit 729, Affidavit of Adam Ross, exhibit B, para 60.

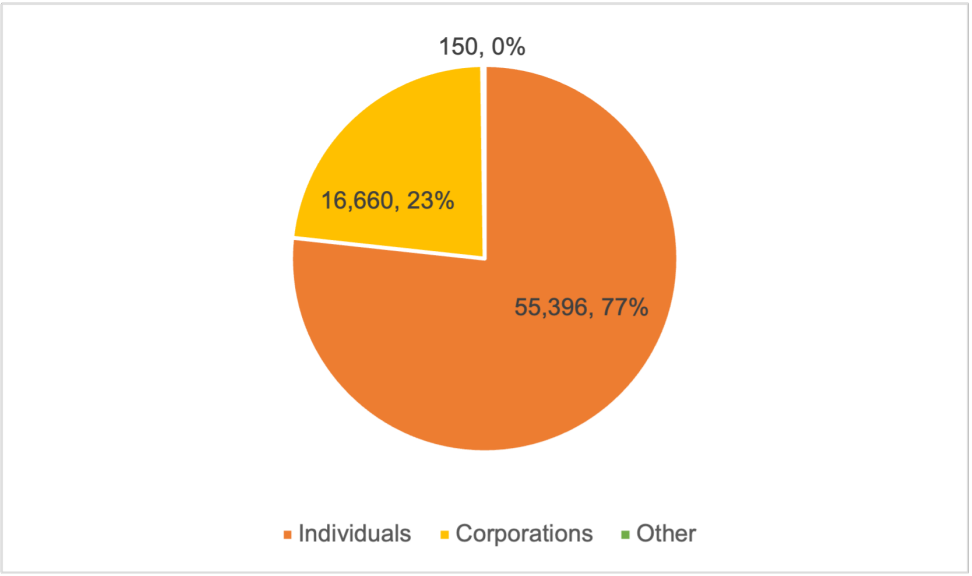
Analyzed by lender, those 132,367 mortgages are held by 72,206 lenders: 55,396 individuals, 16,660 companies, and 150 other institutions.[76]

74 Ibid, exhibit B, para 60: This missing lender information would presumably be available in the mortgage documents filed with the LTSA but is unavailable online.

75 Ibid: there were 16,772 mortgages with multiple lenders included in this count (132,367), which is why the total does not match the total number of mortgages by unregulated and unregistered lenders (115,595).

76 Ibid, exhibit B, para 62.

Figure 17.2: Mortgages Held by Individual Lenders vs. Corporations



Source: Exhibit 729, Affidavit of Adam Ross, exhibit B, para 62.

Among these lenders, the mean number of mortgages for individual lenders is 1.54, while it is 3.15 for corporate entities.[77]

Findings Regarding Mortgage Investment Corporations

Mortgage investment corporations are a small but quickly growing segment of mortgage lenders in BC, and account for much of the private lending in the province.[78]

Size of the Mortgage Investment Industry

The mortgage investment industry has seen significant growth in the past decade. There was approximately $230 million invested in BC mortgage investment corporations in 2012. The industry experienced a peak in 2018, with more than $2 billion in disclosed investment.[79] According to BCFSA, as of May 31, 2020, registered BC mortgage investment corporations had lent $5.5 billion with $3.8 billion secured by mortgages in BC.[80]

Analysis of BC Securities Commission filings by mortgage investment corporations on an annual basis offers perspective into the growth of the industry during the 2011–2019 period. Over the course of that period, 80 mortgage investment corporations filed reports for the first time. Approximately twice as many mortgage investment corporations filed for the first time as stopped filing during that period. The increase in

77 Ibid, exhibit B, para 63.

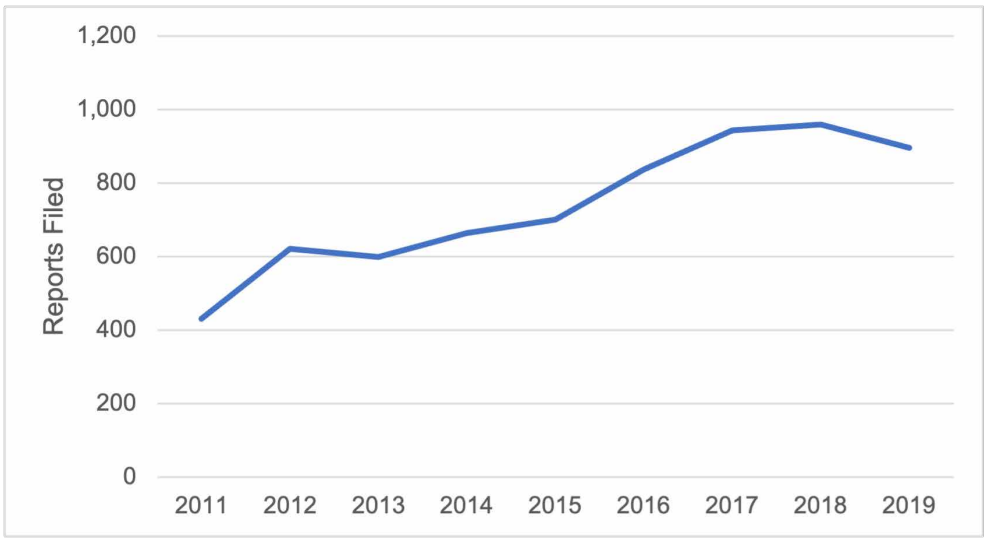
78 Ibid, exhibit B, para 39.

79 Ibid, exhibit B, para 69; British Columbia Mortgage Investment Corporation Managers Association, "About Us," online: https://www.bcmma.org/about-us.

80 Exhibit 729, Ross Affidavit, exhibit B, para 69.

reporting largely aligns with a rise in investment in the industry during that period.[81]

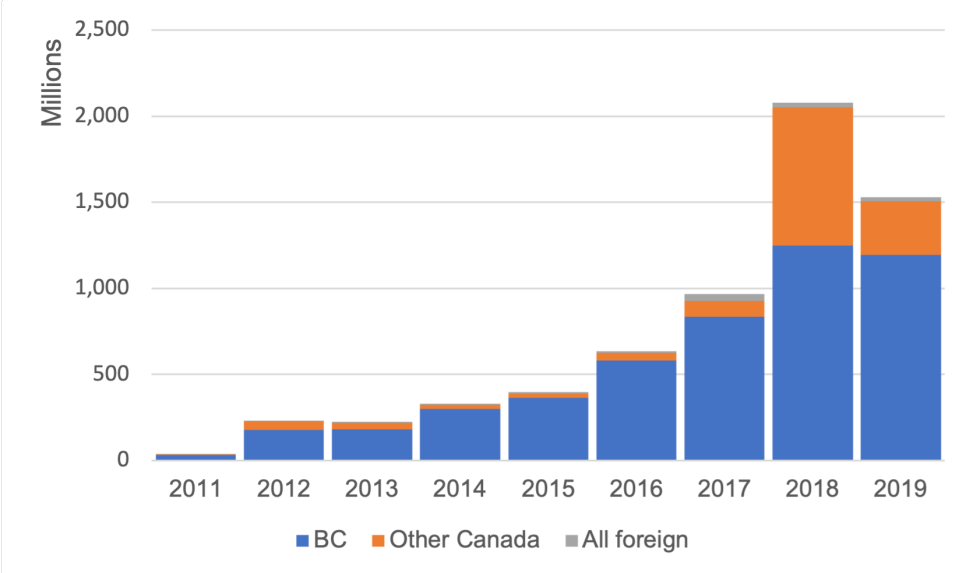
Figure 17.3: Number of Mortgage Investment Corporation Reports Per Year



Source: Exhibit 729, Affidavit of Adam Ross, exhibit B, para 70.

Figure 17.4 shows the total value of investment reported by the 119 mortgage investment corporations each year from 2011 to 2019. In total, approximately $6.4 billion was invested in BC mortgage investment corporations between 2011 and 2019.[82]

Figure 17.4: Total Investment in BC Mortgage Investment Corporations by Origin, 2011–2019



Source: Exhibit 729, Affidavit of Adam Ross, exhibit B, para 71.

81 Ibid, exhibit B, para 70.

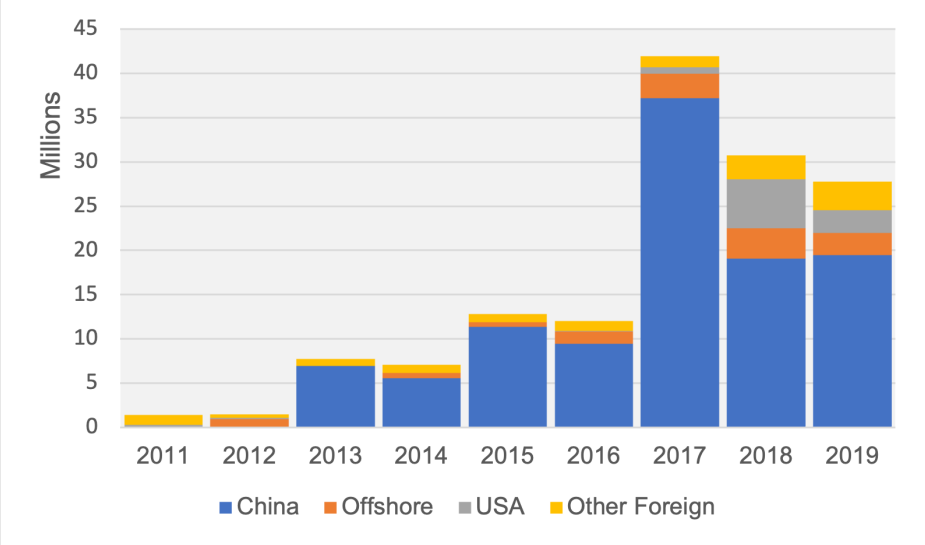
82 Ibid, exhibit B, para 71.

In February 2019, a BC Securities Commission notice exempting mortgage investment corporations from registering as investment dealers expired.[83] When the registration exemption expired in February 2019, there was an immediate spike in reporting by BC mortgage investment corporations (from 70 reports in January to 101 reports in February).[84]

Domestic and Foreign Investment

The vast majority of funds invested in BC mortgage investment corporations originate from Canadian sources, according to data filed with the BC Securities Commission. It is important to note that the data do not necessarily capture the origins of capital invested in BC mortgage investment corporations. Rather, they reflect the residency of investors, which may, with caution, be taken as a proxy for the geographic location of funds immediately prior to their investment with those mortgage investment corporations. Capital that has transited into Canada from abroad prior to being invested by Canadian resident investors cannot be measured through the data disclosed in BC Securities Commission filings, the data source for this analysis.

Figure 17.5: Foreign Investment in BC Mortgage Investment Corporations, 2011–2019



Source: Exhibit 729, Affidavit of Adam Ross, exhibit B, para 75.

From 2011 to 2020, 97.78 percent of all investment was declared to have come from Canadian residents. On an annual basis, Canadian sources have never fallen below 95 percent of the total investment in the data set. Overall, BC sources account for 76.4 percent of total investment in BC, while investment from other provinces amounts to 21.4 percent.[85] Annual investment from BC fluctuates between 77 and 91 percent.

83 Exhibit 729, Ross Affidavit, exhibit B, para 72: There was a one-year grace period for registering, which expired in February 2020.

84 Ibid, exhibit b, para 73.

85 Ibid, exhibit B, para 75: $1.44 billion in extra-provincial Canadian investment comprises Ontario (42.26%), Alberta (23.77%), Quebec (20.65%), Newfoundland (6.93%), PEI (4.77%), Manitoba (0.86%), Saskatchewan (0.69%), and other provinces and territories (0.07%, collectively).

The data shows that 2018 was an anomalous year, in which total investment more than doubled, from $970 million in 2017 to a little over $2 billion. That increase came entirely from domestic capital: BC investment grew by around 50 percent to $1.25 billion, and investment from other provinces increased nearly nine-fold, from $92 million to $801 million.

Throughout the period analyzed (2011–2020), investment from foreign sources remained below 5 percent of annual mortgage corporation investment. In total, it accounts for just 2.2 percent of total investment, or $150 million.

By far the largest constituent of that foreign investment is China, including Hong Kong, which accounts for around 78 percent of the total. Chinese investment in BC mortgage investment corporations amounts to $116 million since 2013 (no investment from China or Hong Kong was recorded in 2011 or 2012).

The next largest contributor, the United States, makes up just 6 percent of foreign investment. Other substantial contributors are Taiwan (3.1%) and several offshore financial centres (8%, collectively). Iran and Italy each account for around 1 percent of foreign investment, and all other foreign countries are below 1 percent – each of their total cumulative investment is less than $1.5 million.

Foreign investment is concentrated in a small minority of mortgage investment corporations. Around 92 percent of Chinese investment has been made with four mortgage investment corporations, with the remaining 8 percent spread between another four firms. All of the $116 million invested from China and Hong Kong in the past decade has been placed with those eight mortgage investment corporations.

Several mortgage investment corporations have reported investment from offshore financial centres deemed by some to be high-risk jurisdictions for tax evasion and other financial crime.[86] In aggregate, $11.71 million has been invested since 2012 from four offshore centres:

- Bahamas – $7.24 million invested with two mortgage investment corporations since 2016
- Malta – $1.65 million invested in one mortgage investment corporation since 2014
- Marshall Islands – $250,000 invested in one mortgage investment corporation in 2019
- Turks and Caicos – $2.57 million invested in one mortgage investment corporation since 2012

That investment was reported by five BC mortgage investment corporations.

86 Ibid, exhibit B, para 81; European Parliamentary Research Service, Cecile Remeur, B*riefing – Listing of Tax Havens by the EU* (May 2018), online: https://www.europarl.europa.eu/cmsdata/147404/7%20-%2001%20EPRS-Briefing-621872-Listing-tax-havens-by-the-EU-FINAL.PDF; OXFAM International, Johan Langerock, *Off the Hook: How the EU Is About to Whitewash the World's Worst Tax Havens* (March 7, 2019), online: https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620625/bn-off-the-hook-eu-tax-havens-070319-en.pdf; Tax Justice Network, Financial Secrecy Index, (February 18, 2020), online: https://fsi.taxjustice.net/en/.

Findings: Identifying Unregistered Mortgage Lenders

LTSA data can also be used to identify lenders that meet one of the criteria for registration as mortgage brokers under the *MBA*. Although the definition of mortgage broker in the *MBA* is imprecise, one criterion states that a person must register as a mortgage broker under the Act if the person "during any one year, lends money on the security of 10 or more mortgages."[87] That 10-mortgage threshold can be applied to a review of LTSA data.

The study conducted for the Commission filtered LTSA mortgage data for lenders that have registered 10 or more mortgages in a 365-day period, then cross-referenced those results with a list of all mortgage brokers and sub-brokers registered since 2012 (no electronic mortgage broker list existed prior to 2012).[88] OSFI-regulated financial institutions, which are exempt from the *MBA*, were filtered out, leaving a list of lenders who appear to meet this definition of mortgage broker, but have not registered with the Registrar.

This analysis only captures lenders that have registered 10 or more mortgages in a 365-day period and whose names appear directly on the LTSA's title search form. It would not capture a lender who is lending under multiple names or through nominees. The study author advised that lenders using multiple distinct legal personalities (i.e., subsidiaries or companies with shared beneficial ownership) *cannot* be captured in the absence of publicly available shareholder and beneficial ownership data on BC companies.[89] Some of the unregistered lenders identified through this analysis appear to conduct their lending through a third-party broker that is registered with the BCFSA. For instance, a company that holds 32 active mortgages was flagged for registering 32 mortgages within a 365-day period. However, its Form B mortgage registration documents all provided a mailing address care of a registered broker. Other unregistered lenders may have similar arrangements with registered brokers, albeit ones that are not reflected on the Form B for their loans. These lenders are still required to register as mortgage brokers if their lending activity crosses the 10-mortgage-per-year threshold.[90] The findings described above may indicate a lack of industry understanding as to the requirement for registration.

The report identified 493 individuals and entities that had registered 10 or more mortgages each within a 365-day period dating back to January 1, 2012, but who were not registered with the Registrar during that period.[91]

A manual review of those lenders found that 16 were likely exempt from registering as mortgage brokers due to their status as financial institutions, trust companies, insurers, or government bodies. The remaining 477 appear to have met the 10-mortgage-per-year registration threshold, but they were not registered.[92]

87 *MBA*, s 1: As defined, "person" includes an individual, corporation, firm, partnership, association, syndicate, any unincorporated organization and an agent of any of them."

88 Exhibit 729, Ross Affidavit, exhibit B, paras 90–91.

89 Ibid, exhibit B, para 91.

90 Ibid, exhibit B, para 95.

91 Ibid, exhibit B, para 96.

92 Ibid, exhibit B, para 97.

Of the unregistered brokers, 247 are corporations, 220 are individuals, and 10 are non-profit societies or foundations.

The 247 unregistered corporate entities have registered a combined 5,808 mortgages. The individual lenders have registered 4,766 mortgages.[93]

A selection of nine individuals and entities of the 477 flagged by the report's author for their lending activity were examined in more detail by a review of the records of mortgage documents pulled from the LTSA. These nine were chosen from the larger group of 477 at random. Of that group of nine, three were individuals or apparent family units, five were corporations, and one was a non-profit society. Available records indicated that, collectively, these nine persons and entities had made at least 590 mortgage loans in a 365-day period. The average number of mortgages registered by each within a 365-day period was 66. The median number was 69. In terms of actively held mortgages, these persons / entities collectively held 250 active mortgages, with a total value of $203,739,420. The average number of active mortgages currently held by these entities was 28, and the average value of all mortgages currently held was $25,467,427. The median number of active mortgages was 23.

Commission counsel wrote to each of the nine lenders set out above to advise them of the results of the analysis and to provide an opportunity for response. Of the six that did respond, three indicated that they were unaware that they were required to register as a mortgage broker, one disputed that it met the definition of a mortgage broker, and one furnished a letter from the Registrar advising the lender that it need not register so long as it conducted all lending through a registered mortgage broker and had no interaction with members of the public.[94]

One of the lenders, in a response to Commission counsel, described having contacted the Registrar (described in the email as "FICOM") after receiving the Commission's letter and reported being advised by an unnamed staff member that "if we [i.e., the lender] are using a mortgage broker then we don't need any licence to lend money." This highlights the apparent confusion over the *MBA*'s application to private lenders – not just among registrants but within the regulator itself.[95]

Based on the findings of the study described above, and the evidence before me about private lending, I recommend that the Province enact legislation directed at private mortgage lenders providing for registration, oversight, and enforcement. This regime should be separate from the scheme applicable to those engaged in brokering loans. I suggest that this regulatory authority be located within BCSFA.

93 Ibid, exhibit B, para 99: Note that some loans would have been double counted in cases where multiple lenders are involved.

94 Ibid, exhibit B, para 101.

95 Ibid, exhibit B, para 102: British Columbia advises that, at various points in time, the Registrar has taken the position that lenders with 10 or more mortgages who have used a registered mortgage broker to complete those transactions need not register themselves as mortgage brokers. This is still the case in some other provinces, such as Ontario. However, it is not the current practice in BC.

Recommendation 29: I recommend that the Province enact legislation directed at private mortgage lenders providing for registration, oversight, and enforcement. This regime should be separate from the scheme applicable to those engaged in brokering loans.

I am of the view that the Province should be able to determine who is engaged in private lending and should be registered with the regulator, and yet is not. To this end, having access to land title information, and particularly new mortgage registrations, is important.

Recommendation 30: I recommend that the Province ensure that the regulator of private mortgage lenders has access to land title data, including new mortgage registrations, in a form that allows it to identify private lenders that ought to be registered with the regulator but are not.

Upon discovering a person or entity engaged in private lending who is not registered, the regulator of private mortgage lenders will, I expect, promptly take action to bring the unregistered mortgage lender within the private lending registration regime as a registrant, or compel them to stop conducting business as a private mortgage lender.

In the meantime, BCFSA must be clear and consistent in its communications with industry as to the requirement to register. As I discussed in Chapter 16, the circumstances in which a person is required to register as a mortgage broker under the *MBA* are not clear. Internal consistency in messaging from BCFSA will no doubt be improved by a clearer expression of the requirement in the *MBA*.

Because a mortgage cannot be registered without going through LTSA, the registration process would be an opportune time to alert lenders and their agents as to the requirement to register. The regulator of private mortgage lenders should work with LTSA to increase lenders' awareness of their obligations. A simple notice of the circumstances under which a mortgage lender must register, attached to a Form B, to be completed by the lender, would accomplish this.

Part 3: Paul Jin Debt Enforcement

The study discussed above provides some insight into the size and scope of the private lending industry in British Columbia. It is important to understand that not all private lending is associated with money laundering. There are many legitimate reasons for borrowers to seek funds from unregulated and unregistered private lenders. At the same time, the private lending industry can be exploited – by organized crime groups, fraudsters, and professional money laundering networks – to launder illicit funds.

An overview report on Paul Jin's private lending activity[96] (which was filed as evidence in the Commission's public hearings) illustrates the vulnerability of private lending to money laundering through the first lender typology identified above (lending proceeds of crime). It also exposes a number of gaps and vulnerabilities in the courts and land title system, which make them vulnerable to abuse.

In basic terms, the overview report reviews the court actions brought by Mr. Jin and his associates between January 2013 and March 2018 to recover funds that were lent to borrowers and not repaid. It also contains a list of mortgages registered by Mr. Jin in the Land Titles Office, to secure certain loans made to borrowers in the Lower Mainland.

While the amounts claimed on these documents are significant, they are likely a small percentage of the private lending activity carried out by Mr. Jin during this time frame.[97]

Table 17.1 provides a list of the court proceedings commenced in British Columbia Supreme Court by Mr. Jin involving private lending activity. In every case but one,[98] the plaintiff or petitioner was (or included) Mr. Jin or his spouse, and the defendants were all individuals (and one company), some of whom filed responses asserting that the loans were *not* related to real estate but were funds borrowed for casino gambling.

96 Exhibit 1052 (previously marked as Exhibit K), Overview Report: Paul Jin Debt Enforcement Against BC Real Estate (May 13, 2021) [OR: Jin]. Under the commission's Rules of Practice and Procedure, "overview reports" may be prepared by those at the commission, circulated to all participants with an opportunity for input, and then, once finalized, entered into evidence as exhibits during the hearings.

97 A financial analysis conducted by the RCMP in connection with the E-Pirate investigation indicates that Mr. Jin received almost $27 million from Silver International in the four and a half months between June 1, 2015, and October 15, 2015: Exhibit 663, Affidavit of Melvin Chizawsky, made on February 4, 2021 [Chizawsky Affidavit], para 100, and exhibit 53, p 24.

98 Exhibit 1052, OR: Jin, Appendix 7, *NOCC 142623: Chunjun Xiang v Paul King Jin, Xiaoqi Wei, Jiexi Zhao* (April 4, 2014): the plaintiff was an individual and Mr. Jin was one of three defendants. This claim alleged that a friend of the plaintiff owed Mr. Jin a gambling debt, which Mr. Jin sought to enforce against the plaintiff's property.

Table 17.1: Court Proceedings Commenced in BC Supreme Court by Mr. Jin

Court File Number	Date Filed	Amount Claimed	CPL
130346	January 16, 2013	$500,000	Yes
136457	August 27, 2013 (amended April 17, 2015)	$892,500	Yes
136760	October 10, 2013	$500,000	Yes
137023	September 19, 2013	$660,000	Yes
131403	November 29, 2013	$750,000	Yes
140079	January 17, 2014	$750,000[99]	No
142623	April 4, 2014	$70,000	n/a
146494	August 20, 2014	$570,000	Yes
151858	March 5, 2015	$300,000	Yes
152698	March 31, 2015	$405,000	Yes
154010	May 15, 2015	$250,000	Yes
154011	May 15, 2015	$50,000	Yes
154354	May 27, 2015	$300,000	Yes
154355	May 27, 2015 (amended May 5, 2017)	$1 million	Yes
155331	June 29, 2015	n/a[100]	Yes
156710	August 17, 2015	$2.3 million	Yes
164148	May 9, 2016	$80,000	Yes
165528	June 16, 2016	$2.68 million	No
168205	September 7, 2016	$600,000	No[101]
168302	September 9, 2016	$400,000	No
174286	May 5, 2017 (amended May 12, 2017)	$200,000	Yes
184259	March 30, 2018	$8 million	No

Source: Exhibit 1052, Overview Report: Paul Jin Debt Enforcement Against BC Real Estate, para 4.

Notes: Amounts claimed are exclusive of interest and costs. "CPL" means certificate of pending litigation, which a plaintiff may have put on the title of real property, to encumber title to the property until the litigation is resolved.

99 Same debt as Exhibit 1052, OR: Jin, Appendix 5, *Petition for Foreclosure to the Court 131403: Paul King Jin v Daqing Wang and Xiao Ju Guan* (November 29, 2013) and Exhibit 1052, OR: Jin, Appendix 9, *NOCC 151858: Paul King Jin v Daqing Wang* (March 5, 2015).

100 Unspecified damages and costs. This case is related to the $1 million debt pursued in Exhibit 1052, OR: Jin, appendix 14, *NOCC 154355: Xiao Qi Wei v Hua Feng* (May 8, 2017).

101 An injunction (charge CA6366019) was filed against the property on October 12, 2017, and a judgment (charge CA7178322) was registered against the property on November 7, 2018.

Table 17.2 contains a list of mortgages filed by Mr. Jin and his spouse which were identified through searches of the land titles registry for active or cancelled charges. In all but the last two mortgages, Mr. Jin or his spouse was recorded as the lender, and the borrower was an individual. The lenders on the last two mortgages were numbered companies, shown through corporate records[102] and in one case the evidence of a borrower[103] to be associated with Mr. Jin and family members.

Table 17.2: Mortgages Filed by Mr. Jin and His Spouse

Charge Number	Date	Principal Amount	Interest Rate	Term
CA2985493	February 6, 2013	$750,000	2.99%	On demand
CA3211764	July 2, 2013	$30,000	40%	On demand
CA3978265	September 24, 2014	$60,000	n/a	3 mo.
CA4327706	April 9, 2015	$110,000	5%/mo.	1 mo.
CA4356217	April 24, 2015	$1 million	12%	1 yr.
CA4412834	May 22, 2015	$1.2 million	3.5%/mo.	3 mo.
CA5031739	March 8, 2016	$8 million	15%	6 mo.
CA5986431	May 10, 2017	$300,000	2%/mo.	2 mo.
CA6334674	September 28, 2017	$125,000	4%/mo.	6 mo.
CA7262007	December 19, 2018	$3 million	6%	1 yr.
CA7997305	January 23, 2020	$400,000	24%	1 yr.

Source: Exhibit 1052, Overview Report: Paul Jin Debt Enforcement Against BC Real Estate, para 5.

While there is limited evidence before me concerning the provenance of the funds given to these individuals, and in particular, whether they were derived from profit-oriented criminal activity, the affidavit evidence filed in legal actions provide some insight into that issue. One of the best examples comes from the Affidavit #1 of Sepehr Motevalli, who described himself as a "close family friend" of Mr. Jin and claims to have witnessed a transaction in which Mr. Jin provided two bundles of cash to a customer. Importantly, the affidavit was commissioned *by Mr. Jin's lawyer* and filed in support of Mr. Jin's debt collection claim. Mr. Motevalli states:

> Partway through the meeting, the plaintiff handed the defendant a piece of paper. The defendant signed the piece of paper and returned it to the plaintiff.
>
> As I did not have an opportunity to observe the piece of paper closely, I do not know the content of the piece of paper.

102 Exhibit 1052, OR: Jin, Appendix 32, *BC Company Summary for 1116909 B.C. LTD*; Appendix 33, *BC Company Summary for 1233543 B.C. LTD*.

103 Exhibit 766, Affidavit of Jian Wei Liang, made on March 8, 2021.

> Prior to the meeting, the plaintiff had kept a plastic grocery bag on the ground next to his chair.
>
> After the defendant returned the piece of paper to the plaintiff, the plaintiff retrieved two bundles of bills from the plastic grocery bag.
>
> The two bundles of cash appeared to consist of twenty-dollar Canadian bills.
>
> Each bundle included five stacks of bills. More particulary [*sic*], each stack was bound together by a rubberband or rubberbands. Then, five stacks would in turn be bound together by a rubberband or rubberbands.
>
> I believe that the two bundles of bills to be cash in the amount of 20,000 CAD, due to the way the bundles and stacks were put together. However, I did not have the opportunity to count the bundles of bills.
>
> The plaintiff handed the two bundles of bills to the defendant.
>
> ...
>
> Several days later, I was hanging out at the plaintiff's office again.
>
> Once again, the defendant attended the plaintiff's office.
>
> As before, the plaintiff gave a piece of paper to the defendant, and the defendant signed the piece of paper. After the defendant returned the piece of paper to the plaintiff, the plaintiff retrieved one bundle of bills (put together in the same way as described above) from a plastic grocery bag, and gave it to the defendant. Then, the defendant left.[104]

Mr. Jin's own evidence also suggests a significant portion of the loans he made to his customers were in cash. For example, an affidavit sworn by Mr. Jin in one action indicates that he gave the defendant a cash loan of $200,000 on November 16, 2014, and that his wife subsequently provided the defendant with an additional $205,000 in cash. On both occasions, Mr. Jin and his wife were able to provide the cash the same day that the request was made even though the first request was made on a Sunday and the second was made outside of regular banking hours.[105] These factors suggest that Mr. Jin had the cash on hand and that lending cash to his customers was a regular part of his business model.

104 Exhibit 1052, OR: Jin, Appendix 17, paras 11–23.

105 Exhibit 1052, OR: Jin, Appendix 10(b), pp 2–3. It is also noteworthy that more than $4 million bundled in the manner described by Mr. Motevalli was found in a safe owned or controlled by Mr. Jin when investigators executed a search warrant at his residence on October 15, 2015: Exhibit 663, Chizawsky Affidavit, paras 22–24.

When Mr. Jin was interviewed by the RCMP in connection with the E-Pirate investigation, he confirmed that he often used Silver International to move funds held as Chinese currency (RMB) in China to Canadian currency in Canada:

> MC [Corporal Melvin Chizawsky]: Let me get this straight (clears throat) just so I have it in my head.
>
> PJ [Paul Jin]: Yeah,
>
> MC: Um money in China
>
> PJ: Yeah,
>
> MC: – is yours.
>
> PJ: Yeah,
>
> MC: And then instead of going to let's say the Bank of Nova Scotia
>
> PJ: Yeah, yeah,
>
> MC: and – or Calforex
>
> PJ: Yeah.
>
> MC: Silver International was doing the exact same thing
>
> PJ: Yeah.
>
> MC: and then you would uh, do you phone them up and say hey I'll be taking out a hundred thousand dollars
>
> PJ: Yeah.
>
> MC: Canadian from my Chinese account, can you convert it to me please from RMB into Canadian and then they do the math for you?
>
> PJ: Yeah, yeah, yeah. Because they – they all received … money … already you know.
>
> MC: Mmhm …
>
> PJ: after they give me the money you know.
>
> MC: Yeah. So basically what you're doing is when – like what I'm hearing from you is you were just taking money from Silver International money that is already yours?
>
> PJ: Yeah. Yeah. Yeah …
>
> MC: So you're not borrowing from them?

PJ: No not borrowing,

MC: They're not loaning money to you?

PJ: No, no, no.

...

MC: But that's your money that uh comes from your account

PJ: Yeah. –

MC: ... and all they did was covert it from RMB into Yeah, – Canadian dollars for you.

PJ: Yeah, yeah.

MC: And then you take that money and you do whatever you want with it?

PJ: Yeah.

MC: Okay. Now have you ever taken money there for them to deposit so they can go back into RMBs or?

PJ: No. No? They don't – they don't do that They don't, okay. They don't do that thing, only I give them some RMB ... money for – have some loan there right, loaning me money they want the cheque ... the cheque ... I give it to them, they give some cash.[106]

Mr. Jin also confirmed that he received the Canadian currency in cash, broke it down into smaller amounts, and provided it to his customers in small bags:

MC: Yeah. Now um our surveillance teams have you going from um Silver to Jones Road

PJ: Yeah.

MC: – and then shortly leaving Jones Road uh with small boutique bags that we know contain cash and then you would hand off the cash to a – a customer who would then go to the casino to

PJ: Yeah.

MC: – spend it any way he wants.

PJ: Yeah.

MC: ls – is that your sort of like methodology for uh distributing your money? Like – like I don't know how else to say it?

106 Exhibit 663, Chizawsky Affidavit, exhibit 50, pp 50–53.

> PJ: Yeah … hard to say … right.
>
> MC: Yeah so you get money from Silver … and you take it to Jones Road and then you break it down into smaller amounts for customers because that's what they're going to borrow from you. And then you take the – the money in – in small bags because it's convenient, and you then give it to the customer who's borrowing from you because you – you know that person, it's not like you're giving it to stranger.
>
> PJ: No, no, no, all the time I know the people.
>
> MC: And these people then they use the money for whatever reason. Yeah. Gambling is one reason, uh paying off debts is another reason. For whatever reason –
>
> PJ: Yeah.[107]

A forensic accounting analysis conducted by Elise To in connection with that investigation confirms that Mr. Jin received almost $27 million from Silver International in the four and a half months between June 1 and October 15, 2015.[108] Moreover, the police seized a batch of promissory notes recording more than $26 million in loans when they executed search warrants at Mr. Jin's properties.[109]

I have previously concluded that most, if not all, of the cash being left at Silver International was derived from profit-oriented criminal activity such as drug trafficking (see Chapter 3). I have no trouble finding that a significant portion of that illicit cash was provided to Mr. Jin to supply his private lending activity.

While Mr. Jin was likely aware of the provenance of that illicit cash, I need not resolve that issue for the purpose of this Report. The important point is that illicit cash generated by profit-oriented criminal activity such as drug trafficking was being used to make private loans to high-stakes gamblers and other individuals who needed access to funds.

When payments were made on those loans, the illicit cash provided to those individuals was effectively substituted for legitimate funds transferred to the lender through traditional means, such as cheques and wire transfers.

Moreover, the existence of legal documentation such as a settlement agreement or a court order has the effect of "legitimizing" the funds that were repaid to Mr. Jin, thereby allowing him to claim that the funds were received for a legitimate purpose (i.e., satisfaction of a legal obligation).

While there is no evidence that Mr. Jin was involved in generating the illicit cash that was provided to his customers (that is, the initial crimes that generated the illicit

107 Ibid, pp 63–64.

108 Ibid, para 100, p 24.

109 Exhibit 663, Chizawsky Affidavit, paras 76, 82, 85, 89.

cash), his private lending activity in effect completed the money laundering cycle by allowing the illicit cash "deposited" at Silver International by organized crime groups to be repurposed and reintroduced into the legitimate economy.

Another feature of Mr. Jin's debt enforcement claims is that the Notice of Civil Claim and underlying loan documents often indicate that the purpose of the loan is to acquire or renovate real property. For example, an affidavit filed by the defendant in BC Securities Commission File No. 152698 indicates that he expressly advised Mr. Jin that he would be using the money for gambling purposes and not – as stated in the Notice of Civil Claim – for the purpose of renovating his home:

> I met the Plaintiff at the Water Cube massage parlour [in Richmond] on November 16, 2014. I was introduced to the Plaintiff by an acquaintance, whom I had met at a casino. The acquaintance knew that I was seeking money with which to gamble. I knew that Mr. Jin was a loan shark and there would be high rates of interest when I borrowed money from him.
>
> The Plaintiff provided me with $200,000 cash on November 16, 2014. In response to paragraph 9 of the Affidavit, I received the money in cash; I did not sign a receipt, though he did take a copy of my identification. I never told Mr. Jin that the money was for household renovations, or anything similar to that. I never told the Plaintiff the money was for the purposes of renovation on our home. I never told the Plaintiff that I was acting as an agent for my ex-wife. I did not say that I would pay the proceeds of the loan from the sale of the residence. The Plaintiff knew that I was going to use the money for gambling purposes as I told him so.[110]

While the stated purpose of the loan may seem inconsequential, there is a legal and strategic advantage to pleading a connection to real property in civil proceedings. In such cases, the plaintiff can claim an interest in the property and file a certificate of pending litigation in the Land Titles Office. A certificate of pending litigation restrains and encumbers the owner's ability to deal with real property. It hangs overhead and means, in lay terms, that the owner cannot be said to have clear title for the purpose of selling or borrowing against the property. If the civil claim is successful, the plaintiff may be able to obtain an order compelling the sale of the property. Moreover, a certificate of pending litigation can be extremely difficult to remove, which gives the plaintiff significant leverage in negotiating a favourable settlement with the borrower.

I pause to note that Mr. Jin was assisted in the filing of the actions and mortgages described here by legal professionals. At some point, he also learned of the utility of inserting a reference to the acquisition or improvement of real property in his promissory notes and claims. In Chapter 26, I comment on the role that professional gatekeepers such as lawyers play in some money laundering typologies, including

110 Exhibit 1052, OR: Jin, para 6; Appendix 10(d) (PDF pp 312–13), paras 4–5, and appendices 13(a), 15(b), 18(a), 19(a).

private lending. This is a concrete example of professionals being used to access the mechanisms of the courts and the land registry to further money laundering schemes. Lawyers are responsible for ensuring that they are not used as tools of money laundering, and for safeguarding the courts from such abuse. It is essential that they remain vigilant in circumstances where they are asked to enforce agreements or debts involving funds of uncertain provenance.[111]

After reviewing the pleadings and affidavits attached to the overview report as well as the evidence of Corporal Chizawsky concerning Mr. Jin's frequent presence at Lower Mainland casinos, I find it wholly implausible that Mr. Jin was lending money to his clients for the purpose of acquiring or renovating real property. While it may be that some of the funds were used for that purpose, I find that the predominant purpose of these loans was to allow high-stakes gamblers to make large cash buy-ins at Lower Mainland casinos and that Mr. Jin described the loans as relating to the acquisition or renovation of real property to obtain a strategic advantage in the litigation process.[112] It would be unsettling to many individuals to have their family home encumbered by a debt claim.

While the creation of a provincial regulator for private mortgage lending will help in addressing money laundering risks in the private lending industry, it is important to note that private lending activity can occur without a mortgage being filed against real property (as was the case for most of Mr. Jin's private lending activity) and it is essential that the dedicated provincial money laundering intelligence and investigation unit (recommended in Chapter 41 of this Report) develop ways of identifying that activity. One of the lessons that can be drawn from the overview report is that those involved in private lending activity can rely on the court system to enforce debt obligations that are not paid, and a review of court records may allow for the identification of individuals and groups involved in private lending activity.

There may also be specific instances in which private lenders take mortgage security or file a certificate of pending litigation against property within the province, which may allow for the effective identification of individuals and groups involved in private lending activity through LTSA filings, even where they are not required to register with the new provincial regulator.

I note, however, that the use of corporate vehicles to make loans to borrowers who are in need of capital can obscure the individual behind the transaction. For example, a

111 To this effect, lawyers should be mindful of the risk advisories issued by the Law Society of British Columbia and Federation of Law Societies of Canada, as set out in Chapter 26; Exhibit 191, Overview Report: Anti–Money Laundering Initiatives of the LSBC and FLSC, Appendix J, *Risk Advisories for the Legal Profession: Advisories to Address the Risks of Money Laundering and Terrorist Financing*, pp 8–9; Law Society of British Columbia, "Discipline Advisory - Private Lending" (April 2, 2019), online: https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/discipline-advisories/april-2,-2019/.

112 In making these findings, I have not considered or otherwise relied on any information in Part 3 of the Jin overview report, which seeks to connect the borrowers and other defendants named in actions commenced by Mr. Jin to large cash transactions at Lower Mainland casinos. All of the findings made in this chapter are based on evidence available to Mr. Jin.

review of the mortgages set out in Table 17.2 (above) indicates that two mortgages were registered in the name of numbered companies that listed one of Mr. Jin's adult children as a director. Because the mortgage was registered by the numbered company, it is not apparent on the face of the mortgage documents available from the land titles registry that Mr. Jin had any involvement with this loan. It is only through a review of records maintained by the corporate registry and evidence provided to the Commission that the connection to Mr. Jin becomes apparent.[113]

While my hope is that the provincial *Land Owner Transparency Act* will assist in identifying individuals like Mr. Jin who engage in private lending activity through the use of shell companies and nominee owners, it is essential that the dedicated provincial money laundering intelligence and investigation unit be aware of the potential for individuals like Mr. Jin to use corporate vehicles and nominee owners to engage in private lending activity in order to avoid scrutiny by law enforcement bodies and regulators.

I am also highly concerned about the ability of a private lender to make use of the court process to enforce loan agreements in which illicit funds are advanced to the borrower as part of a money laundering scheme. Such use of the legal process tends to undermine public confidence in the courts. I address this in the following section of this chapter.

Part 4: Further Recommendations Regarding Private Lending

Money Laundering Vulnerabilities of Private Lenders

I accept that the private lending secured by mortgages presents a risk of money laundering on both the borrower and lender sides of the transaction, as described in the section above, "Typologies: Money Laundering Through Mortgages."

I identify the following vulnerabilities to money laundering based on the evidence and the discussion above:

- gaps in lenders' obligations to make source-of-funds inquiries of investors and borrowers alike;
- gaps in entities currently required to make reports to FINTRAC;
- the ability to avoid (intentionally or otherwise) the requirement to register on the part of mortgage lender, and the consequent lack of regulatory oversight of any kind on a large number of private lenders;
- contradictory messaging from BCFSA employees to lenders as to the requirement to register;

113 See Exhibit 766, Affidavit of Jian Wei Liang, made on March 8, 2021, paras 5–15 for evidence that Mr. Jin was, in fact, involved with this transaction.

- an inability to conclusively determine, from LTSA filings, all of the owners of a registered mortgage charge;
- the ability to conceal personal mortgage lending by way of corporate vehicles;
- a lack of education / understanding within the industry as to the requirement to register;
- the ease with which a private lender can register a certificate of pending litigation against real property (which then encumbers title to the property); and
- the inability of the courts to refuse to enforce debts made with funds of suspicious origin, and to otherwise protect themselves from being used as tools of money laundering.

The recommendations made in this chapter are intended to address these identified vulnerabilities.

In light of the concerns arising with respect to potential abuse of the court system as a tool of money laundering, I recommend that the Province implement a mandatory source-of-funds declaration to be filed with the court in every claim for the recovery of a debt, such that no action in debt or petition in foreclosure can be filed (except by an exempted person or entity) in the absence of such a declaration. Consequently, no certificate of pending litigation will be permitted to be registered on title in respect of such a claim in the absence of showing a filed source-of-funds declaration.

Recommendation 31: I recommend that the Province implement a mandatory source-of-funds declaration to be filed with the court in every claim for the recovery of a debt, such that no action in debt or petition in foreclosure can be filed (except by an exempted person or entity) in the absence of such a declaration.

To complement this source-of-funds declaration for debt recovery actions in court, in my view the courts should be afforded the discretion to determine, on a case-by-case basis, when it is appropriate to decline to make an order. I recommend that the Province enact legislation authorizing the court, in its discretion, to refuse to grant the order(s) sought by the plaintiff in a debt action or foreclosure petition if it is not satisfied that the declaration is truthful and accurate, or if it concludes that the funds advanced by the lender were derived from criminal activity.

Recommendation 32: I recommend that the Province enact legislation authorizing the court, in its discretion, to refuse to grant the order(s) sought by the plaintiff in a debt action or foreclosure petition if it is not satisfied that the declaration is truthful and accurate, or if it concludes that the funds advanced by the lender were derived from criminal activity.

While I appreciate that these recommendations may raise concerns about expense and delay in civil proceedings, I tend to think that any added expense or court time required will, in fact, be relatively minimal and can be managed efficiently by the court. For most plaintiffs, the exercise should begin and end with filling out the declaration and filing it. I anticipate that the vast majority of plaintiffs who come to court seeking to enforce a debt will be equipped already with the information and documents that support their claim, and such documents and information will include the source of funds. If counsel or defendants seek to strategically use the requirement to make excessive discovery demands or to tie up the process, the courts are equipped to manage that.

I would add that the scope of this requirement could be curtailed by carving out exceptions for certain lenders such as federally regulated financial institutions, government agencies, and other entities that pose a low money laundering risk.

The Enduring Nature of the Private Lending Vulnerability

As noted by Professors Jonathan Caulkins and Peter Reuter, the drug trade will continue to operate on a cash basis for the foreseeable future and will generate enormous amounts of proceeds of crime that need to be disposed of.[114] The laundering of the proceeds of crime through real estate is common throughout the world, but I see the British Columbia real estate market as particularly vulnerable, given the substantial rise in residential home values over the past decade.[115]

A rise in property value on paper does not translate into funds in the hands of the homeowner, unless the owner sells or borrows on the security of their home. For some homeowners with great theoretical wealth in the form of home equity, but insufficient income or domestic credentials to demonstrate an ability to service a loan from a traditional lender, a private loan from an individual operator will be tempting. For the lender, there is little perceived risk. History has shown real estate in the Lower Mainland of BC to be a relatively safe investment. So long as the lender is willing to invest in the legal costs associated with foreclosure, recovery is almost certainly assured. Some such lenders are simply investing their own legitimately earned funds into what they see as a secure investment. But others will see an opportunity to divest themselves of cumbersome and risky cash, and to convert that into something less

114 Evidence of J. Caulkins and P. Reuter, Transcript, December 8, 2020, pp 14–16, 118–23.

115 Evidence of B. Ogmundson, Transcript, February 17, 2021, p 172.

conspicuous. Still others will see a business opportunity on both sides: bridging the gap between those holding vast amounts of suspect cash and wanting to get rid of it, and those with available home equity and a need for cash or money. So long as real estate values climb, creating equity in the hands of homeowners, and criminal organizations continue to accrue cash that needs to be disposed of, this will be a serious money laundering vulnerability in British Columbia.

In the example of Mr. Jin set out above, tens of millions of dollars, much of it loaned out in the form of cash, was transformed through the use of the legal process into more legitimate forms of wealth. A party seeking repayment of debt will most likely be repaid by traditional means: personal cheques, wire transfers, or cheques issued from the trust account of a law firm. The court may unintentionally end up playing a role in legitimizing such money: by making an order finding a defendant liable in debt, which can then be enforced through the court process, the court process is engaged to obtain payment (by traditional means) or to obtain an order compelling the sale of land.[116]

That the judicial system can be and likely is being used as an instrument of money laundering is profoundly disturbing. My recommendation – for the implementation of a source-of-funds declaration as a prerequisite to bringing certain types of claims – is directed at giving courts and participants in the judicial process a tool for preventing such abuse.

116 *Court Order Enforcement Act*, RSBC 1996, c 78, s 96.

Chapter 18
Data and Information Sharing in Real Estate

In this chapter, I consider how data and information are best used to address money laundering in real estate.

The real estate sector, perhaps more than any of the other sectors examined in the course of the Commission, produces an enormous amount of data. Some of this data is publicly accessible, but some is not. It has historically been more difficult for the public to access data in this area.

Things are not static. The real estate sector has recently been the focus of transparency measures introduced by the provincial government, most notably by way of the Land Owner Transparency Registry (LOTR). This registry contains information about beneficial owners – that is, the persons who actually hold an interest in land (not just the "owner on paper," but the true owner). I discuss the LOTR below.

During the hearings, I heard evidence about what data is available and to whom, what data is missing but would be useful for anti–money laundering efforts, and efforts to use the large data sets created by the real estate industry to identify money laundering. Such information, of course, may be useful for both government and the private sector. I also heard from participants about privacy concerns relating to the collection and use of such data.

Beneficial Ownership Issues in Real Estate

Commentators such as Transparency International and Transparency International Canada point out that money launderers are attracted to jurisdictions where they can find ways to disguise ownership.[1] One expert called the lack of beneficial ownership transparency the "most important single factor facilitating [money laundering in real estate] in the US."[2] On this view, the lack of data collected by corporate and land registries (i.e. the collection of legal titleholder information but not information on beneficial owners) creates impediments to combatting money laundering. It impedes investigation by law enforcement, prevents real estate professionals from conducting due diligence, and obscures insight into the flow of funds into networks that are laundering money.[3] In sum, they say, the anonymity afforded by land and corporate registries "make[s] trafficking into real estate a very viable option for laundering significant sums."[4]

British Columbia Beneficial Ownership Measures

I begin my discussion of measures in this province with British Columbia's best-known measure to provide transparency around the ownership of real estate in the province: the Land Owner Transparency Registry.

Land Owner Transparency Registry

The British Columbia LOTR was created by the *Land Owner Transparency Act*, SBC 2019, c 23 (*LOTA*), enacted in May 2019. The Act came into force on November 30, 2020, some seven months after the pre-pandemic target date of April 30, 2020.

The purpose of the *LOTA* is to create a registry of indirect ownership of land. The Land Titles Registry records the legal owner (or lessor) of a property, but not the holder of the beneficial interest.[5] The beneficial owner could be the shareholder of a

1 Exhibit 601, Overview Report: Literature on Money Laundering and Real Estate & Response from Real Estate Industry, Appendix 11, Transparency International Canada, *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts* (Transparency International, 2016), also online: https://static1.squarespace.com/static/5df7c3de2e4d3d3fce16c185/t/5dfb8a955179d73d7b758a98/1576766126189/no-reason-to-hide.pdf; Louise Shelley, "Money Laundering into Real Estate" in Michael Miklaucic and Jacqueline Brewer (eds), *Convergence: Illicit Networks and National Security in the Age of Globalization* (Washington, DC: National Defense University Press, 2013), p 141; Transparency International, *Doors Wide Open: Corruption and Real Estate in Four Key Markets* (Transparency International, 2017), online: https://images.transparencycdn.org/images/2017_DoorsWideOpen_EN.pdf.

2 Exhibit 1041, Affidavit #3 of Adam Ross affirmed May 19, 2021, exhibit B, "Assessing the Impacts Of Beneficial Ownership Disclosure on Residential Property Holdings in BC" (May 13, 2021) [PTT Study], p 5, citing Terrorism, Transnational Crime and Corruption Center at the Schar School of Policy and Government of George Mason University, "Money Laundering in Real Estate" conference report (March 25, 2018), p 1.

3 Ibid.

4 L. Shelley, "Money Laundering into Real Estate," p 141. See also, Mohammed Ahmad Naheem, "Money Laundering and Illicit Flows from China – The Real Estate Problem" (2017) 20(1) *Journal of Money Laundering Control*, pp 21–22; Fabian Maximilian Johannes Teichmann "Real Estate Money Laundering in Austria, Germany, Liechtenstein and Switzerland" (2018) 21 (3) *Journal of Money Laundering Control*, p 327.

5 Evidence of C. Dawkins, Transcript, June 12, 2020, p 70.

corporation, the beneficiary of a trust, or a partner in a partnership that owns land. The beneficial owner in some instances may be the person behind a nominee – a nominee being a "stand-in" who appears on title in place of the real owner.

The *LOTA* creates a publicly accessible beneficial ownership registry, the LOTR. The Act requires corporations, trustees, and partners to identify the individuals who have (a) a beneficial interest of 10 percent or more in land;[6] (b) a significant interest in a land owning corporation; or (c) an interest in land via a partnership. The *LOTA* requires this disclosure of beneficial ownership for all land in British Columbia, unless the reporting body is specifically excluded.

There are two types of filings that are made with the LOTR: (a) a transparency declaration, which is filed by anyone making an application to register an interest in land; and (b) a transparency report, which is required to be filed by "reporting bodies."

A **transparency declaration** is filed by a person seeking to register an interest in land as defined by the *LOTA*, for example a transfer of ownership. It requires the transferee (that is, the person to whom the transfer is made) to declare whether they are a reporting body as defined in the *LOTA*.[7] In a simplified way, the requirement is that a corporation, trustee, or partner must identify themselves accordingly when acquiring real property. The Registrar of Land Titles must refuse to accept an application to register an interest in land if the transferee does not submit the transparency declaration with the application.[8] It used to be that a company could acquire title, and thus own real estate, without identifying who actually owns and controls that company. The LOTR puts an end to that, and mandates that such a company (or trust or partnership) properly identify itself, thus revealing the "true" owner of the land.

A **transparency report** is completed and filed by a reporting body. A transparency report must be submitted when a reporting body seeks to register an interest in land (s 12(1)), and by pre-existing owners before a prescribed date (now November 30, 2022)[9] (s 15(1)). Transparency reports are also required to be filed when there is a change in interest holders, for example, a change in the composition of shareholders holding or controlling over 10 percent of the issued shares of a corporation (s 16(1)).

A "reporting body" is defined in the *LOTA*; it includes a corporation, trustee of a trust, and a partner of a partnership that holds an interest in land in British Columbia.[10]

6 Exhibit 756, LOTR Policy Presentation, p 7.

7 *LOTA*, ss 1, 10.

8 Ibid, s 11.

9 *Land Owner Transparency Regulation*, BC Reg 250/2020, s 19.

10 *LOTA*, s 1.

An "interest in land" is defined in the Act as any of:

a) an estate in fee simple [what most people consider "owning" land];

b) a life estate in land;

c) a right to occupy land under a lease that has a term of more than 10 years;

d) a right under and agreement for sale to

   i) occupy land, or

   ii) require the transfer of an estate in fee simple;

e) A prescribed estate, right or interest[.][11]

Other interests in land can be made registrable by way of regulation. One interest in land notably *absent* from the definition is a mortgage.

A transparency report must disclose the following information about a reporting body's "interest holders": primary identification information;[12] date of birth; last known address; social insurance number, if any; any individual tax number assigned by the Canada Revenue Agency; whether the person is resident in Canada for the purposes of the *Income Tax Act*;[13] and a description of how the person is an interest holder.[14] The transparency report does as its name suggests: it reports in a transparent way who really owns the real estate. While the purchaser may have been Company X (or Trust X, Nominee X, etc.), by way of the transparency report, one can ascertain that the real owner is John Doe, with a particular date of birth, address, and the like.

There are different definitions for who qualifies as an "interest holder," depending on the entity involved. For corporations, "interest holders" are those individuals who own or control, directly or indirectly, 10 percent or more of the issued shares or voting rights for the company, or individuals who have the ability to appoint or remove a majority of the company's directors.[15] For trusts, persons who are "interest holder" are persons with a beneficial interest in the land, and those who have the power to revoke the trust and receive the interest in land (including if the person is a corporate interest holder in a corporation that has these powers). As for partnerships, the term "interest holder" means a partner in the partnership, or a corporate interest holder of a corporation that is a partner.[16]

11 Ibid.

12 Primary identification information is defined in sections 7 (corporations), 8 (individuals), and 9 (partnerships) of the *LOTA*.

13 *Income Tax Act*, RSC 1985, c 1 (5th Supp.), s 19.

14 *LOTA*, s 19.

15 Ibid, s 3.

16 Ibid, s 4.

Failure to file a transparency report or providing false or misleading information in declaration or report can result in a financial penalty of $25,000 for an individual, $50,000 for a corporation, or 5 percent of the assessed value of a property, whichever is greater.[17]

The LOTR has been operational since November 30, 2020. Transparency disclosures are now required on the registration of an interest in land. Transparency reports must also be made by pre-existing land owners.[18] Initially, pre-existing interest holders were given one year, until November 30, 2021, to make their transparency reports. On November 2, 2021, the Ministry of Finance extended that deadline to November 30, 2022, citing feedback from legal professionals that more time was needed to gather information about ownership and to file with the registry.[19]

As of February 22, 2022, LOTR had received 263,373 transparency declarations and 40,967 transparency reports.[20]

The registry became searchable on April 30, 2021. While the LOTR is accessible to the public, not all of the information recorded is publicly available. For a fee, members of the public can search a limited subset of prescribed primary identification information. Members of the public are able to search for information about associated reporting bodies, interest holders, and settlors of trusts.[21]

Certain specified entities are entitled to inspect records and reported information. There are five classes of entities that are entitled to access *all* of the information in the registry searching based on the specific property (the parcel identifier). The five who can have this comprehensive access are:

1. the enforcement officer (a position created by *LOTA*);
2. Ministry of Finance employees;
3. taxation authority employees;
4. law enforcement officers; and
5. regulators, including the BC Financial Services Authority (BCFSA), the BC Securities Commission, FINTRAC, and the Law Society of BC.[22]

17 Ibid, s 61.

18 Ibid, s 15.

19 Ministry of Finance Information Bulletin, "Land Owner Transparency Registry Filing Deadline Extended" (November 2, 2021), online: https://news.gov.bc.ca/releases/2021FIN0057-002082; *Land Owner Transparency Regulation*, s 19.

20 This figure was provided by the Land Owner Transparency Registry Services.

21 *LOTA*, s 30(2), s 35.

22 *LOTA*, ss 28, 30(1), 31–34.

As of February 22, 2022, 2,835 searches of the public registry had been made. The administrator of the LOTR provided the Commission with the following breakdown of searching parties (meaning, who did the searches):

Table 18.1: Searches of Information Contained in Transparency Records under Section 30(2))

Parties Conducting a Search	# of Searches
Members of the General Public	2,695
Ministry of Finance	18
Canada Revenue Agency	58
BC Assessment Authority	15
BC Securities Commission	1
BC Financial Services Authority	3
Society of Notaries Public of British Columbia	29
Ministry of Attorney General	10
Ministry of Forests, Lands, Natural Resource Operations and Rural Development	2
Legislative Library of BC	4
Total	2,835

Source: Land Owner Transparency Registry

As can be seen, it is largely members of the public, which includes the media, who have accessed the public registry since April 2020.

The LOTR administrator also provided the Commission information as to the *searches* of the transparency records that can be done for certain entities (those that have permission to obtain the records). These are known as section 30(1) searches of transparency records; that provision of the *LOTA* provides that transparency records held in the LOTR database may be made available for inspection and search to the regulators, law enforcement, and tax officers listed earlier. This is the breakdown of searches conducted:

Table 18.2: Searches of Transparency Records under Section 30(1)

Parties Conducting a Search	# of Searches
BC Securities Commission	4
BC Financial Services Authority	3
Financial Transactions and Reports Analysis Centre of Canada	0
Law Society of British Columbia	0
Society of Notaries Public of British Columbia	9
Director of Civil Forfeiture	1
Taxing Authority	0
Law Enforcement	4
Enforcement Officer and Ministry Officials	351,923

Source: Land Owner Transparency Registry

There has been relatively little use of the section 30(1) search power by regulators and law enforcement who might be expected to find this information useful. This could be due to a number of factors, including the fact that the registry is still relatively new. It could also be because, to date, only a small number of historical transparency reports have been filed. As experience with the LOTR is developed, it will be insightful to learn whether enforcement and regulatory bodies begin to use the information available through section 30(1) to improve their own investigations and processes. Later in this chapter, I recommend that there be an assessment of effectiveness of the registry, once there is more experience with the LOTR. During that review and assessment – which I recommend be handled by the new AML Commissioner – the commissioner should engage with the entities that fall under section 30(1). This will enable the commissioner to determine whether these entities are finding the LOTR useful for law enforcement or regulatory functions, and to learn if information or access might be improved.

The search fee for the LOTR is currently set at $5 per search.[23] I pause to note a distinction between information on a database of corporations and other legal persons, and a registry of owners of real estate. There is a compelling rationale for ensuring that a beneficial ownership transparency registry for *companies* has no search fee. Individuals who contract with or otherwise deal with a company should be able to ascertain the identity of those individuals who own and control it, and they should not have to pay to access this information (as I address in Chapter 24). On the other hand, there is a strong tradition of requiring the payment of a fee to access records about ownership of property, and the business model of the Land Title and Survey Authority (LTSA)[24] relies on such fees to operate.[25] Insisting on free access to the LOTR would, based on the evidence available to me, give rise to financial consequences to LTSA. I therefore have not recommended free access generally, although it is open to government to take that approach if satisfied it is appropriate.

The payment of fees for LOTR access, however, does give rise to a difficulty for law enforcement agencies. The Ministry of Finance does not pay to access this information. But other entities, including law enforcement agencies, are subject to a fee for searching. I heard evidence that this fee-for-search structure is a concern for law enforcement.[26] Beneficial ownership information would be useful to law enforcement conducting investigations into money laundering, and I therefore recommend that the Province remove, by way of amendment to the *LOTA* and/or its Regulations, the fee requirement for law enforcement and regulators with an anti–money laundering mandate. The Province may also consider removing the fee requirement for others such as academics and non-profits.

Recommendation 33: I recommend that the Province remove, by way of amendment to the *Land Owner Transparency Act* and/or its Regulations, the fee requirement for law enforcement and regulators with an anti–money laundering mandate who wish to access the Land Owner Transparency Registry.

Enforcement of the *LOTA* is a responsibility that falls outside of the land titles system. The Registrar of Land Titles receives the transparency reports and declarations and accompanying fees, and the administrator of the LOTR maintains the registry, but neither has legislative authority to ensure compliance with the Act.[27] The *LOTA*

23 Exhibit 756, LOTR Policy Presentation, slide 18.

24 Evidence of C. MacDonald, Transcript, March 12, 2021, p 139. The Land Title and Survey Authority is discussed later in this chapter. The LTSA was established in 2005, and is a statutory corporation, independent from government. It is responsible for managing the land title and survey systems of British Columbia. Its mandate and responsibilities are set out in the *Land Title and Survey Authority Act*, SBC 2004, c 66, and its operating agreement with the Province.

25 Evidence of C. MacDonald, Transcript, March 12, 2021, pp 139–40.

26 Evidence of R. Danakody, Transcript, March 12, 2021, p 190.

27 *LOTA*, s 47; Exhibit 756, LOTR Policy Presentation, slide 11.

creates an enforcement officer, who is to be appointed by the minister of finance.[28] I am informed that the head of the property taxation branch within the revenue division of the Ministry of Finance has been appointed to this role.[29] The enforcement officer conducts inspections, can require information to be provided to the enforcement division, and can use the tools available to the enforcement officer under the *LOTA* to compel compliance, including the imposition of penalties. The enforcement officer is also responsible for providing education and awareness about *LOTA*.[30]

While the LOTR is relatively new, both the Act and the registry it creates have already been the subject of criticism. In a report to provincial and federal ministers of finance, the federal-provincial ad hoc working group on real estate suggested that British Columbia consider:[31]

- further measures to improve the accuracy of the *LOTA* registry, such as requiring the collection of tax numbers from foreign entities that do not have a Canadian tax number;
- monitoring the privacy concerns that emerge from the creation of the public-facing LOTR;
- facilitating the sharing of *LOTA* data with other agencies to allow for data analytics; and
- working with LTSA after the launch of the registry to compile a list of lessons learned in operationalization of the registry.

Implementation of the first suggestion would be subject to the outcomes of the research I will recommend below, but I encourage the Ministry of Finance to take up the last three recommendations, if it has not already done so.

Transparency International, Canadians for Tax Fairness, and Publish What You Pay Canada (together, the Transparency Coalition), a participant in the Inquiry, articulated the following criticisms of the LOTR in their closing submissions:

- There is a lack of verification and validation of information, with no requirement that the LOTR, or any independent third party, verify the information filed. The integrity of the registry depends on the assertion of veracity made by the reporting bodies and their representatives (such as the lawyers or notaries who file the declarations and reports). There is no requirement for reporting entities to provide supporting documentation such as copies of passports. Information is only verified by way of random checks by the enforcement officer.

28 Ibid, s 50.

29 Evidence of J. Primeau, Transcript, March 8, 2021, p 39.

30 Evidence of R. Danakody, Transcript, March 12, 2021, pp 203–5.

31 Exhibit 706, Final Report to Finance Ministers (January 2021), p 5.

- There are inadequate penalties for the intentional submission of false information. The Transparency Coalition advocates for the availability of prison terms as an enforcement tool.
- Searches are not free, which will limit the use and effectiveness of the LOTR.
- There are no clear means for whistle-blowers to report false or inaccurate filings.
- There is no unique identifier for individuals, which creates problems for common names that cannot be distinguished.
- There is limited searchability of the LOTR by members of the public.[32]

On the other side, the British Columbia Civil Liberties Association (BCCLA) expressed reservations about the privacy implications of beneficial ownership registries generally, and the lack of evidence around their effectiveness. BCCLA argues that the LOTR should be accessible only to law enforcement, tax authorities, and perhaps other regulators. It says this approach strikes a more appropriate balance between transparency and privacy. BCCLA also expressed a concern that open access to beneficial ownership information could create risks of fraud, identity theft, and harassment.[33]

I note that the *LOTA* already contains provisions allowing an individual submitting a report to apply to the LOTR administrator to omit their information from a public search, on the grounds that the individual has a reasonable belief there is a threat of harm or safety to themselves or a member of their household.[34] There is, as a result, already a set of exemptions that prevent public access to personal information when appropriate and necessary. I am not persuaded that there is a compelling justification for providing greater privacy protections to individuals who own real estate through a company or similar vehicle, as compared to the vast majority of British Columbians property owners, who register their property in their own name.

With respect to effectiveness, BCCLA references Professor Jason Sharman's report to the Commission, in which he states:

> Yet despite the current popularity of beneficial ownership registries there is a striking lack of evidence that they do actually help in deterring, detecting or combatting money laundering and related financial crime. The UK government has been the main champion of this policy on the international stage, but it is hard to see either any general decline in financial crime, or even any particular case that has succeeded because of this new level of transparency.[35]

32 Closing submissions, Transparency Coalition, July 20, 2021, paras 100, 107–12.

33 Closing submissions, BCCLA, July 8, 2021, paras 76–88.

34 *LOTA*, s 40(1).

35 Exhibit 959, Jason Sharman, *Money Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment*, p 10; Closing submissions, BCCLA, para 77.

Professor Sharman commented on the effectiveness of beneficial ownership registries inasmuch as they contain low-quality information. Interestingly, Professor Sharman's criticism relates to his conclusion of ineffectiveness, but from a different perspective (that of proponents of beneficial ownership registries). The Transparency Coalition likewise has concerns about low-quality information.[36] In his report, Professor Sharman writes:

> The danger with registries is that they contain a large volume of low-quality information. In particular, the information is unverified, and there is almost no enforcement against false ownership declarations. In Canada, there are something like 2.6 million companies; who, specifically, will verify the information they lodge on beneficial ownership, and how will this requirement be enforced?[37]

In his testimony before the Commission, Professor Sharman repeated his view that beneficial ownership information relating to real property should be available for both law enforcement and non-law enforcement purposes, and that the creation of LOTR is positive. He warned, however, against passing laws that will not be effectively enforced, stating "legislation is good, but enforcement is really the name of the game."[38]

Both the Transparency Coalition and BCCLA voice valid concerns. The LOTR is in a nascent stage, and there is reason for optimism that the registry will produce positive changes. First, an abundance of specific information about the actual beneficial owners of real estate is already available, with significantly more being added (the historical information). This should prove useful and informative for regulators and law enforcement, as well as journalists and policy organizations working in the area. It is not speculative to say that the ability to access this type of information will make a difference in combatting money laundering. Second, the very existence of the LOTR will have some deterrent effect on sophisticated jurisdiction-shopping money launderers who want to maximize secrecy over their ownership of property. In my view, they will be less likely to purchase real estate in a jurisdiction that requires them to divulge their name and penalizes them for failure to do so. In saying this, I accept Professor Sharman's point – echoed by the Transparency Coalition – that without verification and enforcement against anyone providing inaccurate information to the LOTR, the effect of the measure will be muted.

I hope it is the case that my optimism proves to be well placed. It is important, whether one adopts an optimistic or cynical view of the LOTR, that research and analysis are conducted on the compliance with, and effectiveness of, the system.

In Chapter 8, I recommend the creation of a new office of the AML Commissioner. This office will be optimally placed to determine the effectiveness and impact of the LOTR, once it is populated with historical data, and to report to the Province on its

36 Closing submissions, Transparency Coalition, paras 100–5.

37 Exhibit 959, Jason Sharman, Money *Laundering and Foreign Corruption Proceeds in British Columbia: A Comparative International Policy Assessment,* p 10.

38 Evidence of J. Sharman, Transcript, May 6, 2021, pp 31–32.

conclusions (and if appropriate to the public as well). In my view, the following steps would evaluate the effectiveness and the impact of the LOTR:

- engaging and consulting with the regulatory and enforcement bodies permitted to perform *Land Owner Transparency Act* section 30(1) searches to determine whether they have found LOTR information valuable for their investigations and anti–money laundering efforts;
- analyzing the extent to which reporting bodies:
    - are complying with the requirement to file;
    - are complete and accurate in their filings;
- researching the extent and result of any enforcement measures taken;
- determining what impact, if any, the *LOTA* has had on the legal ownership of real property by corporations, trusts (including nominees), and partnerships, as opposed to natural persons (a point I return to below); and
- drawing on insights and experience from other jurisdictions around the world.

I therefore conclude that, once there is more experience with the LOTR, there should be an assessment of the effectiveness of the registry. I recommend that, within three years of the Land Owner Transparency Registry being populated with historical data, the AML Commissioner report to the Province with any recommendations for improvement to the registry. These recommendations should be informed by the AML Commissioner's study of the effectiveness of the registry and consultation with entities that are permitted to perform section 30(1) *Land Owner Transparency Act* searches.

Recommendation 34: I recommend that, within three years of the Land Owner Transparency Registry being populated with historical data, the AML Commissioner report to the Province with any recommendations for improvement to the registry. These recommendations should be informed by the AML Commissioner's study of the effectiveness of the registry and consultation with entities that are permitted to perform section 30(1) *Land Owner Transparency Act* searches.

This assessment of the LOTR by the AML Commissioner should enable the Province to make any improvements required to ensure that information in the registry is accurate and of optimal utility to regulators and enforcement agencies. Such analysis may provide insights of broader relevance to beneficial ownership transparency registries, a topic I discuss in relation to legal persons (such as companies) in Chapter 24.

Collection of Beneficial Ownership Information Pursuant to the *Property Transfer Tax Act*

In British Columbia, a person, on gaining or purchasing an interest in property, must file a property transfer tax return and, in most cases, pay property transfer tax. Starting in 2016, prior to the enactment of *LOTA*, the provincial government began using the property transfer tax return as an opportunity to collect information about the beneficial purchasers of real property.

The first set of changes to the *Property Transfer Tax Act*, RSBC 1996, c 378, implemented in June 2016, required the collection of data on the citizenship of transferees, as well as the identity and citizenship of the directors of corporate transferees and settlors and beneficiaries of bare trusts. In September 2018, further changes were made requiring corporate transferees to identify beneficial owners with ownership or controlling interests of 25 percent or more, and requiring trustees to identify the settlors and beneficiaries of their trusts. Transferees holding a property on behalf of a partnership are also required to disclose that fact.[39]

The inspiration for the study was similar work performed by two academics, Sean Hundtofte and Ville Rantala, assessing the impact of orders by FinCEN in the United States that required the collection and disclosure of beneficial ownership information in certain circumstances.[40] The FinCEN orders, and the study by Professors Hundtofte and Rantala, are described briefly below.

United States Experience with Beneficial Ownership Disclosure

A brief review of the United States' use of geographic targeting orders is required before turning to the work of Hundtofte and Rantala.

A geographic targeting order (GTO) is, as the name suggests, a measure that focuses on a particular geographic area. A GTO allows FinCEN, the American financial intelligence unit, to direct entities and businesses in a certain geographic area to collect and report information to FinCEN.[41] GTOs can be issued for a six-month period and renewed if needed.[42]

In 2016, FinCEN issued GTOs that required title insurance companies to collect and report information regarding the beneficial ownership of companies that purchased residential real estate.[43] (Unlike in Canada, in the United States, real estate agents are not

39 Exhibit 1041, exhibit B, PTT Study, pp 24–25.

40 C. Sean Hundtofte and Ville Rantala, "Anonymous Capital Flows and U.S. Housing Markets" (University of Miami Business School Research Paper No. 18-3, 2018).

41 Evidence of S. Brooker, Transcript, May 11, 2021, p 53; See 31 USC § 5326(a); 31 CFR§ 1010.370.

42 Exhibit 973, Stephanie Brooker, *The Role of FinCEN, the US Financial Intelligence Unit, in the US Anti–Money Laundering Regime and Overview of the US Anti–Money Laundering Structure and Authorities* [Brooker Report], pp 6–7.

43 S. Hundtofte and V. Rantala, "Anonymous Capital Flows and U.S. Housing Markets," p 8.

subject to due diligence and suspicious activity reporting.[44]) FinCEN GTOs require title insurance companies, within 30 days of closing, to report to FinCEN any non-financed residential real estate sales in a number of major US counties, when certain criteria are met: (a) the buyer is not a real person but a legal entity (other than a US public company); (b) the purchase is for $300,000 or more; and (c) the purchase is made in part (or entirely) with currency, money instruments, wire transfers, and/or virtual currency.[45] The reports were required to include beneficial ownership information at a "25% or more" threshold for the purchasing legal entity, and the title insurance companies were required to verify the identity of the beneficial owners and their representatives using documentary means.[46]

Initially, on January 13, 2016, FinCEN issued GTOs that applied to Manhattan and Miami-Dade County.[47] On July 27, 2016, FinCEN expanded the order by issuing GTOs to 12 additional counties in California, Florida, and Texas.[48] These temporary orders have been continually renewed and expanded to different cities.[49]

The GTOs were responsive to FinCEN's perception that the purchase of high-end real estate in certain cities were being used to launder proceeds of criminal activity from around the world.[50] Professors Hundtofte and Rantala describe the ability to make all-cash purchases of residential real estate by using a limited liability company (LLC) as a loophole in US anti–money laundering regulations.[51] By using an LLC, all-cash (unfinanced) purchasers of real estate could avoid triggering the banking system's "know your customer" requirements, and could avoid identifying themselves to law enforcement authorities.[52]

FinCEN has stated that "GTOs have provided FinCEN with valuable insight into the ways that illicit actors move money in the US residential real estate market, and help us better understand how actors in markets with relatively fewer anti–money laundering protections respond to new reporting requirements."[53] As an indication of the usefulness of such reports in identifying potentially suspicious transactions, FinCEN reported in May 2017 that 30 percent of reports made pursuant to the GTOs involved either a beneficial owner or purchaser representative that had been the subject of suspicious activity reports.[54]

44 Brooker Report, p 26.

45 Ibid, pp 26–27.

46 Ibid, p 27.

47 Ibid, p 7.

48 Ibid.

49 Evidence of S. Brooker, Transcript, May 11, 2021, pp 53–54.

50 Ibid; Exhibit 973, Brooker Report, p 26.

51 S. Hundtofte and V. Rantala, "Anonymous Capital Flows and U.S. Housing Markets," pp 2–3.

52 Ibid. Note that "all–cash" does not mean the physical transfer of cash, but rather that the real estate was purchased without a mortgage or other bank financing. Obtaining a mortgage or other new financing would trigger US banks' "know your customer" requirements, putting those purchasers outside of this loophole: S. Hundtofte and V. Rantala, "Anonymous Capital Flows and U.S. Housing Markets," p 9; speech of Jamal El–Hindi, deputy director of FinCEN, at the Institute of International Bankers Annual Anti–Money Laundering Seminar, May 16, 2016, online: https://www.fincen.gov/news/speeches/jamal-el-hindi-deputy-director-financial-crimes-enforcement-network.

53 Exhibit 973, Brooker Report, p 27.

54 Ibid, p 27.

Evaluation of the Effectiveness of American GTOs

In an attempt to better understand the influence of anonymity (particularly the use of shell companies) in proceeds of crime entering real estate, Professors Hundtofte and Rantala examined the rate of all-cash purchases of real estate – both before and after the introduction of the GTOs. They found that all-cash purchases by corporate entities comprised 10 percent of the dollar volume of housing purchases prior to the GTOs.[55] This figure *fell by 70 percent* upon the introduction of a GTO.[56] The authors concluded that the availability of anonymity was a key incentive for all-cash purchases of real estate by LLCs, suggesting that these LLCs were being used as shell corporations: "The evidence on the whole suggests that anonymity-preferring buyers made up the majority of corporate cash purchases in the US prior to the policy change."[57]

Professors Hundtofte and Rantala also found declines in the luxury home markets in places where the GTO had been implemented; such declines were *not* observed in comparable jurisdictions in which no GTO applied.[58] After the GTOs were introduced, the prices of high-end houses in targeted counties dropped by 4.2 percent more than prices in other counties.[59]

The results of this study suggest that some buyers in the targeted US jurisdictions were, in fact, using corporate structures for anonymity purposes, and that the implementation of beneficial ownership disclosure requirements has a negative impact on the use of such structures for the purchase of real estate. Removing a tool for obscuring beneficial ownership had the effect of reducing the number of people using the tool, and it reduced the demand for luxury property in those markets. In other words, the GTO had an impact.

The Impact of Beneficial Ownership Disclosure in British Columbia

Returning to this province, the study by Adam Ross, Dr. Tsur Somerville, and Dr. Jake Wetzel sought to evaluate whether a similar impact on corporate ownership could be measured following the implementation of disclosure requirements through British Columbia's property transfer tax (or PTT) return.[60]

The implementation of disclosure requirements through the property transfer tax return created an opportunity to measure their impact on rates of corporate ownership.

55 Ibid, p 18.

56 Ibid.

57 Ibid, p 19.

58 Ibid, pp 5–6 and 20–21.

59 Ibid, p 20. The authors noted that "even a drop of 4–5% indicates that billions of dollars of market value is wiped out in the GTO counties, which include many of the largest cities in the U.S."

60 Exhibit 1041, exhibit B, PTT Study.

To this end, the Commission retained Ross, Somerville, and Wetzel to answer the following questions:

- How has the introduction of beneficial ownership disclosure for BC property transactions impacted the ways in which people own real estate?
- Specifically, has the monitoring of identity led to a decline in property ownership through legal entities?[61]

It is worth noting that at the time the study was commissioned, the LOTR was not yet operational. As outlined earlier in this chapter, I recommend that the new AML Commissioner should, within three years of the LOTR being populated with historical data, study its effectiveness. Because of the ambiguous results (as will be seen) of the BC study performed for the Commission, I recommend above that, in the course of this assessment, the AML Commissioner study and report on the impact of the LOTR on the ownership of real property by non-natural persons.

The specific question addressed by the authors of the PTT Study was "whether the introduction of enhanced ownership reporting and registration in 2016 and in 2018 affected the likelihood that a newly purchased property had at least one owner that was a corporation."[62] The study relied on LTSA title information, BC Assessment roll data, and data collected by the Ministry of Finance through property transfer tax returns. Because of gaps in available data for commercial property transactions, the study focused on residential property.[63] It focused on holdings by corporations because of the difficulty in identifying, through land titles data, bare trusts (i.e., nominee owners) and property held for the benefit of partnerships, making a "before and after" comparison of holdings by such entities impossible.[64]

The study targeted changes to corporate disclosure to the property transfer tax return occurring at two points in time: June 2016 and September 2018. As mentioned above, in June 2016, corporate transferees (purchasers) were required to report the identity and citizenship of their directors. In September 2018, corporate transferees were required to identify beneficial owners with 25 percent or more equity interest.[65]

While the Hundtofte and Rantala study showed a clear response in the market to the implementation of the geographic targeting orders by FinCEN, there was no such clear response in the BC market following the implementation of beneficial ownership disclosure requirements through the property transfer tax.[66] In the year after the implementation of the 2016 changes, LTSA data indicated that the probability that a

61 Ibid, p 6.
62 Exhibit 1041, exhibit B, PTT Study, p 17.
63 Ibid, p 18.
64 Ibid.
65 Ibid, p 79.
66 Ibid, p 19.

residential property in BC would be held through a legal entity increased from a baseline probability of 2.37 percent to 3.01 percent.[67] Following the September 2018 property transfer tax changes (requiring the disclosure of corporate beneficial ownership), the data were mixed. LTSA data indicate that the probability that a residential property in BC would be held through a legal entity increased from 3.52 to 4.15 percent.[68]

Property transfer tax data, on the other hand, indicated that from June 2016 until September 2018, 3.8 to 5.1 percent of residential transactions reportedly involved a corporation. After the September 2018 update to property transfer tax disclosures, the rate of corporate ownership decreased to 3.0 percent from 4.2 percent, amounting to a 12 to 16 percent drop in transfers into corporations.[69] The decrease was most pronounced among single family / duplex properties in metropolitan areas, amounting to a 30 percent drop in transfers into corporations.[70] The authors of the report did have questions about the reliability of the data.[71]

The analyses suggest that "anonymity may not be a primary motivator for most buyers using corporations to hold property in BC."[72] Alternately, as explained by the study's authors, the measures may not be deterring anonymity-seeking buyers as they are not perceived as a threat:

> It is possible that unlike GTOs in the US, which had a clear and immediate impact on anonymity-seeking buyers of property, the BC Government's initiatives have not spurred behaviour change due to perceptions that this additional data collection by the government is not a threat. The collection of beneficial ownership information in [property transfer tax] returns has not been coupled with enforcement or independent verification. In contrast, data gathered through the GTO is shared with the enforcement branch of the US Treasury Department, which has a mandate to combat money laundering, and there are unlimited civil and criminal penalties for non-compliance. The relative strength of the GTO policy and the agency enforcing it may have spurred higher rates of compliance and behaviour change among buyers in the US than for their counterparts in BC.[73]

The study also reports on the number of trusts being reported as transferees through property transfer tax returns. From approximately June 2016 to September 2018, 0.3 percent to 0.9 percent of residential property transfers were reported to involve a bare trust.[74] Following the September 2018 update, 1.3 percent to 1.8 percent of transfers disclosed that the purchaser / transferee was a trustee. In September 2018, the property

67 Ibid, p 19.
68 Ibid, p 19.
69 Ibid, p 20.
70 Ibid.
71 Ibid.
72 Ibid.
73 Ibid, pp 20–21.
74 Ibid, p 21.

transfer tax return was changed to require reporting of all trustees, not just bare trusts (the arrangement most often associated with nominee ownership). The authors suggest this change makes it difficult to assess how much of the increase is merely owing to accuracy in reporting (because the data field captures a broader category of trusts), as opposed to an actual increase in purchases by trusts.[75]

The PTT Study suggests there is an under-reporting of properties held though trusts for several reasons, including a lack of understanding of the meaning of a "bare trust" and difficulties in identifying bare trusts, as they can exist with no formal agreement or documentation of any kind.[76] The authors suggest measures to address under-reporting, including requiring titleholders to declare whether they hold property on behalf of a third party, coupled with sanctions for false declarations.[77]

In considering this suggestion, I note that titleholders of residential property in British Columbia are already required to make an annual declaration as to whether their property is occupied.[78] Requiring an additional declaration as to nominee ownership does not seem an undue burden in this context. I stop short of making a recommendation here, because I believe that additional information is required before determining the best course of action. One benefit of a declaration regime would be to provide a data point that could be used by the Ministry of Finance to measure how comprehensively the LOTR is capturing information about nominee ownership of property. And with respect to money laundering specifically, it is not apparent that the creation of a declaration regime in addition to the LOTR will achieve anti–money laundering goals. In my view, those seeking to hide their beneficial ownership behind a nominee for nefarious reasons are unlikely to honestly disclose this on a declaration. Law enforcement tools will likely be required to identify the use of nominees by criminal actors.

Real Estate Information Collection and Use

I heard from a number of witnesses about research projects and project development using available data to identify suspicious transactions and properties, and networks of relationships between individuals. I review some of this evidence below.

Canada Mortgage and Housing Corporation

I heard from two witnesses from Canada Mortgage and Housing Corporation (CMHC), Albertus ("Bert") Pereboom, senior manager of the housing market policy team, and Wahid Abdallah, a policy analysis specialist with CMHC's housing market policy team. They described CMHC's efforts to make use of existing data sets in the real estate sector in order to detect potential fraud and money laundering.

75 Ibid, pp 21–22.

76 Ibid, p 22.

77 Ibid.

78 *Speculation and Vacancy Tax Act*, SBC 2018, c 46.

CMHC began work on what Mr. Pereboom called a "market integrity index" in 2018, consequent to a direction in CMHC's mandate letter to develop a mortgage fraud action plan.[79] As part of delivering on that mandate, CMHC consulted with Professor Brigitte Unger (also a witness in these proceedings) with respect to her work on anti–money laundering in the Netherlands.[80]

In order to provide context for CMHC's undertaking, a summary of the study by Professor Unger and her colleagues is required. Professor Unger and Professor Joras Ferwerda conducted a study of criminal investment in Dutch real estate in 2010. The purpose of the study was to identify indicators of suspicion ("red flags") in real estate transactions that may indicate money laundering. With access to extensive data from Dutch land registry and tax authorities, Professors Unger and Ferwerda applied a list of 17 indicators of suspicion to identify 200 real estate transactions. Those transactions were analyzed by criminologists on a case-by-case basis to determine which were, in fact, associated with criminal activity. The purpose of the study was to determine which indicators can detect real estate that might be associated with criminal activity, and which do not.[81]

The authors first developed a list of 17 red flags, based on a review of the literature, which included Financial Action Task Force publications.[82] The indicators fell under the following categories: (a) characteristics of the party providing financing; (b) characteristics of the transaction; (c) characteristics of the owner/purchaser; (d) characteristics of the property; and (e) characteristics of the price. The indicators of suspicion are:

1. The financier is from abroad.
2. The financier is a natural person rather than a company (or financial institution).
3. The financing is disproportionately high compared to the value of the property.
4. There is no financing (i.e. no mortgage).
5. Financing is provided by the owner themselves (usually through complex financial arrangements).
6. The owner is from abroad.
7. The owner has an unusual number of properties or performs an unusually high number of transactions.
8. The owner is a company in a business that is associated with criminality or the risk of criminality.

79 Evidence of B. Pereboom, Transcript, March 11, 2021, pp 5–6.

80 Ibid, pp 7–8.

81 Exhibit 718, Joras Ferwerda and Brigitte Unger, "Detecting Money Laundering in the Real Estate Sector," in Brigitte Unger and Daan van der Linde (eds), *Research Handbook on Money Laundering* (Northampton, UK: Edward Elgar Publishing, 2013), pp 268–82.

82 Ibid, pp 271–72.

9. The owner is a newly created company.
10. The owner is a "shell" company or company with no employees.
11. The owner is a "world citizen" whose tax jurisdiction is unknown.
12. The property in question is involved in multiple transactions (for example, it is sold several times over a short period).
13. The property is either in a very upscale or in a marginalized and economically depressed neighbourhood.
14. The purchase amount is unusual compared to the assessed value (either much higher or much lower).[83]

The authors then applied these indicators to a data set consisting of land registry information from two Dutch cities, as well as information on their owners obtained from Dutch tax authorities. They found that many transactions or properties had a couple of red flags, but very few displayed five or more. Criminologists were provided with 150 of the highest "scoring" properties, along with 50 "lower" scoring properties for analysis.[84] The criminologists analyzed the properties and transactions presented to them, and ultimately identified 36 as "conspicuous." Five were linked with drugs, 27 with fraud, and four with "renting irregularities." Nine cases were deemed "strongly conspicuous."[85]

One notable finding of the study was that the red flag analysis identified individuals that were not identified as suspicious or conspicuous by "on the ground" stakeholders, such as law enforcement. The stakeholders were asked to identify subjects that had raised their awareness in the two Dutch cities. This survey identified 356 individuals. When compared with 1,130 individuals associated with the 200 properties analyzed by criminologists, only two matched.[86] The authors note that this could indicate that the red flag analysis was not identifying properties associated with criminal activity, or that it was identifying properties and persons not yet known to local law enforcement.[87]

The study concluded that a property that raised more red flags did, in fact, have an increased chance of being related to money laundering or other criminal investments.[88] Certain indicators – unusual price in comparison to assessed value, ownership by a recently created company, and foreign ownership – were more likely than others to be associated with properties the criminologists concluded were conspicuous.[89]

83 Ibid, pp 272–75: There are 17 indicators, but some were collapsed by the authors into single descriptions, and the list is reproduced here as organized by the authors with small grammatical changes for clarity. For instance, while a purchase amount much higher than assessed value is one indicator and a purchase price much lower than assessed value is a separate indicator, they are grouped for the purpose of description.

84 To increase impartiality, 50 properties "with less than five red flags" were added as a control group without signalling the criminologists: ibid, pp 275–76.

85 Ibid, pp 276–77.

86 Ibid, p 277. Two of the matches did concern one of the "strongly suspicious" cases.

87 Ibid, p 277.

88 Ibid, p 277.

89 Ibid, p 279.

Building on the model established by Professors Unger and Ferwerda, CMHC developed a list of 35 indicators, and narrowed that to 17 to reflect the availability of information in Quebec. The indicators identified by CMHC largely mirror those identified by Unger and Ferwerda.[90] Each indicator was assigned a value between 0 and 1 (1 being more suspicious).[91] The data sets available to CMHC were analyzed through the lens of these 17 indicators and properties with a high number of indicators were identified. CMHC then conducted a second step (much like the criminologists in the Dutch study) and, based on open source information, attempted to determine if the identified properties were, in fact, associated with suspicious persons, suspicious activity, or foreign politically exposed persons.[92] Those open sources included the notaries records in Quebec, politically exposed persons databases, commercially available databases for ultimate beneficial ownership, federal and provincial corporate registries, the Canadian Legal Information Institute (CanLII), and the International Consortium of Investigative Journalists (ICIJ) database.[93]

CMHC first conducted this analysis with Quebec real estate, due to the availability of relevant data.[94] Mr. Pereboom explained why Quebec was chosen:

> Quebec is unique among registries at least for the data that we're able to receive in reporting buyer and seller names … [T]o trace money laundering, to have a ghost of a chance at doing it, you need to know who buyers are and what pattern of transactions they have. So without that name, you can associate multiple transactions with the same individual to see their pattern of activity.[95]

CMHC "scored" 1,612,630 Quebec real estate purchases between 2000 and 2018, applying the values assigned to suspicious indicators (the market integrity index). Out of a maximum market integrity index score of 17, the mean score was 3.67. Ninety-four percent of purchasers had a market integrity index score of five or lower. 3,297 purchasers scored eight or higher. The maximum observed score was 11.[96]

The CMHC analysis did more than simply identify transactions with "red flag" characteristics. Of importance for understanding trends in the real estate market and for better comprehending what is "unusual" (and by extension, perhaps suspicious depending on the circumstances), it provides data relating to each of the suspicious indicators used, across all properties in Quebec, over the 2000–2018 period. This

90 Exhibit 719, Defining a Housing Market Integrity Index (MII): A Methodology and Application to Quebec's Housing Market – Draft (February 19, 2021) [Quebec Housing Integrity Index], pp 12–19.

91 Ibid, p 20. An indicator value of one by itself does not suggest a transaction is suspicious. The methodology requires several indicators to be at or near a value of one to reach range of more suspicious transactions (p 12).

92 Evidence of B. Pereboom, Transcript, March 11, 2021, pp 11–13.

93 Exhibit 719, Quebec Housing Integrity Index, pp 21–22.

94 Evidence of B. Pereboom, Transcript, March 11, 2021, pp 33–34.

95 Ibid, p 49.

96 Exhibit 719, Quebec Housing Integrity Index, pp 23–24.

information provides valuable context for what may be considered normal or unusual in the real estate market. For instance, the CMHC study indicates that only 2.4 percent of properties sold in Quebec in this time frame were sold five times, and less than 1 percent were sold six or more times.[97] Between 2014 and 2018, only 0.45 percent of real estate transactions were financed by a natural person, 0.01 percent by a foreigner, and 15.33 percent had no associated mortgage record.[98]

Using the red flag analysis, CMHC, through open-source research, detected a number of properties with connections to suspicious circumstances. However, given a lack of "confirmed cases" of money laundering to test against (reflecting a lack of prosecutions of money laundering offences in Canada), neither Dr. Abdallah nor Mr. Pereboom could conclusively say whether any one indicator is a better or worse indicator of money laundering in real estate.[99] In order to determine which indicators were more valuable, Mr. Pereboom said that CMHC would need to collaborate with experts who could identify cases in which money laundering was at least suspected, to allow for the application of regression analysis to identify "true" indicators of suspicion.[100] But, as Mr. Pereboom pointed out, CMHC is not part of the formal federal anti–money laundering regime, and does not have access to information – such as suspicious transaction reports filed with FINTRAC – that might inform the assessment of which indicators are most probative in terms of identifying money laundering activity.[101]

The authors of the study suggest the market integrity index tool could be used in the following ways:

- to identify suspicious transactions in a relatively unbiased way, free of more subjective assessments made of those expected to file suspicious transactions reports;
- to focus information gathering on higher risk transactions, relative to random audits, out of hundreds of thousands of other legitimate transactions – especially when the launderers attempt to camouflage their activities from individual observers (the methods can also be used to evaluate historical transactions, with the potential to indicate whether money laundering risk is rising or falling over time);
- to pull together a history of transactions over times and places, revealing patterns that would not be observable by individual professionals in the existing anti–money laundering regime; and
- to deter money laundering in real estate by identifying potential suspicious transactions.[102]

97 Ibid, p 25.

98 The time frame for this analysis begins in 2014 when mortgage finance data became available: ibid, p 27.

99 Evidence of W. Abdallah, B. Pereboom, Transcript, March 11, 2021, pp 39–40.

100 Evidence of B. Pereboom, Transcript, March 11, 2021, p 43.

101 Ibid, pp 44–45.

102 Exhibit 719, Quebec Housing Integrity Index, pp 9–10.

As noted by Mr. Pereboom, use of the market integrity index is supplemental to the obligations of professionals involved in real estate transactions to submit suspicious transaction reports.[103] What the market integrity indicator approach avoids, however, is the inherent conflict of interest involved in asking industry actors to report on – and perhaps distance themselves from – transactions in which they have a direct financial interest.[104]

CMHC did attempt to complete a similar analysis for British Columbia, but encountered issues with accessing the required data.[105] Part of the issue was that some of the necessary information for the analysis was captured only in PDF format, rather than in captured "fields" that were more readily analyzed.[106] In total, only six indicators were capable of being analyzed in British Columbia, as compared to the 17 in Quebec.[107] A key data gap was the absence of buyer and seller names:

> Like the method that we're doing with Quebec and applying it requires you to know … what a buyer has paid for and when a transaction has been transacted and to whom they sell it. So you need the pattern of transactions. You can't just look at a transaction individually. So, again, our mortgage [market integrity index] requires to see a bigger picture rather than a single transaction. So as we've shown in the BC thing, you can only evaluate 6 of the 17 indicators that we can do with Quebec if you do not have more information about the buyers, sellers and the other persons associated with that transaction.[108]

In order to perform the required analysis, an enormous amount of work would have to go into data collection and cleaning to make the available data usable.[109] Mr. Pereboom also suspected some of the difficulty in accessing data related to privacy concerns, but said the continued barriers had not been communicated by the BC LTSA.[110] LTSA witnesses indicated there were concerns about violating privacy legislation by providing bulk data sets to CMHC, and that they would need clear direction on their legal authority to share that information. They also adverted to the significant resources that would be required to provide data in the format required by CMHC, as well as concerns that providing data as requested could undermine LTSA's business model, in that they rely on the ability to charge a fee for access to registry data.[111]

103 Evidence of B. Pereboom, Transcript, March 11, 2021, p 27.

104 Ibid, pp 46–47.

105 Exhibit 717, Bert Pereboom, Scoring and Flagging ML Risks in BC Real Estate (October 2019); Evidence of B. Pereboom, Transcript, March 11, 2021, slides 51–52.

106 Evidence of B. Pereboom, Transcript, March 11, 2021, p 51.

107 Exhibit 717, Bert Pereboom, Scoring and Flagging ML Risks in BC Real Estate, pp 3–4.

108 Evidence of B. Pereboom, Transcript, March 11, 2021, p 53.

109 Ibid, pp 55–56.

110 Ibid, pp 56–57.

111 Evidence of C. MacDonald, Transcript, March 12, 2021, pp 194–95; Evidence of G. Stephens, Transcript, March 12, 2021, p 195–96.

Because the British Columbia data allowed for analysis of only six indicators, the maximum possible market integrity index score for BC was six. The maximum score observed of 1,703,866 transactions analyzed was 5.96. The average score was 2.8.[112] Because of a lack of data, including, apparently, owner identities, CMHC was unable to complete the secondary step of verifying the scores against open-source information that might confirm a basis for finding the property or transaction suspicious, essentially rendering the exercise of very little utility.[113]

The data used in CMHC's Quebec study is specific to Quebec and cannot be safely used to contextualize transactions in the British Columbia real estate sector. The point is that the existence of such data seems enormously helpful for understanding what is normal, and what is out of the ordinary, in different real estate markets. For professionals with reporting obligations to FINTRAC, access to such information would help in determining when a transaction might be "suspicious," as determined by reference to objective criteria. I am recommending that the BC Ministry of Finance, either on its own or in cooperation with CMHC, conduct a similar analysis of the British Columbia real estate market. In addition to assisting reporting entities identify suspicious transactions, I anticipate that access to such information will be of assistance to regulators in detecting and monitoring market trends, and by extension, current behaviours and risks in the market. I see immensez value in the type of analysis CMHC undertook with respect to Quebec real estate, and which it attempted to complete in respect of British Columbia. I recommend that the Ministry of Finance – either in conjunction with CMHC or on its own – develop the required data and conduct such an analysis.

Recommendation 35: I recommend that the Ministry of Finance – either in conjunction with Canada Mortgage and Housing Corporation or on its own – develop the required data and conduct a market integrity analysis in order to identify suspicious transactions and activity in real estate.

In addition, I consider that there would be significant benefits to equipping LTSA with a clear basis to factor in anti–money laundering when it conducts its work. This change in mandate will ensure LTSA is alert to money laundering risks and activity and responds to them when identified. It also ensures that LTSA can more easily share information with other agencies involved in the fight against money laundering. I recommend that the Province give LTSA a clear and enduring anti–money laundering mandate, including the ability to more readily share data with other agencies having a complementary anti–money laundering mandate.

112 Exhibit 717, Bert Pereboom, Scoring and Flagging ML Risks in BC Real Estate, p 8.
113 Ibid, p 11.

Recommendation 36: I recommend that the Province give the Land Title and Survey Authority a clear and enduring anti–money laundering mandate, including the ability to more readily share data with other agencies having a complementary anti–money laundering mandate.

The use of this type of information can be enormously valuable for identifying trends, developing policy and making determinations about the allocation of resources. It will be useful for the AML Commissioner. While it may also prove useful to law enforcement entities, the Province, in developing legislation and policies about access to the information, will have to be alive to privacy and constitutional issues that might impact the ability to use the information for tactical intelligence.

This type of project could benefit significantly from the (contemplated) enhanced anti–money laundering data framework that was a subject of the federal-provincial ad hoc working group on real estate, discussed below.

Financial Real Estate Data Analytics

Following the release of the Maloney Report[114] in May 2019, the provincial Ministry of Finance established the Financial Real Estate and Data Analytics Unit (FREDA). The Maloney Report recommended the creation of a financial intelligence unit within the Ministry of Finance to address money laundering concerns:

> The BC Ministry of Finance should create a specialized, multidisciplinary financial investigations unit that can make effective use of the available information and provide the basis for use of administrative sanctions and prosecution of provincial and criminal offences.[115]

The Maloney Report contemplated a financial intelligence unit with an investigative and tactical intelligence function.[116] FREDA is oriented to providing analysis and, perhaps down the road, strategic intelligence that could assist in combatting money laundering in the real estate sector. FREDA is located within the policy and legislative division of the Ministry of Finance. I heard evidence from Dr. Christina Dawkins, executive lead for FREDA within the Ministry of Finance. Without committing to the permanence of the unit, Dr. Dawkins indicated that FREDA was contemplated to be there to help develop real estate policy "as long as they are needed."[117]

There are two branches to FREDA. The first is a **policy branch**, which is tasked with implementing recommendations of the Maloney Report. That branch has been working

114 Exhibit 330, Maureen Maloney, Tsur Somerville, and Brigitte Unger, "Combatting Money Laundering in British Columbia Real Estate," Expert Panel, March 31, 2019 [Maloney Report].

115 Ibid, p 8.

116 Ibid, pp 92–94.

117 Evidence of C. Dawkins, Transcript, March 8, 2021, p 14.

on issues such as the regulation of money services businesses, exploring the possibility of unexplained wealth orders, amending the *Real Estate Services Act* to create a single real estate regulator, reviewing and consulting on the *Mortgage Brokers Act*, and creating a registry of corporate beneficial ownership.[118] The policy branch is also exploring giving anti–money laundering mandates to various regulators, as well as regulating developers and home inspectors.[119]

The second FREDA arm is a **data analytics branch**, which has a mandate to build data holdings for the purpose of data analytics within the Ministry of Finance.[120] Those holdings include data relating to land titles, the property transfer tax, income tax, provincial sales tax, speculation and vacancy tax, the Condo and Strata Assignment Integrity Register, corporate registries, and pandemic recovery benefits.[121] The work of the data analytics branch to date has involved assembling data from a number of different sources, and cleaning and documenting that data. Currently, its analytical work has been focused on supporting the work of the tax policy branch. Once the branch has built up more capacity, Dr. Dawkins testified, the ministry will turn its mind to issues like anti–money laundering for strategic intelligence purposes. This refers to the identification of trends and red flags – not the identification of individuals who may be involved in money laundering activities.[122]

According to Dr. Dawkins, the work of the data analytics branch will allow for an analysis of "more granular" data, to better understand what is happening in the BC real estate market.[123]

The provincial Ministry of Finance has been taking steps to make the vast data holdings (tax, land titles, BC Assessment) available for analysis. Jonathan Baron, for FREDA, gave evidence that one of the projects that FREDA is working on is migrating LTSA, BC Assessment, and provincial tax data to FREDA at the Ministry of Finance and "cleaning" it for better and easier use in answering analytical questions.[124] The process has involved a privacy impact assessment within government and ensuring that information is held securely on government servers.[125]

Mr. Baron advised me that FREDA uses the data it holds exclusively for the compilation of statistical information and informing policy decisions, and that the work product does not connect to individuals.[126] Mr. Baron said:

> [T]he work that we do is almost exclusively what I would call the compilation of statistical information … [W]e have access to the micro data, but what

118 Ibid, p 5.

119 Evidence of J. Primeau, Transcript, March 8, 2021, p 20.

120 Evidence of C. Dawkins, Transcript, March 8, 2021, pp 5–6.

121 Evidence of J Primeau, Transcript, March 8, 2021, pp 54–55.

122 Evidence of C. Dawkins, Transcript, March 8, 2021, pp 8–9, 18.

123 Ibid, pp 13–14.

124 Evidence of J. Baron, Transcript, March 11, 2021, pp 88–90.

125 Ibid, pp 87–88, 91–92.

126 Ibid, pp 92–93.

> we're interested in is creating statistics that … answer important questions for a policy decision or whatever it is … [O]ur work product is aggregate information and it doesn't connect back to an individual.[127]

FREDA does not currently have an anti–money laundering mandate. If it did, Dr. Dawkins predicted that:

> [I]t would take the work in a little bit of a different direction. It would be less driven by specific policy questions and would be more of a research type analysis in which we would take the data and look for flags and trends and correlations rather than … right now being quite responsive to questions from the policy area.[128]

Appreciating that FREDA has multiple policy concerns to serve, the types of analysis and research described by Dr. Dawkins are needed to understand and combat money laundering through real estate. I recommend that the Province give FREDA an express anti–money laundering mandate so that it can prioritize data analysis and policy development that will further anti–money laundering objectives.

Recommendation 37: I recommend that the Province give the Financial Real Estate and Data Analytics Unit an express anti–money laundering mandate, so that it can prioritize data analysis and policy development that will further anti–money laundering objectives.

Federal-Provincial Working Group on Real Estate

Dr. Dawkins described the federal-provincial working group on real estate as "a group of federal and provincial officials who have an interest in or a role related to money laundering in real estate and who have gathered together to explore various issues related to money laundering in real estate and to … share experience, expertise, and to come up with a series of recommendations for [their] respective ministers."[129]

The working group was formed in August 2018 by the federal and provincial ministers of finance, with a mandate "to enhance communication, information sharing and alignment amongst relevant operational and policy partners to explore and better address issues and risks related to fraud, money laundering and tax evasion through real estate in B.C."[130] The group aimed to identify means of money laundering in British Columbia with respect to real estate, develop a clearer understanding of the challenges government agencies have in carrying out their mandates in the real estate sector, and identify gaps in the provincial and federal regulatory and enforcement

127 Ibid, p 92.

128 Evidence of C. Dawkins, Transcript, March 8, 2021, p 67.

129 Ibid, p 84.

130 Exhibit 702, Terms of Reference on Real Estate Working Group, p 1.

frameworks.[131] The group produced a final report in December 2020, bringing its formal work to a conclusion.[132]

Members of the working group included federal and provincial agencies with an interest in money laundering in British Columbia. On the provincial side this included the Ministry of Finance, the Ministry of Attorney General, BCFSA, the Registrar of Mortgage Brokers, the Office of the Superintendent of Financial Institutions, the Office of the Superintendent of Real Estate, LTSA, and the BC Securities Commission. On the federal side, participants included the Department of Finance Canada, the RCMP, FINTRAC, the Canada Revenue Agency, CMHC, Statistics Canada, and the Bank of Canada.[133]

The working group had three "work streams" or topic areas: (1) data and information sharing, (2) regulatory gaps, and (3) enforcement. Work Streams 2 and 3 are discussed elsewhere in this report. I will focus here on the data workstream and its findings.

Under the first workstream, Statistics Canada was tasked with leading a feasibility study in co-operation with the BC Ministry of Finance. The study aimed to investigate data collection and data sharing options in order to support research, regulatory, and analytical functions relating to anti–money laundering in BC real estate.[134] The objective was to assess the feasibility of producing a data framework to facilitate information sharing among relevant government bodies, focused on British Columbia.

Some key findings of the study were:

- Laundering money through the Canadian real estate market uses a diverse array of methods.
- Court records do not reflect the full extent of money laundering efforts in Canada.
- Anti–money laundering efforts would be more effective by enhanced partner collaboration and data sharing.
- Canadian organizations engaged in anti–money laundering initiatives use real estate data for specific investigations and case-based approaches, and have participated in partnerships to facilitate a broader approach.
- Effective anti–money laundering initiatives could benefit from the participation of other relevant organizations, particularly those in the real estate sector.
- An anti–money laundering data framework for real estate can contribute to identifying money laundering in real estate.[135]

131 Ibid, pp 1–2.

132 Evidence of C. Dawkins, Transcript, March 8, 2021, pp 92–93.

133 Evidence of C. Dawkins and J. Brown, Transcript, March 8, 2021, pp 93–95.

134 Exhibit 703, BC-Canada Working Group on Real Estate, Work Stream 1: Data Collection and Sharing, *Anti–Money Laundering in the Real Estate Sector – Overview and Recommendations for Data Models Relating to Money Laundering in the Real Estate Sector For British Columbia* (December 9, 2020) [Work Stream 1 Feasibility Study], p 6.

135 Exhibit 703, Work Stream 1 Feasibility Study, pp 7–11.

An anti–money laundering data framework could, as contemplated in the group's report to the federal and provincial ministers of finance, be applied for both strategic and tactical purposes:

> Applying the framework for policy purposes could produce general estimates of money laundering in real estate at the aggregate level, useful for relevant governmental entities and policymakers. An application for strategic purposes could focus on more narrow metrics or trends that inform emerging patterns of illicit activity. An application for tactical purposes would focus on enforcement, analysing information with the intent of identifying and apprehending suspected money launderers.[136]

The study also concluded, however, that the efficacy of a data framework for anti–money laundering efforts in real estate is dependent on extensive and high quality data coverage.[137]

The workstream gathered information from federal and provincial agencies on their relevant data holdings – as well as the quality and format in which those data were held. The data holdings of various federal and provincial agencies were assessed, and data gaps identified. Key findings in respect of these data holdings were:

- Some data holdings are not leveraged for the purposes of anti–money laundering because the holder lacks an anti–money laundering mandate.
- Organizations involved in anti–money laundering activities tend to use a case-by-case approach to detect money laundering, rather than a systematic data-driven detection strategy, or use data-driven approaches that are limited by the data they can access.
- Recurring data gaps relate to information on beneficial ownership, property / financing legal arrangements, and mortgage and wealth data, as well as relationship data among those transacting property transfers.
- Several data gaps could be filled with increased sharing of data between public institutions, subject to the Canadian legal framework.[138]

The provincial data holders reviewed included BC Assessment, LTSA, BCFSA, the BC Ministry of Finance, the BC Real Estate Council, and the BC Securities Commission. Federal agencies whose data holdings were reviewed included CMHC, the RCMP, the Bank of Canada, the Canada Revenue Agency, FINTRAC, and Statistics Canada.[139]

136 Ibid, p 6.

137 Ibid, pp 125, 133.

138 Exhibit 703, Work Stream 1 Feasibility Study, p 57.

139 Ibid.

Work Stream 1 learned the typologies of money laundering in real estate to gain an understanding of the available data that could be associated with them – in other words, indicators in the data that could point to suspicious circumstances.[140]

In reviewing the available data, key gaps were identified, including mortgage data, beneficial ownership data, relationship information, individual wealth data, rental income and rent payments data, and data on non-residents.[141] The report further relates each gap to a particular money laundering methodology. For example, Mr. Deschamps-Laporte, for Statistics Canada, explained that one money laundering scheme involves purchasing rental properties and "padding" ostensible rental income with the proceeds of crime, by either declaring rent for unoccupied units or undercharging on rent and making up the difference with the proceeds of crime. While rental income is required to be reported, there is little corresponding reporting from tenants that would allow for the detection of a discrepancy.[142] The report sets out in full the identified data gaps or quality issues, and how each data point relates to a particular money laundering methodology.[143]

"Relationship information" refers the information on connections between individuals, whether familial, business, or professional. The study suggests that through the identification of real estate professionals involved with a transaction, perhaps by assigning them each a unique identifier, clusters of money laundering activity could be revealed and networks better understood.[144] This suggestion is in line with my recommendation elsewhere that there be a record of professionals involved in real estate transactions. As illustrated in the case studies respecting mortgage brokers, incidents of fraud and suspicious transactions are often not isolated but are recurring within a broker's practice.

(It does not appear that the federal-provincial working group was aware of or coordinated with CMHC in its creation of a market integrity index and its application in Quebec and attempted application in British Columbia. This is unfortunate, because CMHC's analysis is a real-world application of the kind of intelligence analysis that the working group's report contemplated. Certainly, there seemed to have been opportunity between CMHC and the working group to share theories and information as to what data points are needed or useful, and where the data are non-existent or falling short.)

140 Evidence of H. McCarrell, Transcript, March 11, 2021, pp 114–17; Evidence of E. Bekkering, Transcript, March 11, 2021, pp 141–42; Exhibit 724, Presentation to Commission Counsel on Working Group Feasibility Study (March 11, 2021), pp 17–18; Exhibit 703, Work Stream 1 Feasibility Study, pp 85–87.

141 Exhibit 703, Work Stream 1 Feasibility Study, pp 93–96.

142 Evidence of J.P. Deschamps-Laporte, Transcript, March 11, 2021, pp 150–51; Exhibit 703, Work Stream 1 Feasibility Study, pp 95–96.

143 Exhibit 703, Work Stream 1 Feasibility Study, pp 85–97.

144 Ibid, pp 11, 15, 83.

The report concludes with a proposal of three concepts for the models that would govern data sharing:[145]

- A **distributed model** where data is held by the collecting agency (e.g., BC Assessment or LTSA), and enhanced access is authorized (or data is shared) among regime partners. Aside from the enhanced ability to access and share information across partners, this option represents the status quo.
- A **centralized model** where data is consolidated to be held and managed in one institution and made accessible to the regime partners.
- A **hybrid model** where data is organized by separate custodial and analytical functions undertaken by existing or new partners or units. A data custodian would be responsible for collecting, processing, and housing data. A separate coordinating organization or unit would lead access and analysis of the data for anti–money laundering purposes.

There are disadvantages to the first two concepts. The first has the weaknesses of the current system, in that it limits the ability to share and leverage data to its full potential for anti–money laundering purposes. The second model may unduly remove control over data necessary for the core functioning of a provincial or federal agency whose primary mandate is not related to anti–money laundering.[146]

The "hybrid" function contemplates data staying with its custodian (e.g., BC Assessment or LTSA), with a separate entity performing a "coordinating role" between agencies "to enable access, linking, and analysis of the data, as well as ensure that consistent data management practices are implemented."[147] The agencies that currently house data would continue to be responsible for maintaining it and ensuring data quality, but the coordinating unit would be largely responsible for the anti–money laundering uses to which this data is put. To quote the report:

> The coordinating unit as the locus of AML [anti–money laundering] expertise could be responsible for leading data linkage and access functions, particularly with respect to non-regime partners, as well as supporting analysis being undertaken by regime partners. This unit could also be charged with the responsibility to ensure appropriate scopes and safeguards for any analyses performed. It could lead in the maintenance and development of the typology data framework and for red flag analysis arising with shared data, leading to a better assessment and understanding of ML [money laundering] as practised in Canada. This unit could also lead the development of metrics aiming to measure the effectiveness of Canada's AML regime and of relevant policy interventions.

145 Ibid, p 98.

146 Exhibit 703, Work Stream 1 Feasibility Study, pp 98–99.

147 Ibid, p 99.

....

> The coordinating unit could conduct its analysis of the various custodial databases designated for investigative purposes, and share suspicious transactions with law enforcement, in keeping with data sharing practices currently in use among regime partners.[148]

There seems to me to be a great deal of merit in providing for improved data consistency and access. Steps must be taken to address the problems identified by the working group relating to data gaps and quality. The provincial Ministry of Finance is well placed to address this, and I appreciate the ministry is working on these issues already. I recommend that the Ministry of Finance develop an action plan for addressing the data gaps and data quality issues identified by the federal-provincial working group on real estate in its reports, focusing on data issues within the Province's jurisdiction.

Recommendation 38: I recommend that the Ministry of Finance develop an action plan for addressing the data gaps and data quality issues identified by the federal-provincial working group on real estate in its reports, focusing on data issues within the Province's jurisdiction.

Having canvassed the three models for data management above, my view is that a modified "hybrid" model is best suited for this province. In Chapter 8 of this Report, I recommend the creation of a new AML Commissioner. The commissioner would be optimally placed to fulfill the "coordinating unit" role for the purpose of data analysis, as set out in the working group's report. The Province will need to determine which body is best suited to address data access and management. I recommend that the Province adopt a modified "hybrid" model of data management (as contemplated in the federal-provincial working group on real estate reports) and that the AML Commissioner fulfill the function of analyzing data for anti–money laundering purposes.

Recommendation 39: I recommend that the Province adopt a modified "hybrid" model of data management (as contemplated in the federal-provincial working group on real estate reports) and that the AML Commissioner fulfill the function of analyzing data for anti–money laundering purposes.

I would offer one further comment. A provincial coordinating unit would be a second-best option to a coordinating unit that could access data from *all* anti–money laundering regime partners, whether provincial or federal. My recommendation above should not be considered a barrier to attempts by the two levels of government to create a coordinating

148 Ibid, pp 99–100.

unit that straddles the jurisdictions. Given the various repositories of information at the federal and provincial levels, a cross-jurisdictional unit would be preferable.

Private Sector Use of Data for Money Laundering Detection

Having considered how governments and public agencies may make use of real estate data to address money laundering, I turn to the private sector, which generates an enormous volume of information in a very active sector of the economy.

During our hearings I learned about data analysis software that works to detect fraud and money laundering through referencing a number of large data sets. Witnesses referred to the product as an "intelligence hub." I also had the advantage of watching demonstrations of these systems, which illustrate their potential. Representatives from Deloitte (a large multinational professional services firm) and Quantexa (a "big data" and enterprise intelligence technology provider based in the United Kingdom) appeared before the Commission.[149] They described and ran demonstrations of "entity resolution" software, which collects information on individuals and entities from across different data sources, reconciling them to create a full picture of their connections and networks.[150] It is one example of many different technologies being developed to analyze large data sets for anti–money laundering and other purposes.[151]

The technology already being employed in the private sector to this end illustrates the possibilities for money laundering detection through aggregation of data. It also raises important considerations of privacy that I anticipate both private enterprises and government will have to grapple with.

The premise of the program is the same as that underlying the federal-provincial working group's proposals for a data-sharing framework. In both cases, the idea is to bring together data from disparate sources, so that it is situated in one place, which allows for the identification of networks between individuals, entities, and transactions. One interesting functionality of such software, as suggested by the witnesses, is to verify information provided to beneficial ownership registries.[152]

As one of the witnesses pointed out, data sets will only continue growing in size and magnitude. When data holdings internationally are considered – for instance, information available on the beneficial ownership of foreign companies – the amount of data available for analysis is enormous. If data holdings are going to be used for the detection and prevention of money laundering, then the data analysis framework must be scalable.[153]

149 Evidence of A. Bell, P. Dent, B. Dewitt, and D. Stewart, Transcript, March 2, 2021; Exhibit 667, Presentation – Application of Networks to Detect and Mitigate Organized Crime (March 2, 2021).

150 Evidence of A. Bell, Transcript, March 2, 2021, pp 18–19, 25–30.

151 Ibid, pp 82–83.

152 Evidence of P. Dent, Transcript, March 2, 2021, pp 59–60.

153 Evidence of D. Stewart, Transcript, March 2, 2021, p 20; Evidence of A. Bell, Transcript, March 2, 2021, pp 20–21.

Access to large amounts of data, including personal information about individuals, raises privacy concerns, as acknowledged by the witnesses who demonstrated the software. This will be a concern for governments as they determine, moving forward, how and for what purposes to use their available data holdings to combat money laundering. As BCCLA highlighted in its examination of witnesses and its final submissions, the implementation of such an intelligence hub would require an analysis of the legal and privacy implications, including consideration of privacy rights and interests as assured by section 8 of the *Canadian Charter of Rights and Freedoms*.[154] Essential questions such as what data are included and who has access and for what purposes would need to be answered. The answers would need to be tested against privacy concerns and constitutional constraints before any such intelligence hub can be implemented. Quite properly, the witnesses presenting the technology are alert to these issues.[155]

I decline to make recommendations about specific programs that the Province should employ. The private sector is developing the capability to deal with large sets of data for detecting fraud and money laundering. If governments do not develop their own ability to conduct analyses of this type, they will either fall behind industry and be at a disadvantage when it comes to the investigation of financial crime, or they will find it necessary to purchase or lease such technologies from the private sector to keep pace.

Land Title and Survey Authority

I will conclude this chapter with a discussion of the Land Title and Survey Authority (referred to here as LTSA). I heard from a number of witnesses that regulatory and investigative processes could be enhanced by improvement of LTSA data and better access to that data. In short, LTSA finds itself in the position of having created a registry that works extremely well for one purpose – securing the integrity of title to land in British Columbia – but which anti–money laundering stakeholders wish would work better for their purposes.

I have already made some recommendations that impact on LTSA based on evidence heard on various topics in the real estate sector. I will not repeat those here but will make some comments on LTSA's views of the feasibility of implementation.

LTSA was established in 2005 and is a statutory corporation, independent from government.[156] It is responsible for managing the land title and survey systems of British Columbia.[157] Its mandate and responsibilities are set out in the *Land Title and Survey Authority Act,* and its operating agreement with the Province.[158] LTSA operates the provincial Land Title Register and the Land Owner Transparency Registry.

154 Evidence of A. Bell, Transcript, March 2, 2021, pp 93–95.

155 Evidence of B. Dewitt, Transcript, March 2, 2021, pp 102–3.

156 Evidence of C. MacDonald, Transcript, March 12, 2021, pp 139–40.

157 Exhibit 749, Presentation – The Land Title and Survey Authority of BC (February 26, 2020), p 2.

158 See the LTSA Operating Agreement, online: https://ltsa.ca/wp-content/uploads/2020/11/Operating-Agreement.pdf.

There are two facts about LTSA that must inform the discussion and any changes to its fee structure or data collection and sharing practices:

1. LTSA does not have an anti–money laundering mandate. It is, as a representative of the authority agreed, a registry of land, not of persons.[159] In order to "repurpose" the LTSA and the registries it operates for anti–money laundering goals, this would have to change.
2. LTSA operates on a self-funded, not-for-profit basis and has an operating agreement with the Province that directs how its revenues are spent. Fifty-five percent of the fees collected goes back to the Province, and it must conduct its operations with the remaining 45 percent.[160]

In order to make some of the changes that I recommend in this Report, LTSA will need access to funds, and to an express legislative mandate to engage in certain activities, particularly information and data sharing for anti–money laundering purposes. I note that this was also the conclusion of the federal-provincial working group, who expressed that "[e]xpanded funding and an expanded mandate would be required to make changes necessary to make the data useable for AML purposes."[161]

Information Collected by and Accessible from the Land Titles Registry

LTSA currently provides information to the Province for the operation of various programs, including the speculation and vacancy tax, and for supporting BC Assessment functions. While the land registry (and now LOTR) is a fee-for-search service, the Province is largely exempt from fees.[162]

A title in the land registry will contain the following information:

- registered owner's name;
- registered owner's occupation;
- an address for delivery of notices;
- legal description;
- parcel identifier (PID);
- a list of charges, including mortgages, rights of way, liens, and certificates of pending litigation;
- the owners of the charges, and the date and time the charge was filed; and/or
- pending applications.[163]

159 Evidence of C. MacDonald, Transcript, March 12, 2021, p 143.

160 Ibid, pp 139–40.

161 Exhibit 703, Work Stream 1 Feasibility Study, p 77.

162 Evidence of C. MacDonald, G. Steves, Transcript, March 12, 2021, pp 145–46.

163 Evidence of L. Blaschuk, Transcript, March 12, 2021, p 148; Exhibit 753, Mock Up – Title Search.

This information is available to a member of the public when they search the registry.

LTSA depends on the filer and legal professional involved in the filing for the accuracy of the information about the owner. Over 95 percent of applications are received electronically, meaning that they are certified digitally by either a lawyer or a notary.[164] LTSA does not verify information provided about an owner – beyond determining that a British Columbia company, in fact, exists and is in good standing. LTSA has access to the corporate registry, which is maintained elsewhere. The two registries are not connected, and users are unable to navigate directly between them to examine beneficial ownership information.

Other documents provide further information. A "Form A freehold transfer" document includes the market value and the consideration (amount) paid for the property. Both figures are reported by the applicant and are not verified by LTSA, which does not have access to the supporting documentation (e.g., purchase of agreement and sale). A "Form B mortgage" document discloses details of a loan, including the principal amount, the rate of interest, and the amount of each payment. Again, this information is self-reported by the applicant and is not independently verified.[165] Also, these details will not always be filled out on Form B, but instead are contained in an attached schedule or not disclosed. The land titles registry will not necessarily disclose the value of a mortgage loan.

A member of the public searching land title information through the registry can search by name, PID or legal description of a parcel, title number, document number, and charge number. A search by name would provide owners of titles and charge holders (which includes mortgagees).[166] A search of a property will also return pending applications (i.e., applications pertaining to a property that have not been processed).

LTSA also confirmed that on receiving an application for a certificate of pending litigation, it checks only that the attached pleading has been filed in the court registry, and that an interest in land is being claimed in the legal proceeding. This screening is performed by deputy registrars, who have experience in the land titles registry but are not lawyers.[167] There is a similar "low bar" for the filing of a claim of builder's lien: the registry simply ensures that the subject of the claim has added to the value of the land.[168]

These comments are not a preface to a recommendation that LTSA engage in independent verification of this kind of information – to do so is beyond its current mandate and could be cost prohibitive. That said, I find the evidence illustrative of two notable limitations: (a) an information gap, and (b) a reliance on professionals who make filings with LTSA to ensure the information provided is accurate.

164 Evidence of L. Blaschuk, Transcript, March 12, 2021, pp 149–50.

165 Evidence of C. MacDonald, Transcript, March 12, 2021, pp 163–64.

166 Ibid, pp 156–57.

167 Evidence of L. Blaschuk, Transcript, March 12, 2021, pp 172–74.

168 Ibid, p 175.

The LTSA witnesses identified a gap in the online searchability of the land registry. A person who physically attends the front counter of a registry can perform a historical name search, which will yield information on a person's current and past titles or charges. But the same search cannot be performed online. Mr. MacDonald, the director of land titles, indicated this is one of the gaps in LTSA's online services they are looking to resolve.[169] It is not clear whether the historical information available from a "front counter" request includes mortgages. What is clear, however, is that historical mortgage information is not available online and, unlike historical title information, LTSA has no plans to address this gap. Mr. MacDonald explained that providing online searchability of historical mortgages is not currently a priority, as it is outside LTSA's traditional paradigm of tracking *ownership* of parcels of land.[170] I consider that the availability of a person's historical property ownership *and* mortgage lending to be valuable information for anti–money laundering purposes, as it provides records of the movement of wealth. I recommend that LTSA make both types of information available through an online search.

Recommendation 40: I recommend that the Land Title and Survey Authority make information about historical mortgage and property ownership available through an online search.

I noted earlier that the LTSA system does not permit one to track transactions involving a real estate professional. LTSA witnesses confirmed there is currently no ability to identify mortgage broker or real estate licensee's participation in a transaction. Mr. MacDonald confirmed that the issue was one of lack of a legislative mandate, and not technical capacity.[171]

I have found elsewhere that an ability to track the participation of individual real estate agents and mortgage brokers across transactions would be a useful tool for regulators (see Chapter 16). In certain cases, it would also be useful to law enforcement. I recommend that the Province amend LTSA's enabling legislation to direct the collection of information on real estate agents and mortgage brokers involved in a property transaction. At a minimum, this information should be available to the Ministry of Finance, BCFSA, law enforcement, and other federal and provincial agencies with an anti–money laundering mandate. This would include the new regulator for private mortgage lending recommended in Chapter 17. I anticipate that this change would be best achieved by the addition of data fields for real estate agents and mortgage brokers in LTSA's Form A and Form B, but I leave it to those with the relevant systems expertise to implement the recommendation as they see fit.

169 Evidence of C. MacDonald, Transcript, March 12, 2021, pp 181–82.

170 Ibid, pp 181–84.

171 He reiterated that the purpose of the LTSA is to track ownership interest in land and that the ability to perform searches for agents or brokers falls outside of this: ibid, p 184.

Recommendation 41: I recommend that the Province amend the Land Title and Survey Authority's enabling legislation to direct the collection of information on real estate agents and mortgage brokers involved in a property transaction. At a minimum, this information should be available to the Ministry of Finance, the British Columbia Financial Services Authority, law enforcement, and other federal and provincial agencies with an anti–money laundering mandate.

Another area that was canvassed was the possibility of implementing a "unique identifier" for owners into the LTSA database. This would involve assigning an identifying number or other unique signifier to an individual or entity to enable tracking across the land titles system.

The lack of unique identifiers can create ambiguity as to the identity of an owner. As noted in a report produced for this Commission (dealing with private lending):

> The LTSA does not assign or collect unique identifiers for titleholders or charge holders, which means it is not possible to discern between people or entities that share names (e.g. 30 properties may be owned by "John Smith", but it is not possible to determine how many of these properties are owned by the same John Smith).[172]

This is not a feature of the current LTSA regime in this province. While LTSA has given consideration to using a unique identifier, it was based on the desire to "preserve the integrity of the land title system." As explained by Mr. MacDonald:

> [I]nitially when we were thinking of a unique owner ID it was to preserve the integrity of the land title system. So you'll have three James Smiths who own 30 different parcels, but you can't tell which James Smith owns them. You can look at their occupation, you can look at the address, but those aren't definitive. So the idea is that we would have a unique owner ID … [This] was about making it more customer centric and with the idea of being able to strengthen the integrity of the land title system.
>
> The implementation of a unique identifier has not been considered for anti–money laundering purposes for similar reasons for the exclusion of the identification of real estate professionals – it is inconsistent with the LTSA's present mandate.[173]

I see benefits both for LTSA's existing mandate of ensuring integrity of title and for anti–money laundering purposes to implement unique identifiers. To put it bluntly, there is little use in LTSA data for anti–money laundering intelligence purposes – strategic or tactical – if the identity of an owner cannot be confirmed even as across

172 Exhibit 729, Affidavit of Adam Ross, affirmed March 9, 2021, exhibit B, "Private Lending in British Columbia (March 9, 2021), p 39.

173 Evidence of G. Steves and C. MacDonald, Transcript, March 12, 2021, pp 186–88.

LTSA's own records. For these reasons, I recommend that the Province institute the use of unique identifiers for LTSA records.

Recommendation 42: I recommend that the Province institute the use of unique identifiers for Land Title and Survey Authority records.

The LTSA has had complaints from law enforcement that the registry is searchable only for a fee.[174] Similar concerns have been expressed about the LOTR. I have seen sufficient evidence about the utility of land title information in the investigation of financial crimes and money laundering that I am persuaded this information should be available to law enforcement *without a fee*.[175] Earlier in this chapter I recommended that the provincial government amend the *LOTA* and/or its regulations to remove the fee presently charged to access the LTSA's records for law enforcement and regulators with an anti–money laundering mandate. I now extend that recommendation to the land titles registry.

Recommendation 43: I recommend that the Province remove the fee requirement presently charged to access the Land Title and Survey Authority's records for law enforcement and regulators with an anti–money laundering mandate.

BCFSA believes that changes to the data collected and/or presented for LTSA records would assist its staff in assessing money laundering risks. BCFSA suggested that LTSA:

a. collect and disclose identifiers for property owners and beneficial owners, as well as their primary addresses;

b. collect and disclose values of purchase price for transactions, lending value for mortgages, and aggregate that information so that the total claims on each property can be viewed;

c. in cases where mortgages are "re-advanceable" (i.e. mortgages with a line of credit), identify the initial draw or limit on the Form B;

d. create categories of mortgage lender and disclose that information on Form B, such as credit union, bank, MIC [mortgage investment corporation] (a full list of proposed categories was not provided);

174 Evidence of C. MacDonald, R. Danakody, Transcript, March 12, 2021, pp 189–90.

175 Although not discussed in detail in this chapter, an instance of this is found in the evidence of Brad Rudnicki, who appeared on behalf of the BC Lottery Corporation to discuss his open-source research for anti–money laundering purposes, which included mapping connections between people, entities, real estate transactions, and court proceedings using, among other sources, land titles data: Transcript, March 2, 2021, pp 119–25.

e. collect identification (e.g. registration numbers) for professionals participating in each transaction, including (where applicable) the mortgage broker, real estate licensee, developer, securities registrant, lawyer and/or notary;

f. create categorization in Form B to indicate the type of mortgage, such as syndications, reverse mortgages and different re-advanceable mortgage types;

g. make the details of Form B machine-readable and improve search functionality;

h. collect and disclose information on the source of funds for purchases and for funds loaned as mortgages, categorized by lender (e.g. Canadian financial institution, foreign financial institution, other) and by form of transfer (e.g. domestic wire transfer, international wire, cash, etc.); and

i. include a disclosure on Form B to select whether a mortgage is income-qualified or non-income qualified (equity).[176]

Aside from those suggestions that are already addressed by specific recommendations above, I am of the view that these specific issues are best considered in the context of my recommendation above in relation to the data gaps identified across a number of provincial record holders. In its development of an action plan for addressing the data gaps and data quality issues identified by the federal-provincial working group in its final reports, the Ministry of Finance should take into account the data issues identified above by BCFSA in respect of the land titles registry at the same time.

176 Exhibit 729, Affidavit of Adam Ross, exhibit B, pp 39–40.

Chapter 19
Real Estate Values, Money Laundering, and Foreign Investment

British Columbia, particularly the Vancouver region, has become notorious for unaffordable housing. The issue has garnered significant attention – from citizens, commentators, and all levels of government. Understandably, when faced with a large imbalance between average earnings and the cost of buying a home, there is an impulse to find a culprit or blame someone. However, as this short chapter outlines, the reasons for increases to housing costs are many, and they are complicated. My intention is not to resolve the vexing and complex question of all the factors that influence housing costs. Instead, I have the more modest aim of focusing on money laundering, which has in various cases been identified as "the" (or "a main") cause of housing unaffordability. And in addressing this question, I have taken time to consider the role of foreign investment in real estate, especially from China. In some parts of the public discussion, there is a shorthand that "criminal money from China" has flown freely into the province's real estate market, leading directly to what is often described as an unaffordability crisis. This is overly simplistic and unfounded.

Public interest in the topic of money laundering in this province has been fuelled in part by rising real estate prices and the belief that those prices are the result of money laundering.[1] At the same time – in tandem – public attention has also been captured by the issue of foreign investment into British Columbia real estate. Among various culprits identified as the causes of housing unaffordability, these are the two that I focus on: (a) money laundering, and (b) foreign money moving into housing here. It is clear to me that in many instances, these two issues get conflated in the discussion. This is particularly so with respect to real estate investment originating from China.

1 Exhibit 330, Maureen Maloney, Tsur Somerville, and Brigitte Unger, "Combatting Money Laundering in BC Real Estate," Expert Panel, March 31, 2019 [Maloney Report], p 41.

The purpose of this chapter is to consider, to the extent possible, the connection between housing prices, money laundering, and foreign investment. Because money laundering and foreign investment are often connected in the discourse, this chapter also considers, in a limited way, the connection between foreign investment and housing prices, and the manner in which the issues of money laundering and foreign investment can become conflated. Finally, this chapter ends with a discussion of the discriminatory consequences of the focus on foreign investment, particularly foreign investment from Asia. It is entirely appropriate to examine the causes of huge increases to housing prices in the province. But it is wrong to leap to an unfounded conclusion that "dirty Chinese money" is to blame.

As this chapter explains, I am unable to conclude, based on the evidence before me, that either money laundering or foreign investment (however that is defined) is a primary cause of price increases in British Columbia residential real estate. There are strong reasons to believe that other factors, discussed above, are the drivers of housing unaffordability in this province.

Money Laundering and Housing Prices

At the outset of my Report (in Chapter 1), I described four reports that pre-date this Commission but that speak directly to topics I am tasked with examining. One is the 2019 report of Professors Maureen Maloney, Tsur Somerville, and Brigitte Unger (the "Expert Panel") entitled "Combatting Money Laundering in BC Real Estate." Their report offered an estimate of the impact of money laundering activity on the value of real estate in British Columbia, using the "gravity model" of estimating money laundering volumes as the "best available approach at this time."[2]

The "gravity model" is described in more detail in Chapter 4, where I discuss various methods that attempt to ascribe an annual amount to the funds laundered in the province each year. The Expert Panel explained the gravity model as follows:

> In essence, application of a gravity model to money laundering involves estimating how much of the proceeds of crime in a given country are laundered within that country and how much flows to each other country in the model. Those flows depend on an attractiveness index based on characteristics that measure how attractive a given country is to money launderers, including GDP per capita, and a distance index that measures how close each pair of countries is geographically and characteristics that measure distance from a cultural perspective. The money laundering in a country is the sum of domestic proceeds of crime that remain in the country plus the flow into the country of monies for laundering from all other countries.[3]

2 Ibid, p 46.

3 Ibid, pp 45–46.

The Expert Panel noted the limitations of the gravity model, including a lack of accurate data respecting money laundering activity and the incomplete nature of crime reporting in both Canada and in countries that have what the model describes as "strong attraction factors" for British Columbia.[4]

The Expert Panel used a gravity model–derived approach, to reach an estimate that $41.3 billion was laundered in Canada as a whole in 2015, and then $46.7 billion in 2018. (This assumed that money laundering growth matched GDP growth.) With respect to this province, as opposed to the whole country, the Expert Panel estimated that $7.4 billion was laundered in British Columbia in 2018.[5]

In order to explain the discussion that follows, I wish to draw a distinction between two things. First, the gravity model method of assessing the quantity of money laundered in the province annually, is described in significantly more detail, and with skepticism, in Chapter 4; it is only sketched briefly above. Secondly, taking the gravity model figure as the starting point, the Expert Panel went on to consider a different question: how much of the increase to real estate values in the province could be attributed to money laundering? As will be seen, the Expert Panel determined (somewhat tentatively) that housing prices were 3.7 to 7.5 percent higher than they would be in the absence of money laundering. Put differently, money laundering was responsible for an increase to housing of between 3.7 and 7.5 percent.[6]

The route taken to move from the gravity model estimate of how much money laundering occurs in British Columbia to its impact on housing prices was a complicated one. I have, at the end of this chapter in an appendix, sought to explain the line of analysis employed by the Expert Panel. For present purposes, setting aside the circuitous path followed to generate the estimated impact on housing costs from money laundering, I turn to where that attempt at measuring impacts leaves us.

This estimate – an impact to housing prices of between 3.7 and 7.5 percent due to money laundering – was accompanied by many caveats from the Expert Panel. The authors emphasized that there were considerable uncertainties surrounding these estimates.[7] To similar effect, in his testimony before the Commission, Professor Somerville repeated this caution.[8]

I have expressed doubt as to the accuracy of the gravity model estimate of money laundering activity. I appreciate that, on top of the gravity model analysis, there is a further extension of reasoning and numerous assumptions are needed to generate an estimate of the increase in housing prices. I cannot confirm the estimate made by the Expert Panel. As a matter of logic, I understand the reasoning that if money laundering

4 Ibid, pp 46–47.

5 Ibid, pp 47–48.

6 Ibid, p 57.

7 Ibid.

8 Evidence of T. Somerville, Transcript, February 18, 2021, pp 90–91, 130–31.

and criminal activity result in a demand for property purchased with illicit funds, then this additional demand would push up prices. (Though I pause to note that the Expert Panel itself cautioned that this assumption is not necessarily correct.[9]) But in the circumstances, ascribing a percentage value of price increases to money laundering by extrapolating from the gravity model estimate is, to my mind, an exercise in speculation and, ultimately, guesswork.

It is laudable that the Expert Panel sought to give this estimate, and the public debate is informed by such efforts, even if the result is tenuous. But I find myself unable to accept their estimate. Even on their analysis, money laundering activity is not a significant contributing factor to housing unaffordability. It seems that fundamental factors such as supply and demand, population, and interest rates are far more important drivers of prices.

Aside from the estimate provided by the Expert Panel, there is little evidence about the connection between money laundering and housing prices in Canada. In my view, this points to a gap in research that should be addressed. The political discourse – including that of the federal and provincial governments – draws a connection between money laundering and housing affordability. Given this, it is all the more important that this issue be studied and monitored. The AML Commissioner (recommended in Chapter 8) will be well placed to study whether and to what extent money laundering has impacts on housing affordability, which will inform policy decisions.

One means of testing the estimate provided by the Expert Panel is to measure the impact of anti–money laundering measures on real estate prices. If money laundering is pushing up housing prices, then measures taken to stop money laundering should, logically, result in lower housing prices. As described in Chapter 18, in the United States, two researchers were able to measure a 4.2 percent decline in housing prices for American properties affected by a Financial Crimes Enforcement Network (FinCEN) geographic targeting order designed to address money laundering through the purchase of real estate by shell companies.[10] This suggests that the American policy measure – the geographic targeting order – *did* have a measurable impact on housing, or at least that it was associated to that decline, if not causally linked.

A study undertaken for the Commission, which was modelled on this American research, was conducted by Professor Somerville, Adam Ross and Dr. Jake Wetzel. The authors examined the impact of British Columbia's new beneficial ownership disclosure requirements. They looked at how these new requirements had an impact on the ways that people own real estate, and specifically on the ownership of real estate by legal entities (that is, not by individual people but by companies and trusts and other "legal persons"). The study's authors did not examine the impact of the disclosure

9 See, e.g., Evidence of T. Somerville, Transcript, February 18, 2021, pp 92–93.

10 Sean Hundtofte and Ville Rantala, "Anonymous Capital Flows and U.S. Housing Markets" (University of Miami Business School Research Paper No. 18-3, 2018).

requirements on prices.[11] I discuss this study in greater detail in Chapter 18, but for present purposes, I point to this as an example of a line of examination that will provide important insights as to the relationship between money laundering and housing prices.

It is possible that anti–money laundering measures will have an impact on housing prices. It is also possible that they will have no discernible impact. To be clear, implementing anti–money laundering measures in the real estate sector should happen *because money laundering is a problem* (as I address in Chapter 5). The Province should take action, even if there is no proof it will improve housing affordability in the province. Impeding the laundering of illicit funds through real estate is good in its own right. But the Province should understand whether, and to what extent, those actions have an impact on real estate prices.

I would add what may be an obvious comment, that anti–money laundering measures should not be considered a "silver bullet" that will somehow fix housing unaffordability in the province.

Returning for a moment to the Expert Panel's attempted and tentative estimate of a 3.7 to 7.5 percent impact on housing prices in British Columbia, I note that according to the BC Real Estate Association (BCREA), the average residential price in BC in December 2021 was $1,033,179.[12] I am informed by the BCREA's chief economist that between 2010 and 2020, home prices in the Lower Mainland rose approximately 80 percent.[13]

Without seeking to diminish the importance of a 3.7 to 7.5 percent inflationary effect on the average British Columbian, it seems to me that the real obstacle to affordability is not in the increase in purchase price that may be caused by money laundering. A price decrease of between $38,000 and $77,000 (3.7 to 7.5 percent of the average December 2021 price) on an average property price of over $1 million will not really bring home ownership within the reach of many more people.[14]

Understanding how and if anti–money laundering measures that are implemented in the real estate sector have an impact on property prices will allow the provincial government to assess the extent to which its anti–money laundering actions, in fact, further its goals regarding housing affordability. It will ensure that action in the one area of concern (money laundering) is not incorrectly conflated with action in another area (housing affordability). If anti–money laundering measures are to be promoted as actions on housing affordability, their actual efficacy as such should be understood. I recommend that, as the Province implements new policies and measures against money laundering in real estate, it analyze the impact of those reforms on housing prices.

11 Exhibit 1041, Affidavit #3 of Adam Ross affirmed May 19, 2021, exhibit B, White Label Insights Ltd., *Assessing the Impacts of Beneficial Ownership Disclosure on Residential Property Holdings in BC* (May 13, 2021).

12 BC Real Estate Association, Brendon Ogmundson, "A Record Year for the BC Housing Market" (January 12, 2022), online: https://www.bcrea.bc.ca/economics/a-record-year-for-the-bc-housing-market/.

13 Evidence of B. Ogmundson, Transcript, February 17, 2021, p 172.

14 See also Evidence of T. Somerville, Transcript, February 18, 2021, pp 154–55.

Recommendation 44: I recommend that, as the Province implements new policies and measures against money laundering in real estate, it analyze the impact of those reforms on housing prices.

Causes of Real Estate Price Increases and the Role of Foreign Investment

Given the connection in the political discourse between money laundering and housing affordability, I heard evidence addressing the general issue of real estate prices and housing affordability in the province. Five witnesses testified about the causes of real estate price increases in British Columbia. One further witness addressed the harmful impact arising from public discourse focused on foreign investment, specifically Chinese wealth, being a cause of high real estate prices.

Dr. Aled ab Iorwerth, deputy chief economist for the Canadian Mortgage and Housing Corporation (CMHC), appeared before the Commission to speak to the CMHC's 2018 report on the causes of housing price increases in Canadian cities.[15] As with many of the reports and materials relied upon in this Inquiry, I have not attempted to capture the entirety of the CMHC report, but merely to set out the essential findings. The report is an exhibit in the Inquiry, and available as such to the public.[16]

Dr. ab Iorwerth explained that, in 2016, CMHC was asked by the federal minister of families, children and social development to examine the causes of escalating housing prices in Canada's large urban areas from 2010 onward, to a thorough academic standard. The report was requested in the context of sharply escalating housing prices over the prior three years.[17]

The study looked at housing prices in census metropolitan areas (CMAs). In British Columbia this meant the Vancouver CMA, which includes surrounding cities such as Surrey and Coquitlam. In both the Toronto and Vancouver CMAs, the price of single detached homes experienced the most significant price growth. Between 2010 and 2016, the average price of a single detached home in the Vancouver CMA grew approximately 85 percent.[18]

Drawing on data from the previous decades, CMHC developed a model to predict housing prices between 2010 and 2016. Price forecasts were informed principally by average disposable income, population, and interest rates. The model's projections closely matched actual prices in the Vancouver CMA, accounting for 75 percent of the area's price increases. The model predicted the price increases in Vancouver better than in Toronto.

15 Exhibit 602, Overview Report: Lower Mainland Housing Prices [OR: Housing Prices], Appendix E, CMHC, *Examining Escalating House Prices in Large Canadian Metropolitan Centres* (May 24, 2018).

16 Ibid.

17 Evidence of A. ab Iorwerth, Transcript, February 18, 2021, pp 5–6.

18 Ibid, pp 10–11.

Dr. ab Iorwerth explained that, while the price increase itself was not unusual, the persistent upward trend in price increase was. When house prices increase, the market is expected to respond with more supply.[19] The study concluded that supply responses to price increases in both Vancouver and Toronto were weaker than in other cities.[20] The responsiveness of the supply side of housing, CMHC found, was limited when compared to other cities that did not see such large and persistent price increases, such as Calgary, Edmonton, and Montreal.[21]

In a later CMHC publication, published in March 2021, CMHC concluded that between 2016 and 2019 (largely after the period studied in the 2018 report discussed by Dr. ab Iorwerth), rapid price growth was caused by "unresponsive" housing supply.[22]

CMHC did *not* conclude that foreign investment was a significant driver of prices in the Vancouver CMA, given the low rate of foreign ownership that Statistics Canada data indicated.[23] It was difficult, Dr. ab Iorwerth testified, to conclude that a reported 3 percent foreign ownership of housing stock could be driving the large price increases that were seen between 2010 and 2016.[24]

Asked if he considered it possible that money laundering has played a significant role in the increase in housing prices in the Vancouver area, Dr. ab Iorwerth was skeptical that money laundering would have had a significant role in the price increases seen between 2010 and 2016. But he said it was entirely possible that a hot real estate market could encourage speculation by a number of players, including those looking to invest illicit funds.[25]

Brendon Ogmundson, chief economist for the BCREA, testified before the Commission about the impact of foreign investment on real estate prices. Addressing in particular the period from 2016 through 2020 and the beginning of the pandemic (the period immediately following the CMHC study), Mr. Ogmundson pointed to a number of factors that first created a rapid increase in housing prices, and then somewhat of a cooling afterward.

In 2016, he testified, there was a "perfect storm" in British Columbia real estate. It was created by record low five-year fixed-rate mortgages, a record low number of new listings, a rapidly growing economy, and "runaway price expectations." Some of the rising prices were fuelled by particularly notable cost increases in the single detached home and luxury markets.[26] To the extent that foreign investment still is a factor in

19 Ibid, pp 11–12.

20 Exhibit 602, OR: Housing Prices, Appendix E, CMHC, *Examining Escalating House Prices in Large Canadian Metropolitan Centres* (May 24, 2018), pp 6–7.

21 Evidence of A. ab Iorwerth, Transcript, February 18, 2021, pp 32–33.

22 CMHC, *Housing Market Insight – The Relationship Between Migration and House Prices* (March 2021), online: https://www.cmhc-schl.gc.ca/en/professionals/housing-markets-data-and-research/market-reports/housing-market/housing-market-insight.

23 Evidence of A. ab Iorwerth, Transcript, February 18, 2021, pp 30–31.

24 Ibid, pp 44–46.

25 Ibid, pp 37–39.

26 Evidence of B. Ogmundson, Transcript, February 17, 2021, pp 162–63.

the luxury market (with price points at $3 million and up), his view was that, given the segmented nature of the housing market, such investment would not have much impact on the rest of the housing market.[27]

The provincial government addressed the situation in part by introducing a foreign buyers' tax in the summer of 2016. This resulted in a dip in prices in the six to eight months following. But the market had already started to decelerate before the tax was implemented.[28] Nor was the effect long lasting: by January 2017, home prices had started to rise again.

As for foreign investment, Mr. Ogmundson testified that BCREA was seeing a decline in the level of foreign investment as a share of transactions after 2017. This was particularly so in respect of investment from China, which had put severe restrictions on the outflow of capital.[29] By the end of 2020, following the closure of borders due to the pandemic, the share of foreign investment in residential real estate was down – from 3.3 percent in 2018 to half a percent in 2020.[30]

A number of cooling measures introduced by both levels of government resulted in a chilling of the market in 2018 and 2019. In 2018, the federal government's Guideline B-20 "stress test" was implemented for uninsured mortgages issued by federally regulated financial institutions. In simple terms, the stress test requires lenders to confirm that borrowers can continue to repay their loans if faced with a sudden change in financial circumstances. To test resilience, borrowers are qualified for a mortgage at the contract rate of the loan, plus two percentage points.[31] According to Mr. Ogmundson, the practical impact of the stress test was to reduce an average borrower's purchasing power by 25 percent.[32] A decline in home sales followed, which was likely partially caused by the stress tests, but more significantly by factors such as rising interest rates, and a slowing economy.[33] In Metro Vancouver, the speculation and vacancy tax also slowed the price growth of residential real estate.[34]

Asked for his views on the causes of rising real estate prices in Vancouver, Mr. Ogmundson pointed to the strong price increases in residential real estate during the pandemic, *despite* the lack of foreign investment and very little immigration. The

27 Ibid, p 163.

28 Ibid, pp 159–60.

29 Ibid, pp 160–61.

30 Exhibit 602, OR: Housing Prices, Appendix N, BCREA, Foreign Buyer Tax Presentation Slides (Vancouver: BCREA, undated); Evidence of B. Ogmundson, Transcript, February 17, 2021, p 161.

31 Evidence of B. Ogmundson, Transcript, February 17, 2021, pp 151–52. See also Office of the Superintendent of Financial Institutions, "Residential Mortgage Underwriting Practices and Procedures Guideline (B-20)" (Modified February 18, 2021), online: https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b20-nfo.aspx.

32 Evidence of B. Ogmundson, Transcript, February 17, 2021, p 152.

33 Ibid, p 155; Exhibit 602, OR: Housing Prices, Appendix L, BCREA, *Market Intelligence Report – July 2019: The Impact of the B20 Stress Test on BC Home Sales in 2018*.

34 Exhibit 602, OR: Housing Prices, Appendix M, BCREA, *Market Intelligence Report – March 2020: Estimating the Impacts of the Speculation and Vacancy Tax*.

cause of price increases was, in his view, more likely rooted in a lack of supply (which, he explained, means homes listed for sale) and record low mortgage rates.[35]

Witnesses disagreed about whether foreign investment plays a significant role in Vancouver's housing prices. The Commission heard from a panel of academics who have studied the issue extensively. They had different takes on the causes of residential property price increases in the British Columbia, particularly the Lower Mainland area. The panel was comprised of Professor David Ley, professor emeritus at the Department of Geography at UBC, Professor Joshua Gordon of the School of Public Policy at SFU, and Professor Tsur Somerville of the UBC Sauder School of Business. Professor Somerville was also a member of the Expert Panel that authored the Maloney Report.

Professor Gordon has written about a phenomenon of households that declare low domestic (Canadian) income for tax purposes, and yet have substantial global income and own real estate in very expensive neighbourhoods. According to Professor Gordon, this is an indicator that there is a substantial amount of foreign capital flowing into Vancouver's housing market, exacerbating affordability challenges.[36] This would also help to explain how it is that Vancouver can sustain such high housing prices without corresponding high median incomes.

Professor Ley has written on the escalation of housing prices disproportionate to local incomes in Vancouver as well as in other "gateway cities," including London, New York, Miami, Sydney, Los Angeles, Hong Kong, and San Francisco. These are cities he described as being "closely tied into global flows of migrants, capital, trade and information."[37]

Economic fundamentals (average disposable income, population, and interest rates), Professor Ley opined, could not explain surges in prices in the Vancouver region. Such price surges in the Vancouver market, he said, can only be explained by the role of investors, many from outside Canada, rather than "local users" earning income in the Vancouver area. He gave as an example the surge in prices between 2015 and 2017, when "an extraordinary amount" of money left China.[38]

Some of the literature, Professor Gordon testified, links the influx of foreign capital to money laundering, suggesting that the pathways used to ensure anonymity and/or evade capital export restrictions are relevant to both the movement of offshore capital and to money laundering.[39]

35 Evidence of B. Ogmundson, Transcript, February 17, 2021, pp 166–167; Exhibit 631, BCREA, Market Intelligence Report, *The Unusual World of Pandemic Economics: Why BC's Housing Market Remains Strong Despite COVID-19* (September 9, 2020); Exhibit 632, BCREA First Quarter Forecast Update (January 25, 2021).

36 Evidence of J. Gordon, Transcript, February 18, 2021, pp 62–64.

37 Evidence of D. Ley, Transcript, February 18, 2021, pp 75–76; David Ley, "A Regional Growth Ecology, A Great Wall of Capital and a Metropolitan Housing Market" (February 2021) 58(2) *Urban Studies*, online: https://journals.sagepub.com/doi/epub/10.1177/0042098019895226.

38 Evidence of D. Ley, Transcript, February 18, 2021, pp 95–97.

39 Evidence of J. Gordon, Transcript, February 18, 2021, pp 136–37.

Professor Somerville agreed that capital from outside Canada could have an impact on housing values but pointed to supply as being a critical factor to understanding housing prices. Foreign investment in real estate also does not necessarily have a negative impact on housing affordability – it depends on the type of investment. If foreign capital is used to purchase land and develop rental housing, then that would be a positive in terms of housing availability.

It became clear as the evidence developed before me that there is disagreement in the academic community about what should be considered "foreign ownership." Is it limited to beneficial ownership by persons or entities based or resident outside of Canada? Or does it extend to purchases made largely with funds earned outside of Canada?

There was also debate over how to address the problem: by taking further steps to limit demand (the foreign buyers' tax being one example) or by aggressively addressing supply by building social housing or addressing regulations that slow the building of new supply.[40] Professor Somerville emphasized the issue of supply, while Professor Gordon was of the view that an emphasis on supply was exaggerated. Professor Ley agreed that supply needs to be addressed, but that supply must be targeted at affordable housing, not high-priced condos.

Resolving these complex issues is somewhat outside the ambit of my mandate, except insofar as the investment of foreign-originated capital has been connected to and, in fact, conflated with money laundering in the province. As Professor Gordon pointed out, it is difficult to know the source of wealth originating in a foreign jurisdiction and whether it is the product of criminal activity or corruption.[41] The case study at the conclusion of this chapter illustrates this point. And while the focus in the public discourse around foreign capital flowing into real estate in British Columbia has been on East Asia, particularly China, as this Report was being written, global attention has turned to the vast wealth of the Russian oligarchs, invested in luxury properties in London and the Riviera as well as other assets like super-yachts and professional soccer clubs. Global events can change the definition of what is considered tainted or criminal. What may not have seemed especially suspicious at one time may come to be seen as deeply problematic later. It is not always (in fact, not often) possible to know whether funds originating in a foreign jurisdiction are tainted.

All of this, in my view, reinforces the importance of a robust beneficial ownership registry for real property. To know if capital coming into Canada is tainted by crime or corruption, Canadian authorities (and professionals with anti–money laundering obligations) need to know the ultimate beneficial owner(s) of property, in order to be properly guided by tools such as lists of politically exposed persons.

40 Evidence of T. Somerville, D. Ley, and J. Gordon, Transcript, February 18, 2021, pp 122–29.

41 Evidence of J. Gordon, Transcript, February 18, 2021, pp 134–35; Evidence of D. Ley, Transcript, February 18, 2021, pp 145–46.

A discussion of foreign capital investment into British Columbia real estate is not complete without consideration of how the discourse relating to foreign investment, immigration, and housing prices can veer into patterns of stereotypical or racist thinking.

Dr. Henry Yu appeared before me to put this issue into its historical context. He described a long history of racist sentiment toward Chinese immigrants from the late 1800s onward – not just in Canada, but also in the United States, Australia, and New Zealand. These countries had overt policies of white supremacy that deliberately limited and excluded immigrants from Asia.[42]

After immigration reform in the 1960s, immigrants to Canada came increasingly from Asia, in particular India, China, and the Philippines. After 1986, and up to the transition of power from Britain to China in Hong Kong in 1997, there was a large influx of immigrants from Hong Kong. Dr. Yu reminded the Commission of the anxiety that was felt in some quarters when this wave of immigration occurred, and compared it to the reaction to recent anxiety about immigration from mainland China.[43]

Dr. Yu also pointed to public resentment or suspicion about the accumulation of wealth by people in or from China, and a heightened sense that such accumulation is illegitimate or corrupt. In British Columbia, this has resulted in focusing on and singling out Chinese buyers as the cause of an unaffordable and speculative real estate market.[44] The manner in which "Chinese money" is discussed in various fora is resonant, he says, with a long history of discrimination.[45]

Asked about the impact of a focus on Chinese people in the public discourse on money laundering, Professor Yu placed the issue in the context of a number of ongoing discussions, like housing affordability and the pandemic, in which people from China, or of Chinese descent, are characterized as "a problem."[46] When this type of discussion becomes normalized, then it becomes easier to treat a subset of people differently from a legal and policy perspective.

I share Professor Yu's concerns about our public dialogue becoming infused with racist stereotyping. There are legitimate policy questions relating to foreign ownership of real estate in the province. Those questions should be addressed on their merits. They should be decided on the basis of sound policy and evidence. They should not engage "us vs. them" dynamics and must take care not to stray into treating any ethnic community as presumptively dishonest or unlawful. It is important to be aware of and avoid racism, whether it is glaring and obvious, or inadvertent and subconscious.

42 Evidence of H. Yu, Transcript, February 19, 2021, pp 6–12; Exhibit 641, Henry Yu, "Then and Now: Trans-Pacific Ethnic Chinese Migrants in Historical Context" (January 2006).

43 Evidence of H. Yu, Transcript, February 19, 2021, pp 55–56.

44 Ibid, pp 68–74.

45 Ibid, pp 80–81.

46 Ibid, pp 122–26.

Conclusion on Causes of Real Estate Price Increases

I am unable to conclude that either money laundering or foreign investment (however that is defined) is a primary cause of price increases in British Columbia residential real estate. There are strong reasons to believe that other factors, discussed above, are the drivers of housing unaffordability in this province. I certainly would not urge the provincial government to take up the recommendations in this Report on the basis that addressing money laundering will resolve British Columbia's housing affordability issues. As my recommendations above suggest, this is an area that would benefit from study and attention. Money laundering should be addressed, to be sure, but steps taken to counteract money laundering should not be viewed as a panacea for housing unaffordability.

Appendix 19A: How the Expert Panel Put a Number on Real Estate Price Increases from Money Laundering

As noted in my discussion of the gravity model of estimating money laundering in BC, the Expert Panel sought to estimate what cost increases for real estate could be attributed to money laundering. In the discussion below, I have summarized the route taken to travel from the gravity model estimate of money laundering per year to the price increases said to be attributable to money laundering.

The Expert Panel had concluded that some $7.4 billion per year was being laundered in the province.[47] The authors went on to estimate what portion of that money was invested into real estate in the province. They came up with a wide range: between $800 million and $5.3 billion. It is important to understand why there is such a wide range in this estimate, because in the media and in the public discourse, it is often the case that only the upper range is cited.

First the Expert Panel had to determine how much of the $7.4 billion would be available for investing at all – let alone in real estate. As noted by the Expert Panel, illicit funds are not necessarily funds that are available for investment in the hands of a criminal. A person who generates illicit funds in the course of criminal activity will spend a good portion of those funds (as everyone does) on purchasing the necessities of life (food, shelter, transport, clothes). If a person with an illicit income behaves like the average Canadian, he or she will save some, but far from most, of their income. Statistics show that Canadian households save somewhere between 3.6 percent (for the average Canadian household) and 28 percent (for the highest income quintile) of their net disposable income. That saved income is then available for investment. It may be invested in many ways, real estate being just one option. On the other hand, some of the $7.4 billion estimated to be laundered in British Columbia can be expected to be money that was *sent* to British Columbia specifically for the purpose of investing.

The Expert Panel concluded that "the proportion of monies available for laundering that is invested is very unlikely to be lower than the proportion of income invested by the highest income quintile of the Canadian population."[48] This was so, the authors reasoned, because "invested proceeds of crime will generate laundered returns that, in turn, provide income more suitable for consumption that dirty proceeds of crime."[49] (On this line of reasoning, in determining how much illicit money is available to invest, it is safe to expect that criminals will be more keen to invest because that will help to legitimize their dirty cash so that, in turn, it is easier to spend.) If all of the $7.4 billion in laundered funds was treated as income (the most conservative approach), and 28 percent of that was assumed to be available for investment, that would leave $2.1 billion available for investment in various areas, including real estate.

47 Exhibit 330, Maloney Report, p 1.

48 Ibid, pp 51–52.

49 Ibid, p 51.

At the upper end of its estimate, the Expert Panel assumed 100 percent of the $7.4 billion laundered in British Columbia was available for investing.

In sum, the Expert Panel concluded that the amount of illicit money available for investment ranged from $2.1 to $7.4 billion per year.

Second, the Expert Panel had to estimate how much of those funds available for investment ($2.1 to $7.4 billion) was invested into real estate. Statistics Canada data indicated that 37 to 72 percent of the wealth of property-owning Canadian households with no pension is invested in real estate (including primary residences).[50]

At the lower end of the range of illicit fund available for investment ($2.1 billion), applying the 37 to 72 percent range, the investment of laundered funds into real estate would be $800 million to $1.5 billion per year.

At the upper end of the spectrum, if *all* of the $7.4 billion estimated to have been laundered in BC in 2018 was available for investment, applying the 37 to 72 percent range, then $2.7 to 5.3 billion of that would be invested into real estate. In the view of the Expert Panel, the upper boundary of $5.3 billion was felt to be more accurate, because that amount offset what they described as the likely underestimation of overall money laundering, because of under-reporting of crime.[51]

Third, having come up with a range of investment of laundered funds into real estate ($800 million to $5.3 billion) in 2018, the Expert Panel then turned to estimating the *impact* of that investment on real estate prices. Flows of such large amounts of money into a market could reasonably be expected to affect the market, pushing prices up. As noted by the panel, estimating the impact of investing from $800 million to $5.3 billion in real estate required making "a large number of assumptions."[52] After making these assumptions, the Expert Panel estimated that the $5.3 billion upper range of illicit funds invested into real estate would result in housing prices that were *3.7 to 7.5 percent higher* than they would be in the absence of money laundering.

50 Ibid, p 52.

51 Ibid, p 52.

52 Ibid, p 57.