

**PROCEEDINGS AT HEARING  
OF  
FEBRUARY 22, 2021**

**COMMISSIONER AUSTIN F. CULLEN**

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**February 22, 2021**

**(Via Videoconference)**

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

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

THE COMMISSIONER: Thank you, Madam Registrar. Yes, Ms. Rose.

MS. ROSE: Thank you, Mr. Commissioner. Today we'll be hearing from two witnesses, both with experience in the mortgage brokering industry. First I will be leading Ms. Samantha Gale, an industry representative, and following which Ms. Patel will be leading Mr. Michael McTavish, who is employed by the BCFSA.

THE COMMISSIONER: Thank you.

MS. ROSE: And I understand that this witness will be affirmed.

**SAMANTHA GALE, a witness  
for the commission,  
affirmed.**

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

THE WITNESS: My full name is Caroline Samantha Gale, G-a-l-e.

THE REGISTRAR: Thank you.

1 MS. ROSE: Thank you, Madam Registrar. So,  
2 Mr. Commissioner, I'd first propose to spend  
3 some time walking through this witness's  
4 background.

5 **EXAMINATION BY MS. ROSE:**

6 Q Ms. Gale, you obtained a Bachelor of Laws from  
7 UBC?

8 A That's correct.

9 Q And that was in 1991?

10 A Yes.

11 Q And after some time you began to work for the  
12 BC Financial Institutions Commission as manager  
13 of mortgage broker regulation and manager of  
14 real estate?

15 A Yes. I actually started out in the real estate  
16 department and then shifted over to the mortgage  
17 broker department later. They were a combined  
18 department at that time.

19 Q Okay. And how long were you in that -- in those  
20 positions?

21 A From -- for about 15 years.

22 Q Okay. I'm sorry, I'm just hearing some feedback  
23 that I'm quiet on the microphone, so I'm going  
24 to adjust my settings. One moment, please.

25 Okay. And what is your current role?

1           A     I am currently the CEO of the Canadian Mortgage  
2                   Brokers Association BC. In addition to the  
3                   Mortgage Brokers Institute BC, which is a sister-  
4                   related organization to the association.

5           Q     And you began in that role in November of 2013?

6           A     That's correct.

7           Q     And you are currently undertaking an LLM  
8                   program?

9           A     That's correct. I've started a master of laws  
10                  program at Osgoode Hall with a specialization in  
11                  financial regulation and law.

12          Q     Okay. And so in total you've worked in the  
13                  mortgage industry for 23 years?

14          A     Yes.

15          MS. ROSE: Mr. Commissioner, my plan today would be  
16                  to lead this witness first through an overview  
17                  of the CMBA-BC's role in the industry and spend  
18                  some time describing the types of activities  
19                  that mortgage brokers engage in in BC. And then  
20                  I would propose to next turn to issues or  
21                  deficiencies in the current legislation and  
22                  finally to the intersection between mortgage  
23                  brokering and money laundering.

24          THE COMMISSIONER: All right.

25          MS. ROSE:

1           Q     So, Ms. Gale, could you please describe what the  
2                    CMBA-BC is.

3           A     Yes. CMBA-BC is a mortgage broker association  
4                    in British Columbia. We represent the mortgage  
5                    broker industry in relation to government  
6                    relations matters. We provide other supports.  
7                    We provide, for instance, practise advice if  
8                    there's practise questions that need to be  
9                    answered by industry members. We do industry  
10                   education in a variety of manners. And  
11                   networking events so that they can connect to  
12                   other industry members.

13          Q     Approximately how many members do you have?

14          A     We have approximately 1,300 members.

15          Q     Thank you. And could you describe the  
16                   relationship between CMBA-BC and its national  
17                   organization?

18          A     Yes. We formed an umbrella organization in  
19                   conjunction with other mortgage broker  
20                   associations across the country for the purposes  
21                   of sharing resources, leveraging resources. So  
22                   members of CMBA National include CMBA-BC, CMBA  
23                   Atlantic, CMBA Quebec and CMBA Ontario, and we  
24                   participate together in CMBA National.

25          Q     I'd like to ask you, Ms. Gale, about the types

1 of activity that mortgage brokers engage in in  
2 BC. And I'd first like to start with what is  
3 often traditionally conceived of as mortgage  
4 brokering but otherwise known as mortgage  
5 origination. Could you describes what that  
6 entails.

7 A Yes, mortgage brokering is an intermediary  
8 process involving arranging mortgages between  
9 borrowers and lenders. It involves taking  
10 applications from borrowers and then submitting  
11 application information to lenders. There's a  
12 variety of different electronic processes for  
13 doing that you but it doesn't have to be through  
14 an electronic process. Along the process  
15 there's an underwriting process that is taken  
16 where the mortgage broker will obtain what I  
17 would refer to as qualification documents  
18 related to things like income, property value.  
19 These documents are submitted to the lender as  
20 part of the underwriting adjudication.

21 And from there there's a decision made from  
22 the lender about whether they're willing to  
23 issue a mortgage commitment. If a mortgage  
24 commitment is issued by a lender, it will likely  
25 contain a series of conditions. It will be a

1 conditional commitment. The mortgage broker  
2 will then work to satisfy those conditions with  
3 the borrower. The conditions might be further  
4 documents required in support of a down payment,  
5 in support of employment or in support of  
6 property condition, valuation, et cetera. Once  
7 the conditions are satisfied the mortgage broker  
8 will work with other parties to ensure that the  
9 mortgage is funded.

10 That's primarily the mortgage broker's role  
11 in connection to borrowers. They may also work  
12 in an intermediary process with investors or  
13 lenders. That's primarily in the private  
14 mortgage area. And they'll work with investors  
15 and lenders to place mortgages with borrowers.  
16 And there's a Form 9 that's issued to the  
17 mortgage investor or lender in that case which  
18 is sort of like an underwriting process. It  
19 requires detailed analysis of the mortgage  
20 transaction that's proposed.

21 So the mortgage broker will underwrite the  
22 private mortgage using the Form 9 lender  
23 disclosure. They may or may not have borrowers.  
24 They may work with an additional mortgage broker  
25 to source borrowers for that mortgage. That's



1                    primarily in a nutshell what the origination  
2                    process looks like.

3                    Q    You mentioned submitting paperwork through an  
4                    electronic system.  Could you expand on that a  
5                    little bit.

6                    A    Yes.  The industry partners have developed  
7                    various electronic systems to submit deals.  
8                    There's a requirement for efficiency.  So  
9                    there's currently three different processes  
10                   where mortgage brokers will enter data in the  
11                   system and it is then submitted to a lender for  
12                   consideration and there will be a way to track  
13                   the progress of a transaction in that system.  
14                   So there's rapid development of changes in this  
15                   area and currently we have three different  
16                   systems that operate in that manner.

17                   Q    And what are those systems?

18                   A    There's a Lendesk Finmo system.  There is a  
19                   system called Velocity, and then there's the D&H  
20                   [phonetic] system which has been around for a  
21                   long time.

22                   Q    And when a mortgage broker is compiling  
23                   paperwork and putting it through these systems,  
24                   what opportunity is there to verify those  
25                   documents?

1           A     Well, the documents will be verified prior to  
2                    uploading them into the system.  Say, for  
3                    example, an appraisal might come in and the  
4                    mortgage broker will review the appraisal, enter  
5                    it into the system and likewise with, you know,  
6                    things like employment letters.

7                    I should add, however, that this is a  
8                    rapidly evolving field and there are methods  
9                    where that process might be cut out.  For  
10                   example, the Lendesk system has the capacity to  
11                   have borrowers provide bank account information  
12                   directly to the lender and that's through part  
13                   of their system called Finmo.  So it eliminates  
14                   the opportunity to interfere with the -- by  
15                   anybody the bank account.

16           Q     Is that a requirement on borrowers to provide  
17                    that bank account directly to the lender?

18           A     No, it's not.  And I should add that there are  
19                    privacy considerations.  So not all mortgage  
20                    brokers like the system.  Some have expressed  
21                    concern with borrowers providing all of this  
22                    banking information to lenders and that it's  
23                    intrusive on their privacy.  So there's some  
24                    debate about how these systems should look.

25                    It's not a requirement.  It's something that

1                   lenders may want. So lenders have the  
2                   opportunity to require certain things be  
3                   furnished to them in whatever manner they wish,  
4                   but borrowers get to say yes or no if they don't  
5                   like the process.

6           Q       And what are the responsibilities or what is the  
7                   role of the mortgage broker in compiling this  
8                   documentation for the lender?

9           A       Well, the mortgage broker should review all of  
10                   the document, give it a look, identify any  
11                   potential red flags, see that it matches the  
12                   application information and then submit it to  
13                   the lender for their consideration.

14          Q       And so is there a responsibility to authenticate  
15                   or verify those documents on the broker?

16          A       That may be challenging. So I'm not sure how it  
17                   is. I guess what you're suggesting is that, you  
18                   know, if there's a false document that's  
19                   provided to a mortgage broker do they have a  
20                   responsibility to ensure that it's true or  
21                   perhaps has been falsified. I think that if  
22                   there's obvious errors, obviously they should  
23                   look at it. One of the challenges may be,  
24                   however, that documents are increasingly -- the  
25                   ones that are found to be not authentic, they're

1                   sometimes very sophisticated and it may not be  
2                   possible to detect problems.

3                   So I would think that mortgage brokers need  
4                   to act, you know, reasonably. They need to use  
5                   their expertise and experience in a reasonable  
6                   fashion to look at these documents. And some  
7                   errors may or some problems may be apparent, but  
8                   some may not. So they may not exactly be in a  
9                   position to authenticate and verify.

10                  Q    Do lenders as a matter of practice authenticate  
11                   the documents on their end?

12                  A    They will, as a matter of practice, take a very  
13                   good look at documents. The larger lenders have  
14                   very experienced underwriting departments and  
15                   the underwriting departments are very  
16                   experienced in reviewing these documents. And  
17                   that is a standard practice, yes.

18                  Q    Are you familiar with the case of *Normak*  
19                   *Investments v.* -- I'm probably going to  
20                   mispronounce this, but *Belciug*?

21                  A    I am familiar with it but I must admit it was  
22                   some time ago that I reviewed that case, yes.

23                  Q    Could you describe to the best of your  
24                   recollection what happened there?

25                  A    I'm not certain that I could get the facts

1           entirely right. I do believe that that case  
2           focused on the question of the duty of the  
3           mortgage broker to ensure that that process  
4           was -- the underwriting process was sound.

5           Q     And I'll just provide the citation for that case  
6                 for the benefit of the Commissioner. It's  
7                 *Normak*, so N-o-r-m-a-k, *Investments Ltd. v.*  
8                 *Belciug*. That's indexed at 2015 BCSC 700.

9                     Were you aware, Ms. Gale, that this case  
10                    found a mortgage broker liable for failing to  
11                    verify the documents that were provided to the  
12                    lender?

13           A     I am aware that that was the focus of the  
14                    litigation, yes.

15           Q     And does it tend to be the case in the industry  
16                    that lenders are relying on mortgage brokers to  
17                    authenticate documents?

18           A     I would say that it depends upon the nature of  
19                    the lender. I think that most lenders expect  
20                    there to be a review by the mortgage broker of  
21                    the qualification documents. Having said that,  
22                    as I've said, there are some very experienced,  
23                    very large scale lenders who have -- which have  
24                    very sophisticated processes for verifying these  
25                    documents. In the case of private mortgages,

1           the lenders might be less sophisticated and have  
2           less sophisticated underwriting protocols, but  
3           yes -- generally, yes, mortgage brokers should  
4           be using reasonable efforts to review documents  
5           that are submitted to lenders. And if there's  
6           questions, they should raise those questions  
7           with the lender and point them out.

8           Q     So in your view the authentication or the  
9           verification process is -- could you say whether  
10          it falls -- the duty to perform those -- that  
11          verification, that authentication, does it fall  
12          more on the lender or more on the broker or are  
13          you able to whether -- is it even between them?

14          A     I would say that ultimately the relationship  
15          between a mortgage broker and a mortgage lender  
16          is contractual. And it would be possible for a  
17          mortgage broker to do absolutely no verification  
18          of mortgage documents, but they would need to  
19          advise the lender that they have done no  
20          verification. And the lender may say yes,  
21          that's fine; we'll do our own verification. So  
22          it's possible for lenders and brokers to shape  
23          the nature of that process.

24                   And by and large there is an expectation  
25                   that mortgage brokers should review these

1 documents. So if they haven't reviewed them,  
2 they should be advising the lenders so the  
3 lenders can then make appropriate underwriting  
4 decisions and proceed accordingly.

5 Q From a regulatory standpoint, are you able to  
6 say whether or not it would be compliant with a  
7 mortgage brokers' regulatory obligations to, as  
8 long as they're being fully transparent with the  
9 lender, advise that they are not going to  
10 undertake the verification process of the  
11 documents?

12 A I think it may be compliant. I would suggest  
13 that the BCFSA might have a view on this which  
14 I'm not certain of.

15 Q But there's no explicit requirement for mortgage  
16 brokers in every instance to verify the  
17 documents that they are providing to a lender?

18 A That's correct. There's nothing in the *Mortgage*  
19 *Brokers Act* that speaks to this particular duty.  
20 There are one or two policy bulletins that I'm  
21 aware of that speaks to the need to verify  
22 information, but there's nothing explicit at  
23 all.

24 Q And are you able to inform us about the access  
25 that a lender has to a borrower's financial

1 details? So, you know, I expect that there  
2 might be a heightened level of awareness where  
3 the borrower is already a banking client of a  
4 financial institution, for example, but where  
5 they're not already a client. What might be the  
6 insight that a lender would have into the  
7 borrower's financial status?

8 A It starts with a -- first of all, the mortgage  
9 broker gets consent, which is very important, to  
10 obtain personal financial information from the  
11 borrower in order to submit and share with  
12 lenders. But one primary document is a credit  
13 bureau report which will show the credit history  
14 of the borrower. And that's pretty critical.

15 The process will generally require the  
16 borrower to furnish things like an employment  
17 letter, pay stubs and to verify deposit for a  
18 new purchase. There might be some banking  
19 information which needs to be shared as well.  
20 So the process is quite thorough.

21 Q And what sort of level of access does the lender  
22 have independent of the mortgage broker? I'm  
23 just -- you know, is there a CRA database that  
24 the lender could review to determine whether the  
25 documents that have been submitted are accurate,



1                   for example?

2                   A    I understand that some of the lenders have what  
3                   I can describe as scrubbing systems.  They may  
4                   put the borrower's name through some kind of  
5                   database and check to see if there's any kind of  
6                   red flag that comes up.  So they've got their  
7                   own -- the lenders talk with one another, share  
8                   information and resources on problem borrowers.

9                   Q    But is there to your knowledge a database where  
10                  a lender could determine whether the documents  
11                  that have been submitted by a borrower  
12                  correspond with that borrower's income and  
13                  assets as declared to the CRA?

14                 A    I'm not aware of it.  The CRA only releases  
15                  information for tax purposes.  They do not have  
16                  a mandate to serve mortgage origination or  
17                  mortgage fraud deterrence purposes.  They have a  
18                  limited mandate, and to my knowledge the CRA  
19                  would not be sharing tax documents with lenders  
20                  for the purposes of mortgage approval.

21                 Q    So typically the way that these documents would  
22                  come to the lender would be from the borrower  
23                  obtaining their own documents and furnishing  
24                  those to the lender?

25                 A    That is typical.  There is, I should add, some

1 service providers which provide documents  
2 from -- through third parties. They provide  
3 documents that have been obtained from CRA and  
4 they provide them directly to the lender. And  
5 as an association actually we tried to apply to  
6 CRA -- this was a number of years ago,  
7 several years ago -- so that we could provide  
8 that service to our mortgage brokers. So if  
9 this service is provided to the brokers, it  
10 provides reassurance to lenders that those are  
11 authentic CRA documents. However, we were  
12 turned down with our application because it was  
13 very clear that we were going to be doing it --  
14 providing this service for mortgage origination  
15 services and not for tax purposes.

16 And at that point in time I was aware that  
17 CRA was shutting down a lot of these services  
18 because they were not compliant with the  
19 purposes of providing these documents. Since  
20 then I am aware that there is a proliferation of  
21 these services, so I'm not quite sure how they  
22 are complying with the CRA requirement that the  
23 documents be accessed and provided to lenders  
24 for tax purposes, but nevertheless these  
25 services do exist.

1           Q     And what sort of know-your-client obligations do  
2                   mortgage brokers that engage in mortgage  
3                   origination face?

4           A     Well, you know, it can be challenging, you know,  
5                   particularly brokers with very busy practices.  
6                   But, you know, they take an application, they  
7                   should be communicating to the borrower.  
8                   Looking for red flags. A standard practice in  
9                   Googling the borrower to verify that any online  
10                  internet information matches with the applicant  
11                  information and is not a concern. So they need  
12                  to take some steps to understand who their  
13                  borrower is.

14          Q     But what you're describing, is that a  
15                   recommended or a best practice or is that a  
16                   statutory requirement on mortgage brokers?

17          A     There's no statutory requirement on mortgage  
18                  brokers to Google borrowers. It is what I would  
19                  refer to as a standard practice, a standard  
20                  expectation.

21          Q     Could you describe the relationship between a  
22                  mortgage broker and a submortgage broker. And I  
23                  understand that there's some distinction in what  
24                  the act refers to as a mortgage broker, and  
25                  maybe I could ask you to flesh that out a little

1                   for us.

2                   A     Absolutely. I have to say that the *Mortgage*  
3                           *Brokers Act* in British Columbia dates to 1972,  
4                           as I'm sure you likely know. And at that time  
5                           it was a very forward thinking piece of  
6                           legislation that was, you know. Decades before  
7                           other jurisdictions implementing such  
8                           legislation. And in 1972 it wasn't quite clear  
9                           how the mortgage industry would develop and  
10                          transform. And so the terminology doesn't quite  
11                          make sense now. It did then but not now.

12                                 A mortgage broker under the *Mortgage Brokers*  
13                                 *Act* is what would commonly be referred to as a  
14                                 mortgage brokerage, an entity that has a  
15                                 dedicated individual and individual mortgage  
16                                 brokers working underneath the entity.

17                                 So a mortgage broker, a licensed or a  
18                                 registered mortgage broker is equivalent to a  
19                                 mortgage brokerage.

20                                 A submortgage broker is equivalent to what  
21                                 we would commonly refer to as a mortgage broker.  
22                                 So it can be quite confusing. There's no single  
23                                 submortgage broker that I am aware of that refers  
24                                 to themselves as a submortgage broker. It's  
25                                 simply never been adopted by industry. So

1                   there's that distinction.

2                   Q     And you mentioned a designated individual.  What  
3                   is that?

4                   A     Most licensing statutes provide for what we  
5                   refer to as a managing broker.  The managing  
6                   broker is the key individual underneath the  
7                   brokerage that ensures compliance and adherence  
8                   to the regulatory rules and is a key point  
9                   person for discussions with the regulator.

10                                 There is no provision in the *Mortgage*  
11                                 *Brokers Act*, the *BC Mortgage Brokers Act* for a  
12                                 managing broker.  The registrar for a long time,  
13                                 decades, has nevertheless required that --  
14                                 through policy has required that an individual  
15                                 who is called a "designated individual" act as a  
16                                 managing broker to ensure compliance with the  
17                                 mortgage brokerage.

18                   Q     And as you say, that's a policy creation more so  
19                   than a statutory one?

20                   A     Correct.  There is nothing in the *Mortgage*  
21                   *Brokers Act* that provides a requirement for a  
22                   mortgage brokerage to have a managing broker, a  
23                   supervising individual, a designated individual.  
24                   And so that requirement is created through  
25                   policy.

1           Q     And for the Commissioner's benefit, more detail  
2                    on designated individuals is set out at  
3                    exhibit 603, which is our overview report on  
4                    legislative and regulatory structure of real  
5                    estate in BC and that reference is at page 40.

6                            And, Ms. Gale, could you describe how --  
7                    mortgage brokers who are engaged in origination,  
8                    how they are compensated?

9           A     Most mortgage brokers are compensated after the  
10                   mortgage funds from the lender.

11          Q     And so is it the lender that is providing a  
12                   commission, or who would be providing the  
13                   commission in that context?

14          A     The commission is paid by the lender to the  
15                   mortgage brokerage.

16          Q     And how does it -- if we could just break down  
17                   how it makes its way from the brokerage to the  
18                   mortgage broker himself?

19          A     Well, depending upon the structure of the  
20                   mortgage brokerage because there may be  
21                   different entities involved, but essentially the  
22                   lender provides the commission to the mortgage  
23                   brokerage. The mortgage brokerage will keep its  
24                   portion of the commission and then remit the  
25                   balance to the mortgage broker or the

1                   submortgage broker, if you will, and that's how  
2                   the mortgage broker gets paid. A commission is  
3                   split between the mortgage brokerage and the  
4                   mortgage broker.

5           Q       And are you able to say what a standard split  
6                   might be?

7           A       It varies. So it could be 75 percent,  
8                   25 percent. It could be 90 percent, 10 percent,  
9                   or it could be nothing at all. It could be that  
10                  the mortgage broker gets a hundred percent and  
11                  simply pays a desk fee to the mortgage  
12                  brokerage. So it varies.

13          Q       Typically it's more than 50 percent, at least?

14          A       Yes, it's more than 50 percent. It might be  
15                  50 percent at the very outset when you've got a  
16                  brand new mortgage broker who's learning, and  
17                  there might be some additional review processes  
18                  undertaken by the mortgage brokerage. And for  
19                  that they might require compensation at a 50/50  
20                  ratio and that might change after a certain  
21                  number of deals is completed, such as five  
22                  deals.

23          Q       And what would be a standard commission that  
24                  would be paid from the lender? I take it it's a  
25                  commission that is a percentage of the loan?

1           A     Correct.  So they're paid -- it depends on the  
2                    lender, but they're paid anywhere from .75 to  
3                    1.25 percent of the principal.  It will depend  
4                    upon the lender, it will depend upon the other  
5                    things -- other factors such as the term of the  
6                    mortgage.

7           Q     Okay.  I think those are my questions with  
8                    respect to origination.  If we could turn now to  
9                    the role of lending, and perhaps you could  
10                   explain to us how it is that lending falls under  
11                   the rubric of mortgage brokering in BC.

12          A     Absolutely.  Section 1 of the *Mortgage Brokers*  
13                    *Act* defines what is included in mortgage  
14                    brokering.  And it may -- it is obviously a  
15                    misnomer to refer to the *Mortgage Brokers Act*  
16                    and to call mortgage brokers "lenders" but back  
17                    in 1972 it made sense at that point.  Mortgage  
18                    brokering includes lending and there's a couple  
19                    of different triggers.  So it's not all lending,  
20                    but it's lenders who are in the business of  
21                    lending, so professional lenders, or  
22                    alternatively there's a threshold of ten  
23                    mortgages per year, and those ten mortgages per  
24                    year will include renewal.

25                                So mortgage brokering is defined to include



1 mortgage lending, mortgage administration and  
2 mortgage trading activities.

3 Q And there are a couple of exemptions in the act,  
4 including if the lending is being done by a  
5 federal financial institution, for example?

6 A Yes. I believe that's contained in section 11  
7 of the *Mortgage Brokers Act*. There's a set of  
8 exemptions. Financial institutions are exempt  
9 from the registration sections of the *Mortgage*  
10 *Brokers Act*. And in addition to that employees  
11 of financial institutions are also exempt,  
12 provided that they are doing brokering or  
13 lending under their proper name, the proper name  
14 of the financial institution.

15 Q And so could you perhaps describe the types of  
16 lending that are undertaken in BC that -- aside  
17 from these exempt categories?

18 A The types of lending?

19 Q Perhaps I should say the types of lenders. That  
20 would be a better --

21 A Types of lenders.

22 Q Might be a better way to say it.

23 A Well, the vast majority of lenders are very  
24 large-scale institutional lenders. There's  
25 quite a varied landscape as to how lenders are

1 regulated. We have federally regulated  
2 financial institutions who -- which are  
3 regulated under OSFI that have very heavy,  
4 burdensome prudential regulations.

5 In addition to that, in British Columbia  
6 there are financial institutions such as credit  
7 unions which are regulated provincially under  
8 the similar prudential requirements. There are  
9 in addition to that some fairly large-scale  
10 lenders that are provincially regulated under  
11 mortgage broker legislation that is provincial,  
12 but they operate perhaps nationally in scope and  
13 they're very, very large. First National would  
14 be an example. And it may not be commonly  
15 understood by people that that actually is a  
16 very large entity, bank-like in its scale, but  
17 it operates under the *Mortgage Brokers Act* and  
18 they're provincially regulated. They may be  
19 regulated in some other ways through insurance  
20 requirements and bundling of mortgages through  
21 the securities end of it, but their regulation  
22 is provincial.

23 In addition to that, there is private  
24 lending that goes on with individual private  
25 investors. There may be individuals or entities

1                   with some extra funds and they wish to invest  
2                   those in mortgages. So those are individuals or  
3                   entities that simply wish -- not business  
4                   professional lenders, but they simply wish to  
5                   lend their money in which case, like I mentioned  
6                   previously, mortgage brokers would assist to  
7                   underwrite those loans.

8                   There's also structures such as syndicated  
9                   mortgages. A syndicated mortgage is simply a  
10                  mortgage with shared lender interests. A simple  
11                  syndicated mortgage might simply have two  
12                  lenders, such as two spouses that are on title  
13                  as mortgage lenders sharing in the loan. Some  
14                  of the syndicated mortgages might be  
15                  significantly more complex than that. So there  
16                  might be a series of syndicated mortgages.  
17                  There might be -- for example, in Ontario there  
18                  was Fortress, which was a professional  
19                  syndicated mortgage lender and it would sell  
20                  syndicated mortgage units to investors. So  
21                  there's different scales of syndicated mortgage  
22                  lending.

23                  There are mortgage investment corporations  
24                  in addition to that. Mortgage investment  
25                  corporations are a tax flow-through vehicle

1           where the investors actually do not have a  
2           direct interest in the mortgage. The investors  
3           acquire an interest in the mortgage entity.  
4           They are therefore shareholders and not lenders.  
5           And the advantage to the shareholder are some  
6           tax advantages. So the mortgage investment  
7           corporation will then take the funds raised  
8           through the investors and place them in  
9           mortgages.

10                     Those are typically the standard vehicles.  
11           I should add that the entities such as the  
12           mortgage investment corporations are licensees  
13           or registrants under the *Mortgage Brokers Act*,  
14           so they would be complying with *Mortgage Broker*  
15           *Act* requirements as well as requirements under  
16           BCSC security raising -- capital rating  
17           requirements.

18           Q       And in terms of the last view forms of lending  
19                     you've just described, the private lending,  
20                     syndicated mortgage lending, mortgage investment  
21                     corporations, can you speak to the share of the  
22                     market that is occupied by these types of  
23                     lending practices.

24           A       That's a very difficult question to answer. So  
25                     I think one of the challenges the industry has

1                   is in quantification. There's no central  
2                   database where the information about lending  
3                   activity is recorded or reported. You know,  
4                   we're probably looking somewhere between 4 or  
5                   5 percent and maybe 9 or 10 percent. It's hard  
6                   to say.

7                   Q    The bulk of the market, though, is occupied by  
8                   the larger institutional lending whether by  
9                   federal institution or by a provincially  
10                  regulated institution or entity?

11                 A    That's correct. Private lending is generally  
12                  regarded as a short-term solution because the  
13                  interest rates charged to borrowers are higher,  
14                  generally substantially higher than conventional  
15                  lenders. And so somebody would resort to a  
16                  private mortgage as an interim step. They  
17                  wouldn't -- borrowers generally don't look to  
18                  hold private mortgages long term.

19                 Q    And can you just expand on that process. Why  
20                  might someone go to a private mortgage lender  
21                  for, as you say, a short-term loan?

22                 A    Yeah, there's many different reasons. They  
23                  might be experiencing some financial distress.  
24                  You know, they -- you know, maybe they're in  
25                  between jobs, they've lost their employment.

1                   They don't want to lose their property. They --  
2                   you know, so there might be some challenges like  
3                   that.

4                   There may be -- it may be for a business, it  
5                   may be to develop property. And, you know,  
6                   there are no -- there wouldn't be a conventional  
7                   lender looking to provide development mortgages.  
8                   And so the idea would be to lend the entity  
9                   short term money to fund construction and the  
10                  exit strategy by the borrower would be on the  
11                  sale the property, of the developed property.

12                  So essentially mortgage borrowers that have  
13                  some challenges, perhaps their income tax  
14                  documents weren't kept up to date and they  
15                  there's some qualification hiccups along the  
16                  way. So they might be looking, for example, to  
17                  straighten out their income tax issues, and so  
18                  generally there's an exit strategy to get them  
19                  out of the private mortgage into something else.  
20                  And that exit strategy may be selling the  
21                  property and perhaps buying something that is  
22                  more affordable.

23                  Q     And what you've described in terms of the  
24                  developer obtaining financing with the idea that  
25                  it then becomes sorts of refinanced once the

1 property is sold, is that what is colloquially  
2 referred to as a bridge loan?

3 A Bridge loans are generally where somebody has  
4 purchased a property but has not yet sold their  
5 property. So they will -- generally buyers are  
6 going to be paying for their new acquisition,  
7 their new property with the sale proceeds or  
8 partly with the sale proceeds of the property  
9 they've sold. So if in some markets they  
10 haven't yet sold their property, they may need  
11 some interim bridge financing for that interim  
12 period and during that period they would be  
13 trying to sell their currently held property to  
14 pay out the bridge loan.

15 Q You described some of the reasons that an  
16 individual or that a borrower might seek out a  
17 private loan as having problems with income tax  
18 or being in financial distress. I presume  
19 you're describing instances -- or this borrower  
20 would turn to private financing when a loan from  
21 another financial institution is unavailable?  
22 Is that fair?

23 A Generally speaking, yes. It's an alternative  
24 financing.

25 Q And how do the rates for private mortgages

1 compare to those of larger financial entities?

2 A It varies. It depends how -- it's a competitive  
3 environment at the moment. A private mortgage  
4 might be as low as 5 or 6 percent. It could be  
5 as high as 12 percent. It could be more. And  
6 generally the conventional mortgages operate  
7 more -- you know, currently at the 2 percent  
8 mark.

9 Q So generally these private lending or syndicated  
10 lending or mortgage investment corporations tend  
11 to have interest rates that are higher than  
12 federal financial institutions or provincial  
13 financial entities typically?

14 A Correct. And the rationale is that the  
15 borrowers represent a higher risk and so the  
16 higher interest is geared towards higher risk  
17 borrowers.

18 Q And one type of lending that we haven't touched  
19 on is the real estate investment trust. Is this  
20 a type of lending that is common in BC?

21 A I wouldn't say it's overly common. A there are  
22 some real estate investment trusts. And you  
23 know, it operates -- it raises capital under the  
24 security capital raising rules, under BCSC.

25 Q And then one thing I wanted to go back to. You



1                   mentioned for some of these private mortgage  
2                   lenders they might have a mortgage broker  
3                   involved to underwrite the loan. Could you  
4                   explain that process.

5           A       Well, the process for underwriting a mortgage  
6                   needs to occur, and it's more important that the  
7                   mortgage broker with a private mortgage take  
8                   those steps. Following the Eron Mortgage  
9                   scandal in the 1990s in British Columbia there  
10                  were some amendments to the *Mortgage Brokers Act*  
11                  which required what we referred to as lender  
12                  disclosure in Form 9. And the Form 9 is a  
13                  fairly comprehensive document that requires a  
14                  determination of the value of the property.

15                         So one of the key differences between  
16                         private lending and conventional lending is that  
17                         the value of the property is much more pivotal  
18                         and central for qualification. So it's very  
19                         important that the property value be ascertained  
20                         and that generally is ascertained through -- not  
21                         always but generally through an appraisal  
22                         process. And from there the mortgage broker  
23                         needs to determine something called an LTV, or a  
24                         loan-to-value ratio.

25                                 So, for example, if you had a property worth

1           a million dollars and the loan -- the mortgage  
2           was 500,000, the LTV would be 50 percent. And  
3           so the investor or lender generally needs to  
4           have a comfort level that if the property should  
5           default, if the borrower should default on the  
6           mortgage and go into foreclosure, that there's  
7           enough of a cushion there to recover the  
8           mortgage moneys that are due.

9           Q     And where would the mortgage broker come in in  
10           that process?

11          A     The mortgage broker is responsible for  
12           completing the Form 9 and delivering the Form 9  
13           to the investor, private lender.

14          Q     Now, is that a requirement of all private  
15           lending?

16          A     Generally, yes. So there's a requirement in the  
17           *Mortgage Brokers Act* -- like I say, these  
18           amendments were made following the Eron Mortgage  
19           debacle which was in the 90s. So it's a  
20           requirement that they complete it, and there's a  
21           requirement that they complete it for all  
22           transactions. And then there's a set of  
23           exemptions. So the exemptions are for regulated  
24           entities like financial institutions. It  
25           wouldn't make sense, for example, for a mortgage

1 broker to complete a Form 9 if they just  
2 facilitated a mortgage with the Toronto Dominion  
3 Bank. There would be no purpose and value to  
4 that.

5 So the Form 9 is completed or all lenders  
6 but then you look to see which lenders are  
7 exempt. And so it's -- there's a whole series  
8 of exemptions. And generally speaking it is  
9 private lenders who would get the benefit of the  
10 Form 9, but I'm just pointing out that the  
11 legislation is a little bit more technical than  
12 that. But generally speaking it's accepted that  
13 the Form 9 is for private lending.

14 Q If a private lender chose to dispense with the  
15 Form 9, do they -- first of all, do they have  
16 that option?

17 A The private lender can choose to review the  
18 Form 9, look at the Form 9 or not. That doesn't  
19 impact the mortgage brokers' duty to prepare and  
20 deliver the Form 9 to the private investor.  
21 Private investors would generally probably take  
22 a fairly close look at the Form 9. It would,  
23 for example, be probably the most important  
24 document in the package of documents they  
25 received in relation to the private mortgage.

1           Q     Okay. I do want to turn to the *Mortgage Brokers*  
2                    *Act* in a moment, but just picking up on one  
3                    thing you said earlier about the trouble in  
4                    quantifying what is happening in the market.  
5                    You mentioned that there is no database  
6                    essentially to see what is happening. The LTSA  
7                    has -- mortgages that are registered on title  
8                    would be displayed on the LTSA; correct?

9           A     Yes.

10          Q     But the LTSA does not provide for an indication  
11                   of the mortgage broker that facilitated the  
12                   loan?

13          A     No. The land title records are simply there to  
14                   show the mortgage and it's -- you know, they're  
15                   the documents between the borrower and the  
16                   lender. The whole process for getting there for  
17                   originating that mortgage, that is not in any  
18                   way disclosed or explained in the land title  
19                   records.

20          Q     And would that be useful, do you think, to  
21                   include that?

22          A     I don't think so. I do agree that it's  
23                   important to ascertain, have better knowledge of  
24                   the private lending. I would suggest that there  
25                   be financial reporting requirements from the

1 mortgage broker regulator imposed on the  
2 industry. It makes sense to have annual  
3 information reports to the regulator where  
4 industry people disclose their activities. That  
5 probably makes more sense. I think that, you  
6 know, the land title documents are there to  
7 serve a different purpose than to provide that  
8 kind of information. I don't see how that could  
9 be fulfilled. It would be very cumbersome to  
10 do.

11 Q And when you describe the annual financial  
12 statements being submitted to the regulator, is  
13 your view that those ought to be provided to the  
14 regulator alone or ought those to be made public  
15 as well?

16 A Well, I think we could probably follow the  
17 Ontario example. So, first of all, mortgage  
18 brokers, you know -- brokerages, to be clear,  
19 actually do provide financial reports. There is  
20 section 6 of the *Mortgage Broker Act* regulations  
21 which enables the registrar to get reports. And  
22 currently they do two things under that  
23 requirement. They provide a trust accounting  
24 audit, if they manage or handle trust funds. If  
25 they do not handle trust funds, the report is

1                    simply a statutory declaration advising that  
2                    they don't handle trust funds.

3                    In Ontario, they actually have a fairly  
4                    complex information return where they advise on  
5                    their activities. So all licensees under the  
6                    Ontario legislation are reporting on the number  
7                    of different mortgages they've arranged, the  
8                    volume of mortgages, et cetera. And then the  
9                    regulator in Ontario will then collate the  
10                   information and release a report once that is  
11                   done.

12                   So, you know, whether or not the individual  
13                   reports are disclosable, I suppose they could  
14                   be. But what is really critical and what's  
15                   really more important is the aggregate data. I  
16                   think that one of the things that we've seen is  
17                   a lack of data, a lack of information about how  
18                   big the industry is and that we need to work on  
19                   better data collection.

20                   Q    So I'd like to turn now to a discussion of the  
21                   *Mortgage Brokers Act* in a bit more detail. I'll  
22                   start with a very general question. Ms. Gale,  
23                   what would you say are the critical gaps or  
24                   failures of the *Mortgage Brokers Act* in BC that  
25                   you would like to see rectified in any new



1 requirements of those separate areas.

2 One of the challenges with such a  
3 reorganization of the licensing structure,  
4 however, might be too much red tape. So you  
5 might end up with too many different licences.  
6 So what we've recommended is something along the  
7 lines of the Australian model where you simply  
8 have one licence. So you're just renewing one  
9 licence each year. But underneath that licence  
10 is an authorization system, so under the licence  
11 you're authorized to engage in a certain  
12 activity, if you've met those requirements to --  
13 qualification requirements and you have shown  
14 that you are qualified to engage in that  
15 activity. And there then could be continuing  
16 education required for those different  
17 authorizations.

18 So I think with the *Mortgage Brokers Act*  
19 there's a need to review the licensing  
20 structure, to provide a managing broker or a  
21 designated individual category, to somehow  
22 segment the different areas that are regulated  
23 to provide for different qualifications at the  
24 same time not making it overly complex or more  
25 complex than is necessary.



1                   So that would be one change. A fairly  
2                   critical one that would then speak to the rest  
3                   of how the legislation should look, but there  
4                   are other areas we need to ensure. One of the  
5                   critical areas that we've looked at is how  
6                   the -- sometimes the enforcement provisions  
7                   don't match activity requirements. So we've  
8                   looked at the *AZTA Management* case when that  
9                   came out in 2014. This was a case involving a  
10                  single transaction where an unlicensed,  
11                  unregistered person was requesting a commission  
12                  in the nature of \$600,000 and up, yet there was  
13                  no agreement for this and the question then  
14                  arose was this -- should this person be entitled  
15                  to this commission. And the section --  
16                  enforcement sections of the *Mortgage Brokers Act*  
17                  was looked at.

18                  So the act of arranging a mortgage over --  
19                  in collecting a fee of over \$1,000 was  
20                  satisfied, so the person was engaging in  
21                  mortgage brokering as defined in section 1 of  
22                  the act. Yet the challenge with the enforcement  
23                  provision was that you needed to be in the  
24                  business of lending. And the court determined  
25                  that if you simply do one transaction, a one

1                   off, even though you're asking for \$600,000, you  
2                   are not in the business of lending. And they  
3                   were entitled to a commission. So they were  
4                   entitled actually to the less than the 600,000.  
5                   The commission was valued at something less than  
6                   that, under \$100,000.

7                   So we would want to ensure that those  
8                   enforcement provisions matched the activity so  
9                   that if you were engaging in activity and you  
10                  shouldn't be engaging in activity there needs to  
11                  be adequate enforcement provisions.

12                  And I think that one of the things that we  
13                  can see is that civil litigation plays a  
14                  significant role in the mortgage broker conduct.  
15                  It's not just, you know, the regulatory system  
16                  that governs mortgage brokers; it's the criminal  
17                  justice system, the civil litigation system and  
18                  there's also some self-regulation that goes on  
19                  with lenders. And I think that one very clear  
20                  suggestion that we can make is that it ought to  
21                  be only licensed or registered mortgage brokers  
22                  who are entitled to mortgage broker fees and  
23                  commissions, and that could be made clear in the  
24                  legislation.

25                  So if somebody ought to have been licensed

1 as a mortgage broker and they engaged in  
2 activity, they should not be permitted to obtain  
3 a commission or a fee. And I think that would  
4 go a long way towards ensuring, you know, if  
5 mortgage brokers weren't certain they were going  
6 to be get paid for their activity, then they  
7 probably would take those additional steps to  
8 ensure they were licensed. And so that's  
9 something I think that could be addressed in a  
10 revisited *Mortgage Brokers Act*.

11 But in addition to that I think that there  
12 are certain adjudication protocols that are  
13 missing from the legislation. As sometimes  
14 the -- as the penalties escalate -- and some  
15 mortgage brokers have been -- have faced in a  
16 disciplinary process some very significant  
17 suspension periods. And as the penalties  
18 increase in amount, it's very important that the  
19 mortgage broker community have confidence in the  
20 system, the adjudication system from the  
21 regulator.

22 And so we've recommended to the Ministry of  
23 Finance as part of its *Mortgage Brokers Act*  
24 review that some of those processes be  
25 implemented. One would be to have an

1 independent adjudication panel. So the mortgage  
2 brokers have to have confidence in the system  
3 and confidence that they'll be treated fairly,  
4 and that creates a culture of compliance.

5 We want to make sure that mortgage brokers  
6 believe it's a fair system and I think that the  
7 mortgage broker community sometimes -- not all  
8 the time, but sometimes they don't have trust or  
9 faith that the system will be fair. So right  
10 now the whole process is managed by internal  
11 BCFSA staff, formerly FICOM. So having an  
12 independent adjudication panel, I think that  
13 would go a long way of creating a culture of  
14 compliance. It follows along as well with the  
15 real estate sector. The real estate sector has  
16 that.

17 And I think that just to facilitate the  
18 processing of disciplinary matters it would be  
19 helpful to have settlement protocols. So  
20 structured settlement conferences so that the  
21 parties, you know, the industry member who is  
22 subject to being disciplined and the regulator  
23 could come together, discuss the issues and have  
24 an opportunity to see if there's any -- anything  
25 that they can agree upon at that point. So

1           structuring those sorts of protocols I think  
2           would help both the regulator and the industry  
3           through this kind of process.

4                        So we've made recommendations along those  
5           lines. And, you know, we've made other  
6           recommendations as well. We've made  
7           recommendations about bank brokers. So the  
8           brokering occurs within financial institutions.  
9           They do brokering. And what I mean is that  
10          sometimes somebody can walk into a financial  
11          institution looking for a bank mortgage. It's  
12          what I would refer to as a mortgage shop model,  
13          where they go into a bank and they, you know,  
14          want a mortgage off the shelf. They may not  
15          qualify. And some institutions are then  
16          brokering that mortgage to other third-party  
17          lenders. So you may -- a borrower may walk into  
18          a bank and then walk out with a private  
19          mortgage, and in some cases the borrowers are  
20          very confused. They don't understand why they  
21          didn't get a bank mortgage.

22                       And part of the challenge with that is that  
23          it's a different way of obtaining a mortgage.  
24          So apart from it being -- it's not a mortgage  
25          shop model, it's an intermediary or fiduciary

1           model, and it's not clear if that model is being  
2           followed. If, for example, a bank broker would  
3           be facilitating the best mortgage in the best  
4           interests of the borrower.

5                        So we'd like the bank brokers -- and I think  
6           the bank -- we talked a little bit about not  
7           knowing the numbers and not knowing exactly what  
8           the mortgage market looks like. We don't know  
9           exactly how many bank mortgages are brokered by  
10          banks, and it would be helpful to know that. So  
11          one of the challenges with that whole process is  
12          that there's no licensing of these individuals  
13          that work for banks and there's no individual  
14          licensing process or qualification process or  
15          disciplinary process that's visible.

16                       So our recommendation is not to exempt. In  
17          looking at the exemptions under section 11, to  
18          make sure that brokering activity engaged in by  
19          financial institutions is captured under  
20          licensing legislation. So we've made  
21          recommendations of that nature.

22                       We've made recommendations to simplify the  
23          statutes with regards to certain protections  
24          under part 2 and part 5 of the *Business*  
25          *Practices and Consumer Protection Act*.

1 Provisions in part 2 and part 5 of the *BPCPA* are  
2 brought into the *Mortgage Brokers Act* by  
3 reference, and it's very confusing. So it --  
4 very seldom are those part 2 and part 5 sections  
5 being looked at. There is -- part 2 governs  
6 certain unconscionable acts, including the  
7 advance fee provisions, and part 5 governs cost  
8 of credit disclosure.

9 And sometimes the language contained in the  
10 *BPCPA* doesn't match that contained in the  
11 *Mortgage Brokers Act* and mortgage broker  
12 terminology. The *BPCPA* is an omnibus consumer  
13 protection statute that is geared towards all  
14 kinds of different consumer activity. And  
15 sometimes the definition of activity contained  
16 in the *BPCPA* is focused on consumer activity,  
17 whereas in the *Mortgage Brokers Act* they look at  
18 residential mortgages versus commercial  
19 mortgages, and it's not clear exactly sometimes.  
20 You can have a consumer mortgage that actually  
21 is not residential and vice versa.

22 So there's some confusion between the two  
23 statutes, their purpose, their scope, and it  
24 would make sense to incorporate the part 2 and  
25 part 5 provisions into a new modern *Mortgage*

1                   *Brokers Act.*

2                   I think we've made some other  
3                   recommendations. But in a nutshell it needs to  
4                   be revisited to be simplified and updated,  
5                   modernized with new terminology, new licensing  
6                   structure. In a nutshell, those are the  
7                   recommendations we've made.

8                   Q    And I think some of those recommendations have  
9                   been captured at exhibit 605, which is our  
10                  overview report on the *Mortgage Brokers Act*  
11                  consultation. I wanted to pick up on a couple  
12                  of the points you've made. First you mentioned  
13                  the *AZTA* case. So for the Commissioner's  
14                  benefit that is *AZTA Management Corporation v.*  
15                  *Croft Agencies Ltd.* And it's indexed at 2014  
16                  BCSC 1462.

17                  And that was the case in which the court  
18                  reviewed the -- as you said, the registration  
19                  requirements which -- fair to say that they --  
20                  that the registration requirements have an "or"  
21                  provision. So you can either be in the business  
22                  or carrying on business or lending on ten or  
23                  more mortgages in a year. Is that fair?

24                  A    Yes. Those are what I would refer to as  
25                  registration triggers. So section 1 of the



1                    *Mortgage Brokers Act* sets out registration  
2                    triggers. And in relation to lending the  
3                    triggers are being in the business of lending  
4                    and lending on more than ten mortgages per year.  
5                    And so that's what's captured in the definition  
6                    of "mortgage brokering." It triggers  
7                    registration.

8                    Q    And in the *AZTA* case the issue was that some of  
9                    the enforcement provisions were interpreted to  
10                    require both being in the business and carrying  
11                    out more than ten or more mortgage lending in a  
12                    year; is that right?

13                    A    I believe it was focused on the *Offence Act*  
14                    provision contained in the *Mortgage Brokers Act*,  
15                    which is section 21 of the *Mortgage Brokers Act*.  
16                    So in order to -- it's an offence to carry on a  
17                    business of mortgage brokering. Specifically,  
18                    you know, if you're in the business of lending  
19                    or the business of brokering, then you are  
20                    committing an offence.

21                                       So according to the supreme court in *AZTA*,  
22                    the act of engaging in one transaction resulting  
23                    in one very large fee was not carrying on  
24                    business, and so you're committing an offence if  
25                    you carry on business. So you have a situation



1 interests of the lender where a mortgage broker  
2 is working for a particular lender?

3 A There is no statutory duty in the *Mortgage*  
4 *Brokers Act* in relation to the lender and the  
5 borrower. That's correct.

6 Q And I suppose perhaps these consumer protection  
7 provisions are attempted to sort of fill some of  
8 those gaps?

9 A In relation to -- like I say, so the *BPCPA* only  
10 is for consumer mortgages. And it was drafted  
11 with all transactions in mind, all kinds of  
12 consumer transactions. So it's much -- I think  
13 much broader in scope than the *Mortgage Brokers*  
14 *Act*. It's more modern legislation. But its  
15 problem is that it isn't directly applicable to  
16 mortgage transactions. It uses different  
17 terminology, for example. But there very  
18 clearly are some protections in Part 2 that are  
19 designed to curtail predatory practices, such as  
20 advance fees, and I think that it's perhaps a  
21 little too strict on the advance fee issue.

22 So the *BPCPA* in part 2 completely prohibits  
23 the taking of a fee for mortgage arranging prior  
24 to the mortgage transaction closing. It has to  
25 be provided to the broker at the time of

1 closing. So in one strict sense you can't even  
2 have a borrower pay a fee after it closes; it's  
3 got to be part of that transaction process. And  
4 part of the -- I think the purpose of the  
5 advance fee protections in Part 2 was to stop  
6 something called advance fee fraud where  
7 somebody is promised a loan in exchanges for an  
8 advance application fee, maybe 1,000 or \$2,000,  
9 et cetera, and the loan never materializes; it  
10 was never meant to materialize.

11 And so mortgage brokers have suggested that  
12 that's challenging. It's challenging to work  
13 for a borrower. Sometimes fees -- private  
14 mortgage files take hundreds and hundreds of  
15 hours and time to put together. They can be  
16 very onerous. And so you've got a problem  
17 sometimes with borrowers backing out, sometimes  
18 at the last minute in the lawyer's office, and  
19 so the mortgage broker may have completely  
20 fulfilled all of the work providing the  
21 commitment and, you know, the transaction may  
22 even be prepared, you know, by the conveyancing  
23 lawyer or notary, and the borrower then backs  
24 out. Which means that if the deal doesn't  
25 proceed, the broker doesn't get paid.

1                   So one of the interests that we have as an  
2                   association is ensuring that it's not just about  
3                   enforcement, and it's also about having balanced  
4                   legislation which facilitates the transactions.  
5                   Because at the end of the day servicing -- the  
6                   consumer, servicing borrowers and investors and  
7                   lenders is necessary to provide protection.

8                   Q     And so these --

9                   A     Anyway.

10                  Q     Sorry.

11                  A     So we've made some suggestions, some  
12                  recommendations, for example, suggesting that  
13                  perhaps these moneys -- advance fees might go in  
14                  trust and they could be held, you know, by a  
15                  stakeholder in trust pending completion of a  
16                  transaction.

17                  Q     And so the incorporation of the *Consumer*  
18                  *Protection Act* does provide comfort against  
19                  certain specific predatory practices, but in  
20                  general the act does not have a duty to act in  
21                  the best interests of a borrower, there's no  
22                  duty to act in the best interest of the lender,  
23                  and there is no know-your-client requirements in  
24                  the act?

25                  A     That's correct.

1           Q     And is there any requirement for a mortgage  
2                   broker to do a suitability analysis of their  
3                   client? I'm thinking of, you know, perhaps like  
4                   an investment advisor would do to determine  
5                   appropriate investment portfolio what the  
6                   client's risk thresholds are. Is there any  
7                   suitability requirements on mortgage brokers for  
8                   their clients?

9           A     There are none. No.

10          Q     And so would you -- is that something that you  
11                 would consider would be appropriate in the new  
12                 formulation of a new act?

13          A     I think that even though there's no statutory  
14                 obligation for mortgage brokers to conduct a  
15                 suitability analysis, it's part of their job to  
16                 provide appropriate mortgage solutions for  
17                 clients. And I don't see any issue with not  
18                 including suitability requirements in a new  
19                 *Mortgage Brokers Act*. It would make sense, yes.

20          Q     And so these particular gaps, the lack of a duty  
21                 to act in the best interests of a borrower or  
22                 the lender, the lack of suitability analysis or  
23                 assessment and the lack of know-your-client  
24                 obligations, how in your mind do those gaps in  
25                 the act relate to the prospect of vulnerability

1 of money laundering?

2 A That's really hard to say because, like I say,  
3 most mortgage brokers engage in these steps  
4 anyway. And I don't think an analysis has ever  
5 been done as to whether they're not engaging in  
6 appropriate suitability analysis,  
7 know-your-client analysis right now. So it's  
8 not clear exactly what that gap looks like.  
9 It's not clear in jurisdictions that have these  
10 requirements how they've been enforced, how  
11 they've been interpreted and how effective they  
12 have been in preventing opportunities for money  
13 laundering. It's a bit unknown.

14 It potentially creates gaps theoretically,  
15 but I don't think that we really understand what  
16 those risks are and how the implementation of  
17 statutory requirements might assist. I think  
18 the general convention is that it's considered  
19 to be pretty standard requirements for licensing  
20 legislation, but, you know, how the opportunity  
21 for money laundering might be diminished by  
22 these requirements is not clear.

23 Q Do you think it creates any challenges in  
24 enforcement where these requirements are not  
25 specifically laid out in the act? I take it

1                   that you're saying it's a best practice or it's  
2                   a standard practice, but does that create a  
3                   challenge from the regulator's perspective to  
4                   enforce those practices?

5                   A    I think that's a great question and I don't  
6                   really have an answer.  Despite the fact that  
7                   these provisions are not contained in the  
8                   *Mortgage Brokers Act* there is a provision in the  
9                   *Mortgage Brokers Act* that licensees/registrants  
10                  not engage in prejudicial conduct, and  
11                  prejudicial conduct has been interpreted very  
12                  broadly.  And if a mortgage broker was not  
13                  acting in the best interests of a clients or  
14                  engaged in processing transactions without  
15                  really knowing their client, it may very well be  
16                  determined that that activity is prejudicial  
17                  conduct.

18                  So I think that the prejudicial conduct  
19                  provision in the *Mortgage Brokers Act* has been  
20                  used along the same lines, and it's hard to say.  
21                  In jurisdictions that do have suitability  
22                  requirements, I have to say I haven't seen much  
23                  enforcement in this area.  So it's not exactly  
24                  clear exactly how it is that the lack of  
25                  adherence to suitability requirements would be



1 treated by a regulator. So I think they're good  
2 standards and it goes hand in hand with  
3 prejudicial conduct, but I can't say for sure  
4 that it would make a difference in how mortgage  
5 brokers underwrite or originate mortgage files.

6 Q Okay. Are you aware of any suitability cases  
7 that have come before the regulator and have  
8 received sanction?

9 A Are you talking about mortgage suitability or  
10 licensee registrant suitability?

11 Q Mortgage suitability for a particular client,  
12 for a particular borrower?

13 A I am not, no. I'm aware of cases involving  
14 prejudicial conduct but not suitability.

15 MS. ROSE: Okay. I do want to turn to that topic  
16 next, but I expect to spend a fair bit of time  
17 on that. So I wonder, Mr. Commissioner, if now  
18 might be a good moment for our 15-minute morning  
19 break.

20 THE COMMISSIONER: Very well. We'll take 15 minutes.  
21 Thank you.

22 THE REGISTRAR: This hearing is adjourned for a  
23 15-minute recess until 11:10 a.m. Please mute  
24 your mic and turn off your video. Thank you.

25 **(WITNESS STOOD DOWN)**

1                                   **(PROCEEDINGS ADJOURNED AT 10:55 A.M.)**

2                                   **(PROCEEDINGS RECONVENED AT 11:10 A.M.)**

3                   THE REGISTRAR: Thank you for waiting. The hearing  
4                                   is resumed. Mr. Commissioner.

5                   THE COMMISSIONER: Yes, thank you, Madam Registrar.

6   **SAMANTHA GALE, a witness**  
7   **for the commission,**  
8   **recalled.**

9                   THE COMMISSIONER: Yes, Ms. Rose.

10                   MS. ROSE: I'm sorry, I've had a couple of technical  
11                                   issues there.

12                   **EXAMINATION BY MS. ROSE (continuing):**

13                   Q     Ms. Gale, I wanted to ask you a couple of  
14                                   questions about disciplinary matters that have  
15                                   come before the registrar of mortgage brokers.

16   But first of I wanted to flag for  
17                                   Mr. Commissioner that many of these orders are  
18                                   set out at exhibit 604, which is our overview  
19                                   report on the registrar of mortgage brokers  
20                                   disciplinary orders.

21                   THE COMMISSIONER: Thank you.

22                   MS. ROSE:

23                   Q     So, Ms. Gale, you've already touched on the AZTA  
24                                   case. Are you familiar with any other -- well,  
25                                   first perhaps I would ask, has the CMBA-BC been

1 directly involved in the complaints process with  
2 complaints to the registrar of mortgage brokers?

3 A No. I mean, from time to time we may refer  
4 complainants to BCFSA. We have our own -- as an  
5 association, we have our own ethics process so,  
6 you know, we may deal with complaints internally  
7 to our association. But, you know, apart from  
8 that, the complaint process is wholly managed  
9 and administered by the regulator.

10 Q Have you been involved with assisting  
11 individuals in making complaints to the  
12 registrar?

13 A On occasion, yes. Sometimes somebody might be  
14 looking for clarification or to understand the  
15 relevance of something and we have -- I have  
16 from time to time assisted with that process.

17 Q And are there particular types of conduct that  
18 you've seen recur?

19 A There are trends and themes, yes. You know,  
20 recently there was an individual here in BC that  
21 had contacted a collection agent and was  
22 referred to an Ontario lender, and that Ontario  
23 lender had proceeded to arrange for what I would  
24 consider to be a non-compliant BC mortgage for  
25 this particular borrower. And I assisted the

1                   borrower in understanding what the rules were in  
2                   BC and what her options were to deal with this  
3                   particular problem.

4           Q        Could you describe how it is that an Ontario  
5                   mortgage broker is practising in BC?

6           A        Well, first of all I think that -- you know, let  
7                   me just sort of say that there's separate  
8                   jurisdiction. As we all know each province  
9                   regulates its industry under its own rules, its  
10                  own legislation. Although we do have  
11                  reciprocity rules which permit mortgage brokers  
12                  from other jurisdictions to qualify here under  
13                  those reciprocity rules governed by the AIT, the  
14                  agreement of internal trade, but apart from that  
15                  there are sometimes instances where those  
16                  licensing rules, reciprocity rules, are not well  
17                  understood and there have been instances where  
18                  Ontario lenders lend to people here in  
19                  BC without being licensed or registered here in  
20                  BC. And why that makes a difference is that  
21                  there are different rules which apply.

22                         One of those rules would be about advance  
23                         fees that I touched on not too long ago.  
24                         Advance fees in British Columbia are prohibited  
25                         a hundred percent, whereas in Ontario they are

1           permitted depending upon the size of the  
2           mortgage so that larger mortgages, they permit  
3           advance fees and mortgages below this threshold  
4           in Ontario are prohibited. So sometimes we've  
5           got Ontario lenders asking for advance fees.

6                     And in addition to that I do believe that  
7           our licensing statute here in BC is actually  
8           significantly stricter than statutes in other  
9           provinces in terms of requiring lenders to be  
10          registered or licensed. There isn't, for  
11          example, an exemption like they have in Ontario  
12          which permits lenders to not be licensed because  
13          they go through a mortgage broker. There's no  
14          such exemption here. So there's a strict  
15          requirement that lenders obtain registration or  
16          licensing and that the employees working for the  
17          lender likewise obtain -- who are engaging in  
18          registrable activity as a lender obtain  
19          licensing as a submortgage broker.

20                    So yes, from time to time I have seen what I  
21          would describe as predatory lending by Ontario  
22          lenders that are very aggressive with fees, that  
23          don't comply with, for example, the discharge  
24          fee caps that are imposed in BC by the *Business*  
25          *Practices and Consumer Protection Act* or they

1 don't comply with the advance fee rules. In  
2 other words they charge advance fees when they  
3 shouldn't. And I think that, you know, because  
4 some of these lenders aren't licensed, they  
5 may engage in predatory activity without being  
6 called out or controlled.

7 So in the case of this one borrower who I  
8 assisted, I explained the licensing rules and  
9 she was able to extricate herself from the --  
10 what I would describe as a predatory arrangement  
11 with this other lender and was -- then made her  
12 way to get serviced by a BC registered mortgage  
13 broker who would have tackled her file under the  
14 BC rules.

15 So from time to time we do see lenders from  
16 other jurisdictions that don't have as good of a  
17 tight control on lending engage in activity in  
18 our province.

19 Q And when you have assisted individuals in  
20 relaying complaints to the registrar or to other  
21 authorities, have you faced any difficulties or  
22 any barriers in that process?

23 A Well, I don't know. I'm only able to forward  
24 information. I don't become a complainant, so  
25 the regulators -- if I forward a complaint to a

1 regulator, they simply take the information and  
2 process the complaint as they deem appropriate.  
3 And I -- sometimes I just -- I don't hear back,  
4 so I don't know how it's been resolved, how it's  
5 been processed.

6 I may hear from the complainant, who may  
7 fill me in, but it's not clear how that  
8 complaint would have been managed. So, you  
9 know, there's nothing really much more I can do  
10 other than to say, here's a complaint; can you  
11 look into it.

12 Q And going back to some of the trends or themes  
13 in conduct that receives sanction, is it fair to  
14 say that one of those themes might be forged or  
15 inauthentic documents?

16 A Yes. Historically the registrar has tackled  
17 issues, you know, right from the get-go when  
18 this legislation was introduced with fraud.  
19 It's been a long-standing problem and subject of  
20 disciplinary action over the years.

21 Q And are you familiar with the case of -- the  
22 cases of Mr. Jay Chaudhary and Mr. Dean Wolford?

23 A To a certain extent yes, I'm familiar.

24 Q And could you describe -- I'll just rephrase  
25 that. These are individuals who have received

1           sanction in the past and were subsequently  
2           sanctioned for conducting the same activity; is  
3           that fair?

4           A     I believe that these two individuals were  
5           disciplined by the registrar a number of years  
6           ago, different points in time, for engaging in  
7           unregistered conduct. The unregistered conduct  
8           was accompanied by what I would describe as  
9           prejudicial conduct which looked like fraud --  
10          mortgage qualification fraud, yes.

11          Q     And this pattern of repeated conduct by  
12          individuals, what do you take from that in terms  
13          of the enforcement and the structure of the  
14          legislation in BC?

15          A     Well, I think this goes to the nature of  
16          licensing. Licensing legislation is very good  
17          at regulating people who are -- industry people,  
18          members who are generally compliant. People who  
19          intentionally engage in wrongful conduct are  
20          very -- and who aren't, for example, licensed.  
21          It's very hard for a licensing statute to govern  
22          these individuals. You know, if -- the biggest  
23          stick a licensing statute has and a regulator  
24          has is to take a licensee who is flouting the  
25          requirements, the rules and to take away that



1                   licence either permanently or temporarily under  
2                   a suspension order.

3                   But once people are no longer -- either  
4                   they're not licensed at all or you've taken away  
5                   their licence and they're continuing to engage  
6                   in problematic conduct, I'd say that it's very  
7                   challenging for a regulator who is administering  
8                   a licensing statute to tackle that problem  
9                   simply because there's no stick. The people  
10                  involved are not licensees and, you know, the  
11                  biggest stick of all, which is taking the  
12                  licence away, doesn't exist.

13                  So for that reason it may be desirable or a  
14                  good alternative to forward action to -- if you  
15                  have repeat offenders who aren't licensed, to  
16                  forward that to Crown counsel who may decide to  
17                  prosecute under *Offence Act* provisions or  
18                  alternatively the *Criminal Code* and have those  
19                  systems manage that activity.

20                  Q     And I believe we've already heard evidence to  
21                  the effect that the maximum penalty for  
22                  unregistered conduct as contemplated by the  
23                  *Mortgage Brokers Act* is a \$50,000 penalty. In  
24                  your view is that a sufficient deterrent?

25                  A     I think it is. So, first of all, I don't think

1           that you're going to -- it's very difficult for  
2           regulators -- and I'm not speaking on behalf of  
3           BCFSA here; I think they can do that for  
4           themselves. But what I've seen is that people  
5           who are not licensed who are evading the rules,  
6           you're going to have -- regulators may have a  
7           very hard time trying to collect penalties and  
8           fines from them. You know, they're simply not  
9           in the clutches of the licensing regime.

10                     \$50,000 is actually a pretty sizeable fine  
11           for an industry member. The vast majority of  
12           mortgage brokers earn somewhere in the range of  
13           50- to \$70,000 a year, so it is substantial.  
14           And you have to keep in mind as well that not  
15           only do -- persons under investigation, are they  
16           potentially subject to a maximum fine of  
17           \$50,000; they're also liable to pay regulator  
18           costs, enforcement costs, which sometimes are an  
19           amount that's equivalent to that.

20                     I'm aware that in the real estate sector  
21           they've just done a review of penalties. And I  
22           haven't taken a very -- they've reviewed the  
23           penalties and issued a consultation document on  
24           that reviewing the feedback. I haven't had time  
25           to carefully look at it, but they've adopted

1           a -- appear to have adopted an approach that is  
2           incremental, so if you're a first offender you  
3           get something, if you're a second offender it's  
4           bigger than that. The penalty that you get if  
5           you are a first offender, et cetera.

6                        So I think that, you know, what I see as  
7           more critical tools for compliance are creating  
8           that culture of compliance through perhaps  
9           higher education standards at the outset,  
10          encouraging, you know, better learning, better  
11          compliance. In addition to that instilling  
12          trust and confidence in the industry, leveraging  
13          that through, you know, things like adjudication  
14          panels.

15                       So my suggestion or recommendation would be  
16          to take a look at the review of penalties that  
17          have been undertaken by the real estate industry  
18          and use that as a starting point for how it is  
19          that the appropriate amount of penalty can be  
20          determined. And those penalties, I think, ought  
21          to be geared for the licensees. People who are  
22          engaging in unlicensed conduct, particularly  
23          ones who are repeat offenders, I would suggest  
24          that mechanisms be looked at to more easily  
25          deploy Crown counsel in the arena of the *Offence*

1           Act charges or criminal charges and that that  
2           system might be better deployed instead of just  
3           hiking up the penalties.

4           Q    And you mentioned perhaps opportunities to  
5           increase education for designated individuals.  
6           In your view are -- educational requirements for  
7           mortgage brokers generally, are they  
8           sufficiently stringent? And if not, what would  
9           be needed to improve that?

10          A    Well, I think that as an association -- I know  
11          other associations have also advocated for  
12          higher qualification standards. I think the  
13          standards are quite low. So in British Columbia  
14          to qualify for mortgage broker registration a  
15          person needs to have taken a correspondence  
16          course from the Sauder School of Business. The  
17          course might take six months or it might take  
18          two months or even shorter. In -- I think  
19          that's probably not enough.

20                    In other provinces like Ontario the  
21          standards are significantly lower. There is,  
22          for example, what has commonly been referred to  
23          as a drive-by course, so like a three-day course  
24          and a 50-question exam at the end with some  
25          fairly basic questions that really don't go

1                   towards the complexity of mortgage lending,  
2                   mortgage brokering.

3                   And the challenge with the low Ontario  
4                   standards is that under the agreement on  
5                   internal trade, the provinces have adopted  
6                   reciprocity rules to encourage what is described  
7                   as labour mobility. So the labour mobility  
8                   rules are designed to ensure that we're not  
9                   stopping somebody who's qualified in one  
10                  province from coming to BC to practice their  
11                  profession.

12                 But what that means is somebody from Ontario  
13                 can come into BC with these very low standards.  
14                 And in some cases this is actively facilitated  
15                 by the -- by some broker houses who try to  
16                 qualify their brokers under this lower threshold  
17                 and get them -- they basically need to get  
18                 licensed. They take this short course in  
19                 Ontario, they get licensed in Ontario, then they  
20                 get to transfer their licence here to BC. And  
21                 so that can be a challenge, you know.

22                 So in addressing mortgage broker standards  
23                 here in BC, we need to look at the other  
24                 provinces too to determine what they're doing  
25                 and how their standards impact the industry here

1 in BC.

2 Q And I understand that CMBA-BC has prepared an  
3 anti-money laundering course to educate mortgage  
4 brokers?

5 A Yeah. We created a course in 2019, and we offer  
6 courses on a voluntary basis, so ones that  
7 aren't a requirement for licensing or what we  
8 call relicensing or renewing registration. And  
9 we made a proposal in 2019, October 2019, to the  
10 registrar to develop an AML course for licensing  
11 purposes. And we're in the process of  
12 developing that course currently with BCFSA so  
13 that licensees would be required to take this  
14 course when they renewed their registration.

15 They renew their registration every  
16 two years. And when they renew their  
17 registration, they go through an additional  
18 suitability review by the regulator. And in  
19 addition to that they need to take two voluntary  
20 licensing modules and they need to take an  
21 update course as well. So we've proposed  
22 preparing an AML course for the purposes of that  
23 grouping of courses that they take every  
24 two years as part of their renewal.

25 MS. ROSE: And, Madam Registrar, could we have a copy

1                   of the CMBA-BC AML course module on the screen,  
2                   please.

3           Q        So, Ms. Gale, is this the course you were just  
4                   describing?

5           A        Yes. So we prepared two courses. So in 2019 we  
6                   prepared a course, the voluntary course for our  
7                   members. And then we prepared, I believe, a  
8                   stripped down course as a starting point for the  
9                   regulator to consider a module that was for  
10                  relicensing purposes. And this would appear to  
11                  be the stripped down version for relicensing  
12                  purposes that we sent to the registrar's office.

13       MS. ROSE: And so, Mr. Commissioner, if I could have  
14                  this marked as the next exhibit, please.

15                        And, Madam Registrar, you may need to remind  
16                        me what exhibit number we are on.

17       THE REGISTRAR: We are at 647, Mr. Commissioner.

18       THE COMMISSIONER: Thank you.

19                        **EXHIBIT 647: CMBA-BC Anti Money Laundering**  
20                        **Course Module - draft**

21       MS. ROSE: So I don't need it on the screen anymore,  
22                  Madam Registrar. Thank you.

23       Q        And what is the status of this course? Do you  
24                  have any sense of whether it will be approved?  
25                  And if so, when?

1           A     Well, we submitted a proposal for a concept in,  
2                   I believe, 2019. I believe we submitted the  
3                   stripped down course in 2020 -- in mid 2020.  
4                   This was reviewed by the staff of BCFSA and we  
5                   heard back with them for some suggestions in  
6                   January of 2021. So we're in the process of  
7                   reviewing those suggested changes. Two of them  
8                   have to do with substance and two of the  
9                   suggestions have to do with process, how we  
10                  create courses. So we're in the process of just  
11                  dealing with the recommendations from BCFSA at  
12                  this point, but we hope to deal with them very  
13                  soon and get a course back to BCFSA that they  
14                  can consider for approval. So it's not yet been  
15                  approved for licensing -- relicensing purposes.

16           Q     And I wanted to ask you about one other piece of  
17                   work that you've done with respect to anti-money  
18                   laundering.

19           MS. ROSE: Madam Registrar, could we please have the  
20                   article "What the German Report Got Wrong" on  
21                   the screen.

22           Q     Ms. Gale, do you recognize this article?

23           A     Yes, I do.

24           Q     Are you the author of this article?

25           A     Yes, I am.



1 MS. ROSE: And so first, Mr. Commissioner, if we  
2 could have this marked as an exhibit.

3 THE COMMISSIONER: Yes, very well, 648.

4 THE REGISTRAR: Exhibit 648.

5 **EXHIBIT 648: What the German Report Got Wrong**  
6 **by Samantha Gale - Summer 2019**

7 MS. ROSE:

8 Q And, Ms. Gale, I wanted to ask you first about  
9 one particular point of -- what I understand to  
10 be a point of contention is the term of  
11 "unregulated lenders." Can you describe what  
12 the issue was with that term in this -- in the  
13 German report and your article here?

14 A Well, I think that it's a complete  
15 misdescription because as we've explored over  
16 the last hour or so, mortgage lenders are  
17 regulated. You know, the whole concept of  
18 licensing is a very serious one and mortgage  
19 lenders take their obligations to get licensed  
20 and maintain their licence very seriously. It's  
21 different kinds of regulation than financial  
22 institutions, and I think that what I've seen in  
23 a lot of literature is a recognition that the  
24 only kind of licensing is prudential regulation.  
25 And there's this idea that private lenders are

1 not regulated and they're often referred to as  
2 unlicensed, unregulated lenders when it's not  
3 true.

4 What I'd like to suggest is that they are  
5 licensed, they are regulated, but it's a  
6 different kind of regulation. It's not  
7 prudential regulation; it's market conduct  
8 regulation.

9 And further to that what I'd like to suggest  
10 as well is that the bank broker activity, which  
11 I talked about over the course hour or so, is an  
12 example of perhaps how financial institutions do  
13 not regulate market conduct activity within  
14 their institutions.

15 And as a comparison what I can explain is  
16 that the most powerful -- even though the  
17 lending regulation under the *Mortgage Brokers*  
18 *Act* is deficient, and we've talked about some of  
19 those deficiencies, the most powerful tool is to  
20 grant a licence and have the power to take it a  
21 away. And that makes industry members very  
22 compliant.

23 Not only that, but when you publish notices  
24 of hearing naming industry members and then you  
25 publish final orders naming industry members



1           conduct activity that goes on inside financial  
2           institutions is unregulated and so the irony is  
3           this. That often the unregulated -- private  
4           lenders are referred to as unregulated lenders  
5           because lack of prudential regulation equivalent  
6           to what the financial institutions have to  
7           undergo, but the irony is that the market  
8           conduct issues which go on inside financial  
9           institutions have no similar regulation  
10          equivalent to the licensing regime.

11                   And so for that reason I think we need to  
12           set the record straight and that is what I was  
13           trying to do here is, you know, the mortgage  
14           industry wants to participate and do its share  
15           of the work to combat money laundering, but  
16           let's start off understanding how the landscape  
17           works and how regulation works. And I don't  
18           think it's fair to refer to lenders who are  
19           licensed under the *Mortgage Brokers Act* as  
20           unregulated lenders because they are, and they  
21           take that obligation very seriously.

22          MS. ROSE: Thank you, Madam Registrar. I don't need  
23           that document on the screen any longer.

24          Q    Ms. Gale, the Maloney report, as you may be  
25           familiar with, included a recommendation that

1 mortgage brokers be made reporting entities for  
2 the purposes of the *Proceeds of Crime (Money*  
3 *Laundering) and Terrorist Financing Act*. In  
4 your view should mortgage brokers be made  
5 reporting entities? And if so -- or perhaps are  
6 there particular categories of mortgage brokers  
7 as you previously described today that should be  
8 and some that should not?

9 A I think that's a really good question. And  
10 there's been a lot of debate about, you know,  
11 whether they should be or shouldn't be. I think  
12 one of the facts that can go into this debate is  
13 that most mortgage brokers don't handle money.  
14 So the money is managed through the transaction  
15 process by realtors, through, you know, deposits  
16 and then through to lawyers and notaries who  
17 handle the conveyances. And of course as part  
18 of this process you've got banks.

19 So a lot of the activity that is undertaken  
20 by mortgage brokers doesn't touch the transfer  
21 of funds. So I think that clearly any industry  
22 member who's taking funds from members of the  
23 public, they should be complying with reporting  
24 obligations under the AML regime. There may be  
25 some benefit to having other individuals who

1 don't handle funds to report, but I think that  
2 we probably need to explore what the goal is,  
3 what the purpose is of AML regulation a bit  
4 more. I think that it's a bit of a mystery.

5 I think that's one of the criticisms that  
6 the industry has of FINTRAC is that the  
7 perception the industry has of FINTRAC is that  
8 it's very red tape laden. They don't understand  
9 how information which is provided to FINTRAC is  
10 utilized and if the information actually results  
11 in any AML enforcement efforts.

12 So if there's a purpose to be served by  
13 reporting, then yes, I think that the industry  
14 would be behind that. All I'm saying is it's  
15 not clear exactly how that role would be  
16 fulfilled, and I think there ought to be further  
17 exploration of how that would look and the value  
18 of reporting under that system.

19 Q Currently in the real estate context the  
20 compliance officer or -- which is usually the  
21 managing broker is responsible for actually  
22 submitting the suspicious transaction reports.  
23 I have a two-part question for you. One, do you  
24 think that mortgage brokers are familiar with  
25 the indicators of suspicious transactions as

1 articulated by FINTRAC? And secondly, do you  
2 have any views on if -- made reporting entities,  
3 who within the mortgage broker context should  
4 have the responsibility for submitting the  
5 reports, whether it should be a managing broker  
6 or another person within the industry?

7 A That's a great question. I think we need to do  
8 much more education for the industry about  
9 exactly what these red flags are. But very  
10 clearly the industry understands quick closes  
11 are a red flag. Private transactions without  
12 industry people, for example, realtors being  
13 involved in the transactions are a red flag.  
14 Perhaps transactions that are in some corporate  
15 company names are perhaps at higher risk as  
16 well.

17 So I think that they understand the concern  
18 about some of these transactions. I think the  
19 transactions might speak more to just improper  
20 conduct, perhaps fraud than money laundering.  
21 So I think that we need to have more of a  
22 dialogue between regulators and industry about  
23 what these red flags look like and what ought to  
24 be done. Even though mortgage industry members  
25 are not reporting entities under FINTRAC

1                   legislation, they do have the ability to make  
2                   voluntary reports and we have mentioned to the  
3                   industry, discussed with the industry the  
4                   opportunity to make voluntary reports. And like  
5                   I say, we've done our own AML module which is  
6                   accessible and available to industry members  
7                   where we discussed this.

8                   Who would be responsible. I think very  
9                   clearly under the current structure it would be,  
10                  the DI, the designated individual, or managing  
11                  broker, if you will, who would responsible for  
12                  ensuring that these reports were being done.  
13                  And I think that probably aligned with the real  
14                  estate sector as well in how they're managing  
15                  this AML reporting process.

16                  MS. ROSE: Thank you, Ms. Gale.

17                  Mr. Commissioner, those are my questions for  
18                  this witness.

19                  THE COMMISSIONER: Thank you, Ms. Rose.

20                  I'll now call on Ms. Friesen on behalf of  
21                  the province, who has been allocated  
22                  ten minutes.

23                  MS. FRIESEN: Thank you, Mr. Commissioner. And I  
24                  don't anticipate being that long.

25



1                   **EXAMINATION BY MS. FRIESEN:**

2                   Q     Good morning, Ms. Gale. Can you hear me?

3                   A     Yes, I can.

4                   Q     Thank you. Earlier in answer to questions by  
5                   Ms. Rose you gave evidence regarding tools that  
6                   the regulator may have to use against unlicensed  
7                   individuals. And you stated that there -- they  
8                   lack the primary stick to use against them  
9                   because they can't take the licence away. Is  
10                  that -- do you recall giving that evidence?

11                  A     Yes.

12                  Q     And in circumstances where an unlicensed person  
13                  is working with a licensed mortgage broker and  
14                  the licensed mortgage broker is submitting  
15                  documents to a lender on their behalf and  
16                  that's -- firstly, that's commonly referred to  
17                  as fronting. Is that your understanding?

18                  A     Yes.

19                  Q     Okay. So in that circumstance taking  
20                  enforcement steps against the licensed mortgage  
21                  broker is a tool that the regulator has to  
22                  discourage the unlicensed activity through  
23                  fronting; would you agree?

24                  A     Yes, I would.

25                  Q     Okay.

1 MS. FRIESEN: Thank you, those are my questions.

2 THE COMMISSIONER: Thank you, Ms. Friesen.

3 Now Ms. French on behalf of Canada, who has  
4 been allocated five minutes.

5 MS. FRENCH: Thank you, Mr. Commissioner. I have no  
6 questions for this witness.

7 THE COMMISSIONER: Thank you, Ms. French. And  
8 Mr. Usher on behalf of the Society of Notaries  
9 Public of British Columbia, who has been  
10 allocated ten minutes.

11 MR. USHER: Thank you, Mr. Commissioner.

12 **EXAMINATION BY MR. USHER:**

13 Q Ms. Gale, just two questions. Firstly, you  
14 mentioned that referral to prosecution for  
15 fraud, forgery, use of forged documents would be  
16 effective. Are you aware of this happening? Do  
17 you have any experience of this proceeding and  
18 then leading to charges and convictions?

19 A I actually am. There are two reported cases.  
20 One is called Semeniuk [phonetic] and the other  
21 is Dan Wen [phonetic]. And so there are  
22 examples of where this has occurred in the past.  
23 I am aware of additional cases. I am, for  
24 example, aware of an *Offence Act* prosecution for  
25 unregistered activity that you will not find in

1           the court reports but I am aware of it having  
2           occurred. I believe it dates to the 80s or the  
3           90s. So there are instances where it has been  
4           utilized, yes.

5           Q    Thank you. This may or may not be a matter  
6           you're familiar with. One of the changes in  
7           mortgages in BC over the last 20, 30 years has  
8           been mortgages prepared by title insurance  
9           companies and their service bureaus on behalf  
10          lenders registered.

11                    In your looking at possible changes, is that  
12           something you've looked at or the industry has  
13           any concerns about?

14          A    I am aware that title companies sometimes are  
15           utilized -- sometimes they're utilized more than  
16           conventional lawyers -- or notaries, I should  
17           say, for renewals. Switches in renewals. And  
18           that is a practice that we have observed, yes.

19          Q    And is that something you think should perhaps  
20           be brought into a regulatory scheme? You've  
21           mentioned that you'd like to see -- I think you  
22           said that in-house mortgage lenders at banks --  
23           mortgage brokers as bank should be brought into  
24           regulation. Would this fit that?

25          A    I think it's a different issue and it has to do

1                   with the closing process.

2           Q       Yeah.

3           A       And perhaps it's a question about whether  
4                   borrowers receive adequate advice or  
5                   representation during the closing process when  
6                   they don't have somebody like a notary or a  
7                   lawyer representing them. I haven't looked too  
8                   closely at this issue. And I think the  
9                   assumption is that if it's a straightforward  
10                  renewal or a straightforward switch from  
11                  lender A to lender B that there's nothing new  
12                  arising with the transaction and that the  
13                  consumer is at low risk and not needing separate  
14                  representation. But I think it's a good  
15                  question.

16           MR. USHER: Thank you. That is all my questions.

17           THE COMMISSIONER: Thank you, Mr. Usher.

18                               Anything arising from that Ms. Friesen.

19           MS. FRIESEN: No, Mr. Commissioner. Thank you.

20           THE COMMISSIONER: Thank you. Ms. Rose?

21           MR. MARTLAND: Nothing arising from me,  
22                               Mr. Commissioner. Thank you.

23           THE COMMISSIONER: Thank you. All right. Thank you  
24                               very much, Ms. Gale. I'm very appreciative of  
25                               the time you've taken to familiarize us with the

1 mortgage brokerage industry and share your  
2 expertise with us. You are now excused from  
3 further testimony.

4 THE WITNESS: Thank you.

5 **(WITNESS EXCUSED)**

6 THE COMMISSIONER: And now, Ms. Patel, I understand  
7 we have another witness to be called and we'll  
8 need to stand down briefly to accomplish that.  
9 Is that the case?

10 MS. PATEL: Yes, that's correct, Mr. Commissioner.  
11 And if I might take the opportunity before we  
12 stand down to ask. There's a chance we might  
13 have to run a little bit long, I think no later  
14 than 2 o'clock, if the Commissioner is  
15 available. And I would just before we go to a  
16 bit of a break to see if -- I'd ask if counsel  
17 could come back with their position on whether  
18 they'd be available until 2 o'clock today, if  
19 necessary.

20 THE COMMISSIONER: All right. Well, it's certainly  
21 fine with me. So I'll just leave it to counsel  
22 to communicate with you offline. Thank you.  
23 We'll take perhaps ten minutes.

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

25 THE COMMISSIONER: Thank you.

1 THE REGISTRAR: The hearing is stood down for  
2 ten minutes until 12:02 p.m. Please mute your  
3 mic and turn off your video. Thank you.

4 **(PROCEEDINGS ADJOURNED AT 11:52 A.M.)**

5 **(PROCEEDINGS RECONVENED AT 12:09 P.M.)**

6 THE REGISTRAR: Thank you for waiting. The hearing  
7 is resumed.

8 MS. PATEL: Thank you, Mr. Commissioner. I think  
9 that we've connected with our next witness now,  
10 Mr. Michael McTavish, an employee with the  
11 BC Financial Services Authority.

12 THE COMMISSIONER: All right. Thank you.

13 Mr. McTavish, are you able to hear us all right?

14 THE WITNESS: Yes, I am now. I've got the technology  
15 solved. Thank you.

16 MS. PATEL: Yes, go ahead, Ms. Patel.

17 THE REGISTRAR: Would you like to have Mr. McTavish  
18 affirmed?

19 MS. PATEL: Yes. Thank you.

20 **MICHAEL MCTAVISH, a**  
21 **witness for the**  
22 **commission, affirmed.**

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

25 THE WITNESS: Michael McTavish, M-i-c-h-a-e-l

1 M-c-T-a-v-i-s-h.

2 THE REGISTRAR: Thank you.

3 MS. PATEL: Thank you. Madam Registrar, I'm  
4 wondering if we could pull up Mr. McTavish's CV.  
5 Or his bio. And this document is fine to be  
6 displayed on the live stream, Madam Registrar.

7 **EXAMINATION BY MS. PATEL:**

8 Q Mr. McTavish, do you recognize this as the CV  
9 that you provided to the commission?

10 A I do.

11 Q Okay. I'll just note a few aspects of your  
12 qualifications and your background. You are  
13 the -- your current role is as Director of  
14 Business Solutions for the BC Financial Services  
15 Authority; is that right?

16 A Yes.

17 Q And you have previously acted as the Director of  
18 Market Conduct for financial institutions and  
19 you were also the Acting Director of Mortgage  
20 Brokers at one point?

21 A Yes, at the same time.

22 Q At the same time. Okay. You were the managing  
23 director of mortgage broker regulation for the  
24 BC -- well, it was then FICOM from November 2012  
25 to June 2017. Is that correct?

1 A Yes. Yes.

2 Q And prior to that I acted as -- you had an  
3 investigator role with the Registrar of Mortgage  
4 Brokers; is that right?

5 A Yes, for one year.

6 Q For one year. And so you joined the -- you  
7 joined FICOM in 2011?

8 A Yes.

9 Q And just in way of previous regulator experience  
10 I'll note that you've been a compliance officer  
11 with the Insurance Council of BC?

12 A Yes.

13 Q And in terms of your professional background,  
14 you come from a background in the private sector  
15 in financial services. You have been a mortgage  
16 broker and an investment analyst?

17 A Yes, that's correct.

18 Q And --

19 A The latter being focused on commercial mortgage  
20 lending for a financial institution.

21 Q Thank you. You have a masters of business  
22 administration from Simon Fraser University?

23 A Yes.

24 Q And finally I'll note that you also have  
25 experience as a police officer. You spent, I



1 think, four years in the patrol division with  
2 the West Vancouver Police Department; is that  
3 right?

4 A Yes.

5 MS. PATEL: Mr. Commissioner, if we could please mark  
6 Mr. McTavish's CV as the next exhibit.

7 THE COMMISSIONER: Very well.

8 THE REGISTRAR: Exhibit 649, Mr. Commissioner.

9 **EXHIBIT 649: Curriculum vitae of Michael**  
10 **McTavish**

11 MS. PATEL: And, Madam Registrar, we can take that  
12 down. Thank you.

13 Q Just in broad strokes could you explain to the  
14 Commissioner what your current role with the  
15 BC Financial Services Authority is, and from  
16 here on I'll refer to it as the BCFSA.

17 A Sure. In my current role I am full-time  
18 business sponsor for a transformational IT  
19 project which is seeking to replace a disparate  
20 set of legacy outdated information management  
21 systems with the modern integrated system to  
22 support BCFSA's future as a modern, efficient  
23 and effective regulator.

24 Q And we heard a little bit about that project  
25 from Mr. Morrison last week. I am going to ask

1                   you now to tell us about your current -- sorry,  
2                   not your current, your historical  
3                   responsibilities specifically with respect to  
4                   the registrar of mortgage brokers, and if you  
5                   could describe to the Commissioner what your  
6                   experience was there. And I believe you said  
7                   you started in 2011 as an investigator. If you  
8                   could just kind of walk us through the  
9                   process -- the progress of your career in that  
10                  particular area of at FICOM as it was.

11                A     Sure. So after one year of working as an  
12                  investigator, I had an opportunity to take on  
13                  the role of manager of the mortgage broker  
14                  program. It was at the time a very small  
15                  program. And incrementally took on  
16                  investigations capacity that previously existed  
17                  as a separate function. And so at the time it  
18                  was a small team covering registrations and  
19                  complaints and inquiries in a very small team of  
20                  two investigators.

21                        Over time that expanded and my role expanded  
22                        to a managing director level. Critically we  
23                        added a function which we now call our  
24                        examinations function. And that was to engage  
25                        in more proactive regulatory work to seek out

1                   harms and address them proactively. To the  
2                   state that it's in now and where I left it last  
3                   April of 2020 overseeing three tranches: the  
4                   registrations, the complaints inquiries and  
5                   examinations being the second, and thirdly the  
6                   investigations. Each of those tranches had its  
7                   own manager who in turn reported to myself and I  
8                   reported to the Deputy Registrar of mortgage  
9                   brokers.

10            Q    So up until April of 2020 you had pretty good  
11                   direct experience and visibility into the  
12                   operations of the Registrar of Mortgage Brokers  
13                   with respect to the complaints, investigations  
14                   and compliance?

15            A    Yes.

16            Q    I'm going to ask you some questions that are  
17                   based on your work in compliance and  
18                   investigations, overseeing that in particular.  
19                   But first I think as a more general question can  
20                   you describe to the Commissioner what -- as a  
21                   regulator, what is the scope of the Registrar of  
22                   Mortgage Brokers to oversee the conduct of  
23                   registered mortgage brokers?

24            A    So the scope is set out in the *Mortgage Brokers*  
25                   *Act* which affords the authority of the registrar

1 to register those individuals who require  
2 registration under the terms of the act and then  
3 oversee their conduct and registrations.

4 Q Okay. And what is the kind of conduct  
5 obligations that a registered mortgage broker  
6 has under the act or the regulations?

7 A In terms of conduct specifically, there are some  
8 provisions around disclosure. There are  
9 provisions around the manner in which  
10 advertising is conducted, essentially truthful  
11 advertising. And lastly there's a bucket that  
12 is referred to -- it's an enforcement tool  
13 called conduct prejudicial to the public  
14 interest, but by and large that is the bucket  
15 that is used by the registrar to address most  
16 market conduct issues. That said, the act  
17 itself is not prescriptive in providing a set of  
18 requirements that people have to abide by as  
19 registrants. So each case is looked at in its  
20 specifics and then determined if it's conduct  
21 prejudicial.

22 Q And just -- we've heard about this a little bit  
23 from previous witnesses, but I just want to make  
24 sure that it's clear. The conduct of mortgage  
25 brokers, there's no express know-your-client

1 obligations, is that right, in the legislation?

2 A You are correct, yes.

3 Q And no express duty to act in the best interests  
4 of either the borrower or the lender in the  
5 legislation?

6 A Correct.

7 Q There's no requirement to ensure that a borrower  
8 is being placed into an appropriate product, an  
9 appropriate mortgage?

10 A Correct.

11 Q And any conduct that would be contrary to those  
12 obligations, which are -- I understand to be  
13 common in other financial professions, would  
14 fall into that bucket of conduct prejudicial to  
15 the public interest; is that right?

16 A That's right. You would have to look at the  
17 facts and determine if you can articulate that  
18 indeed whatever that conduct was conduct  
19 prejudicial to the public interest.

20 Q Can you speak to the Registrar of Mortgage  
21 Brokers' jurisdiction to oversee a registrant  
22 for suitability for registration?

23 A Sure. So there's two parts to that. The first  
24 part is when a person is an applicant to become  
25 registered in the first instance and the second

1 part is there's an ongoing suitability  
2 provision. So the registrar can take action if  
3 a person subsequent to be registered is found to  
4 be unsuitable. So it is a continuous effort.

5 And so in the first instance suitability  
6 is -- you can think of two aspects. The first  
7 is competence, which is to say that, you know,  
8 they've passed the course, they have the basic  
9 level of competence to arrange mortgages or lend  
10 on the security of mortgages or the other  
11 activities.

12 Secondly there's more character based, which  
13 in the legislation would be something -- if you  
14 find someone is objectionable based on their  
15 character. And good examples of that are a  
16 person, for example, who was convicted of a  
17 financial crime. Another example would be an  
18 individual who was disciplined by another  
19 regulator, particularly in a relevant area such  
20 as securities or real estate.

21 And then, thirdly, you could look at other  
22 aspects of their circumstances. They could have  
23 bankruptcies or other matters that if -- you  
24 know, if relevant to their ability to work as a  
25 mortgage broker and protect the public would --

1                   might be leading to a finding that they're  
2                   not -- they're objectionable.

3                   Q     Just getting a little bit deeper into that  
4                   question of suitability on the basis of  
5                   character. What are -- you've indicated that  
6                   you could consider if a person was convicted of  
7                   an offence, if they were disciplined by another  
8                   regulator in another -- in a related area.  
9                   Would the Registrar of Mortgage Brokers take  
10                  into account or have the capacity to take into  
11                  account charges that didn't lead to convictions  
12                  or disciplinary investigations that didn't lead  
13                  to action by another regulator?

14                 A     Yeah. There's no boundaries in the sense that  
15                  you would look at the underlying facts, and then  
16                  if the Registrar can adduce evidence from those  
17                  underlying facts that the Registrar can then  
18                  form an opinion that the person's registration  
19                  would be objectionable. There's no barrier to  
20                  taking that into consideration. In terms of  
21                  criminal charges, I would say, you know, you  
22                  have to look at the circumstances.

23                             If a person has pending charges that are  
24                             unresolved, that's -- you know, that's one  
25                             thing. If a person was charged but then not --

1                   you know, they weren't convicted, then that's a  
2                   different issue. Again, you would look at the  
3                   underlying circumstances. The Registrar would  
4                   have to adduce facts from those to form his own  
5                   opinion.

6                   Q    Can you speak to channels of communication that  
7                   exist with other regulators in financial or real  
8                   estate industries to communicate about ongoing  
9                   investigations. I guess what I'm getting at  
10                  here is do you have the ability to communicate  
11                  with other regulators to determine if there is  
12                  an ongoing investigation or an unresolved  
13                  complaint about an applicant?

14                 A    Yes. In fact that forms part of the  
15                  registration process to review databases of  
16                  other regulators and determine if they are  
17                  facing any investigation or pending action or  
18                  have been disciplined. Secondly there's a  
19                  requirement for an applicant to declare if they  
20                  have been.

21                 Q    And if an applicant fails to disclose an ongoing  
22                  process or at another regulator, what would be  
23                  the consequence of such a failure to disclose?

24                 A    It depends on the circumstances and the nature  
25                  of the matter. And so I can't say there's any



1 particular response depending on the facts, but  
2 it is taken seriously.

3 Q Are there any sources of information that the  
4 registrar does not have access to when it comes  
5 to considering factors going to suitability?  
6 Are there any blind spots for the registrar when  
7 an applicant comes to you and you're considering  
8 whether they're suitable to be registered?

9 A There are. Firstly, a person's prior employment  
10 may be of interest to the registrar, and in  
11 particular individuals who were employed in a  
12 similar type of financial service with a  
13 financial institution, a bank or credit union,  
14 for example. And if a person left that  
15 employment for reasons that were based on any  
16 sort of internal issues or conduct with  
17 consumers, for example, it's very difficult to  
18 get that information from those private  
19 entities. One.

20 Two, an area that's often probed is a  
21 person's experience with the judicial system, in  
22 particular any civil matters that they have been  
23 involved in. And it gets difficult to search  
24 records, in particular the substance of  
25 decisions or anything material in those

1           decisions that would be of interest to the  
2           registrar in determining or assessing  
3           suitability.

4                       So there's a couple of examples where the  
5           team does have some challenges. So the second  
6           being searchability. The information may be  
7           there. It's the ability to access it  
8           sufficiently.

9           Q       I'm moving to the Registrar's jurisdiction with  
10           respect to persons who are not registered.  
11           We've heard a bit about unregistered mortgage  
12           broker activity already. Today we'll hear more.  
13           What is the scope of the Registrar's  
14           jurisdiction when it comes to the conduct of  
15           unregistered persons?

16           A       It's very limited. The scope of the Registrar's  
17           authority is limited to the fact of whether or  
18           not they require registration for any activity  
19           they're engaged in. And if they're engaged in  
20           activity that requires registration, the  
21           Registrar can only take action against them for  
22           not being registered.

23                       The manner in which they do their business  
24           while unregistered is not something the  
25           Registrar has any authority over. Unlike the

1                   manner in which a registrant does business,  
2                   there are remedies to deal with any conduct.  
3                   However, with unregistered individuals there is  
4                   no remedy available to the registrar except to  
5                   sanction them for engaging in business without  
6                   being registered.

7                   Q    Okay.  And when it comes to the sanctions that  
8                   are available, what are the sanctions that are  
9                   available against -- first of all against  
10                  registrants for, say, conduct that's considered  
11                  to be prejudicial to the public interest?

12                 A    There's only one avenue, which is administrative  
13                   remedies, and you're -- if they're registered,  
14                   there's the option to apply conditions to the  
15                   registration if that mitigates the risk.  The  
16                   Registrar may suspend or cancel a registration  
17                   which is a more -- an escalated response.  As  
18                   well, there's available to the Registrar up to  
19                   \$50,000 in administrative penalties, and that's  
20                   the limit of what the Registrar can act on  
21                   specifically for conduct prejudicial to the  
22                   publicly interest.

23                 Q    What about the tools that are available to  
24                   employ against unregistered persons?

25                 A    The -- essentially the registrar has two

1 options. One is an administrative route and the  
2 other is a provincial offence route under the  
3 *Mortgage Brokers Act*. Under the administrative  
4 provisions there is the ability to issue an  
5 order, to cease and desist and to make that  
6 public. Secondly the Registrar can impose a  
7 financial penalty on that individual. Up to  
8 \$50,000.

9 Q In your experience --

10 A Now, the -- sorry. And the other option which  
11 is more serious is to refer to Crown counsel to  
12 consider pursuing or charging under a provincial  
13 offence under the *Mortgage Brokers Act* for  
14 unregistered.

15 Q Okay. I'll return to the referring to Crown  
16 counsel option in a moment, but just going back  
17 to the penalty that can be imposed against  
18 unregistered persons, can you speak from your  
19 experience to the Registrar's success in  
20 collecting such penalties from unregistered  
21 persons?

22 A I cannot recall any particular cases that I can  
23 comment on specifically with respect to  
24 collections.

25 Q Can you recall --

1           A     For unregistered.

2           Q     Can you recall any instances in which a fine was  
3                    successfully collected from an unregistered  
4                    person?

5           A     I cannot.

6           Q     The size of the penalty that's available is  
7                    limited, I think you said, to \$50,000?

8           A     Administrative, yes.

9           Q     Administrative penalties?

10          A     Yes.

11          Q     And do you have a view as to whether that is a  
12                   sufficient limit of monetary penalty?

13          A     I think I would just simply observe that the  
14                   amount of remuneration an individual can  
15                   receive, you know, for the totality of their  
16                   activity can certainly well exceed \$50,000.  And  
17                   we have seen cases of unregistered individuals  
18                   whose earnings from their activities exceeded  
19                   \$50,000.

20          Q     Now, going back to the option of referring  
21                   matters to Crown, what are the -- what are the  
22                   penalties available if Crown counsel pursues  
23                   prosecution of an offence under the act?

24          A     So for a first offence it's up to \$100,000 and  
25                   the potential for up to two years in prison.

1                   And the second offence is up to \$200,000 plus  
2                   the possibility of prison up to two years.

3           Q       And with your time at the Registrar of Mortgage  
4                   Brokers, can you recall any successful referrals  
5                   of matters of unregistered or -- unregistered  
6                   activity being referred to Crown counsel?

7           A       Not during my time, no.

8           Q       And do you think that there are any systemic  
9                   issues which might contribute to a lack of  
10                  successful referrals?

11          A       Systemic on the part of whom?

12          Q       Well, either --

13          A       BCFSA or -- sorry, go ahead.

14          Q       I think the question would go to either side,  
15                  whether there's a systemic issue on the BCFSA  
16                  side, FICOM when you were there at the Registrar  
17                  of Mortgage Brokers, or on the part of Crown  
18                  counsel.

19          A       Okay. I can't speak for Crown. However, BCFSA  
20                  during my time was under very significant  
21                  constraint in terms of capacity and resources  
22                  with our investigation teams. The approach was  
23                  in my experience, primarily administrative. My  
24                  understanding is in order to -- and in my  
25                  experience from law enforcement many, many,

1           many years ago is that the standards of evidence  
2           are clearly higher. There's a lot more  
3           infrastructure in terms of the organization  
4           would need to be implemented to manage, for  
5           example, evidence to manage certain databases  
6           we'd need to access and a considerable  
7           investment in training and resourcing to build  
8           up the capacity to do quasi-criminal  
9           investigations.

10                   And so from a BCFSAs perspective over the  
11           time I was there we certainly had a lot of  
12           constraints that limited -- would have limited  
13           our ability to really execute on investigations  
14           where offences might be contemplated.

15           Q       Based on your experience, do you think that  
16           the -- an increased ability to pursue criminal  
17           consequences would be an effective tool for the  
18           Registrar to have?

19           A       I think there needs to be -- certainly we  
20           welcome consideration of that. And  
21           contemplation of what is the role of the  
22           Registrar and BCFSAs as a financial sector  
23           regulator, what is the mandate. And then  
24           considering what are the other law enforcement  
25           agencies, where are the gaps in jurisdiction or

1 mandates. I think in my mind there needs to be  
2 a larger evaluation of that before contemplating  
3 what the appropriate solution is.

4 And I'm not sure if by your question you  
5 mean just limiting to pursuing offences under  
6 the *Mortgage Brokers Act* or expanding to a more  
7 *Criminal Code* option.

8 Q Yeah, my question at this point is limited to  
9 pursuing offences under the *Mortgage Brokers*  
10 *Act*. If you see --

11 A Okay.

12 Q For a greater facility to pursue those kinds of  
13 remedies.

14 A I think it's certainly an area that ought to be  
15 looked at and considered. And the thing I would  
16 point out is there's implications for  
17 resourcing. BCFSA is funded entirely by  
18 industry, and so to build that capacity will  
19 come at a cost. And so I can't -- at this stage  
20 I couldn't opine on what the appropriate  
21 solution is, but I think it's certainly worthy  
22 of being explored.

23 Q Turning back to the issue of unregistered  
24 activity. Is unregistered mortgage broker  
25 activity something that you encountered in your



1 time at the Registrar of Mortgage Brokers?

2 A Yes.

3 Q And was it -- would you characterize it as an  
4 infrequent problem, a pervasive problem,  
5 somewhere in between?

6 A I would say that it did occupy a substantial  
7 portion of our -- of the registrar's  
8 investigative work. I can't comment on how  
9 pervasive it is in the industry, but I can say  
10 it was certainly one of our top areas of  
11 investigation in the time that I was there.

12 Q And likewise what might be referred to as  
13 mortgage fraud or less -- applying a less  
14 legally conclusive label, the alteration of  
15 documents to support a mortgage application, is  
16 that an issue that you encountered in your time  
17 with the Registrar?

18 A Yes, probably the single largest proportion of  
19 our investigative efforts was focused on that.

20 Q And was there or is there a connection between  
21 that and the problem of unregistered activity?

22 A In most cases to my recollection the two -- both  
23 issues were involved, but not always. So there  
24 were cases where it was simply unregistered  
25 activity, but there was no evidence of specific

1 document falsification or false or misleading  
2 information involved in those transactions.  
3 However, in a large proportion of high profile  
4 or priority cases that were addressed by the  
5 team over the years, there often was the  
6 involvement of falsified information and false  
7 documents in addition to the unregistered  
8 activity.

9 Q And I'm a not sure if you're able to comment on  
10 this, but can you draw the connection for us  
11 between mortgage fraud and vulnerability to  
12 money laundering?

13 A Well, I'm not an expert on money laundering for  
14 sure, but I can comment on certainly  
15 vulnerabilities in the industry and how industry  
16 works. In particular falsifying information in  
17 mortgage applications yields the result of  
18 borrowers being approved for loans they  
19 otherwise wouldn't be approved for by the  
20 lender, and lenders making loans they -- you  
21 know, they wouldn't make and potentially  
22 borrowers can't afford assuming that they  
23 truthfully don't have that income to support it.  
24 If their income is something that's not  
25 legitimate, then they may have the income;

1                   however, by it being illegitimate, they're  
2                   unable to show it. And lenders require that you  
3                   show your -- your conventional lenders require  
4                   that you demonstrate income and financial  
5                   assets, you know, for example, to pay your down  
6                   payment if you're buying a home and the ability  
7                   to service the debt payments over time.

8                   So therein lies the vulnerability. It's  
9                   fairly easy using available technology to take  
10                  digital documents and change numbers, for  
11                  example, and then pass those documents off as if  
12                  they were genuine when you submit them to a  
13                  lender typically in a PDF or electronic format  
14                  where the lender looks at that document, for  
15                  example, a tax return or a notice of assessment,  
16                  and it appears genuine on the face of it.  
17                  There's no sort of obvious way to see that  
18                  digital tampering. So therein lies a  
19                  vulnerability. It's relatively easy to do.

20                Q   How do -- how does unregistered mortgage broker  
21                  activity and how does mortgage fraud or the  
22                  alteration of documents to support a mortgage  
23                  application, how do such matters come to the  
24                  attention of a regulator in your experience?

25                A   Right. So in the experience of the Registrar

1           it's any number of ways. Firstly, complaints  
2           from others who may or may not be -- have  
3           visibility into that. The second is the team  
4           undertakes risk-based proactive examinations.  
5           And one of the things they're looking for is any  
6           types of misconduct, including, you know -- for  
7           example, if they're reviewing a broker's files  
8           and they see there's a high level of referral  
9           fees being paid out, for example, they might  
10          look into that and then, you know, they could be  
11          very well legitimate or they might not. So  
12          that's another window that the team has to spot  
13          the sort of activity.

14                   And otherwise lenders may report. We have  
15          even had law enforcement report when they found  
16          mortgage documents in one of their  
17          investigations and they questioned if the  
18          person's registered. So there's different ways  
19          that you can come across this information.

20          MS. PATEL: Madam Registrar, I'm going to ask you to  
21          pull up a document. I believe it's exhibit 610,  
22          FSA0001. And if we could scroll down to page 5  
23          of the PDF. That's fine. Thank you, Madam  
24          Registrar.

25          Q        Mr. McTavish, there under -- do you see the

1 heading "Other Risks" in the centre of the page?

2 A Yes.

3 Q Under "Other Risks" as bullet points there's --  
4 the first one says "incentives mixing risk  
5 management and sales." Unless you have  
6 something to comment on that I was actually  
7 going to move to the next two points, which  
8 was -- the second bullet point under "other  
9 risks" says:

10 "Mortgage broker and lending is an  
11 industry of yes. Market participants are  
12 only rewarded for getting mortgages  
13 approved and funded. There is no reward  
14 for saying no.

15 Is this an observation that you agree with?

16 A Yes.

17 Q And how does this contribute to the risk of  
18 unregistered activity or of mortgage fraud?

19 A I would say that it just -- it's inherent in the  
20 incentive structure of the industry is you're  
21 only paid if you fund a mortgage. In fact you  
22 can't charge fees for arranging mortgages unless  
23 those fees are deducted from the proceeds of the  
24 loan. Unless you're an employee of an  
25 institution on a salary, then your compensation

1 is separated -- well, it may be linked, but it's  
2 not directly linked to your production in terms  
3 of getting loans approved.

4 And so in my experience both as a regulator  
5 and as an industry practitioner, your incentive  
6 is to get people money through loans and there's  
7 no other -- that's the value of a broker.  
8 That's the value of a broker to their referral  
9 partners if they are, for example, real estate  
10 agents because the real estate agent is in the  
11 same position that they are only paid if the  
12 deal -- the real estate transaction closes and  
13 that may be dependent of course on a loan being  
14 approved. So all the way along in the value  
15 chain the incentives are focused entirely on  
16 getting loans approved.

17 MS. PATEL: Madam Registrar, if we could scroll down  
18 to page 6, please. Just a moment, I'm looking  
19 for a bullet point that says -- there we are.

20 Q In the middle of the page at the top of the  
21 page that you can see, the first bullet point  
22 under:

23 "Financial institution risk of reporting  
24 suspicious activity by mortgage brokers to  
25 other financial institutions or oversight



1 individuals, so I wouldn't say it's a position  
2 of BCFSA or myself, but we're certainly seeing  
3 signs that may be a culture. That's a bit  
4 concerning. And the Registrar has -- the Deputy  
5 certainly has on several occasions at industry  
6 events and in other manner communicated to the  
7 industry that there's the expectation that  
8 misconduct is reported or suspected misconduct  
9 is reported. So I would say it's a concern.  
10 I'd be a little cautious to say it's pervasive.

11 Q From one perspective it might seem  
12 counterintuitive that a lender wouldn't be  
13 motivated to report misconduct by mortgage  
14 brokers because misconducts by a mortgage broker  
15 could expose them to financial risk. Can you  
16 comment on what incentives or motivating factors  
17 might be behind a lender or financial  
18 institution's decision not to report?

19 A So I would say that -- you know, I would look at  
20 the structure of the industry, and it's not  
21 monolithic. Some lenders do in fact bare the  
22 risk of the loans they originate. Other lenders  
23 secure ties and sell them off to investors  
24 through securities. Additionally lenders in the  
25 past -- I mean, I am a little bit out of date



1                   now, but there was bulk insurance, default  
2                   insurance, available to lenders.

3                   And so there's different models, you know,  
4                   where -- in the case where you're separating the  
5                   sales from the risk, whomever is driven by a  
6                   sales incentive is -- and if they're not in turn  
7                   sharing in the risk, may not be as motivated by  
8                   the risk consideration as they are the sale  
9                   consideration. There's -- many brokers do  
10                  many millions of dollars.

11                  There's a lot of money at stake, and so, you  
12                  know, I can't speak to a lender's motivation,  
13                  but I would just observe that, you know, the  
14                  connection between risk and reward or sales,  
15                  which is the reward piece, is often severed in  
16                  the value chain of originating mortgages.

17                  Q   And we've covered the issue of how mortgage  
18                  brokers are compensated and of how real estate  
19                  licensees are compensated. And just to close  
20                  the loop, what is the financial compensation or  
21                  reward for the lender in the mortgage  
22                  transaction?

23                  A   The lender it's the yield between whatever their  
24                  cost of funds is, typically a bond rate, and the  
25                  retail interest rate charged.

1 MS. PATEL: And, Madam Registrar, if we just -- I  
2 should have done this at the outset, but if we  
3 could scroll up to page 1 of this document.

4 Q Mr. McTavish, before today have you seen this  
5 document? Are you familiar with it?

6 A Yes, I am.

7 Q Okay. Did you author this document?

8 A I drafted it. It is not -- it's not my content.  
9 It's a collection of observations I gathered  
10 from the mortgage broker team, including myself,  
11 but it is an aggregation of observations and --  
12 for a discussion purpose. I want to emphasize  
13 this document is not a position. It's simply a  
14 list of discussion topics, observations, things  
15 to explore.

16 MS. PATEL: Madam Registrar, we can take that  
17 document down now. Thank you.

18 Q I want to return to something that you mentioned  
19 before in the context of the size of penalties  
20 that are available. And you mentioned the  
21 potential profitability of unregistered mortgage  
22 broker activity. And I wonder if maybe in this  
23 context we could --

24 MS PATEL: Madam Registrar, if you could pull up --  
25 and this is fine for public livestream, again --

1 exhibit 604, page 76. And I am going a cease  
2 and desist order of the Registrar dated  
3 May 23rd, 2019, in respect of an individual  
4 named Mr. Jay Kanth Chaudhary.

5 Q Are you familiar with this cease and desist  
6 order and this matter generally?

7 A I am at a high level, yes.

8 Q Okay. And just at a high level are you able,  
9 for the benefit of the Commissioner, to outline  
10 what the issues, the conduct of Mr. Chaudhary as  
11 described in this cease and desist order that  
12 was of concern to the Registrar.

13 A Yes. This was issued, I believe, if I'm looking  
14 at the correct document, 2019. There was an  
15 investigation which revealed evidence indicating  
16 this individual was engaged in arranging  
17 mortgages on behalf of borrowers when they were  
18 not registered to do so. They in turn packaged  
19 up the information and sent it to any of a few  
20 individuals who were registered mortgage  
21 brokers. And those individuals in turn  
22 submitted applications to lender on behalf of  
23 this person in order to get mortgages funded as  
24 if it were their own business submitted to those  
25 lenders.

1                   And evidence also show or indicated in a  
2                   number of transactions involved here that those  
3                   transactions involved the provision of false  
4                   information, altered documents which were  
5                   provided to the lenders in support of those  
6                   applications, in particular indicating inflated  
7                   incomes and inflated financial assets which  
8                   would have been to support down payment  
9                   verification purposes and income purposes.

10            Q    And do you recall the period of time over which  
11                   it was said in this order that Mr. Chaudhary  
12                   engaged in his unregistered activity?

13            A    My recollection was a few years. Beyond that I  
14                   can't give you an exact number from the top of  
15                   my memory.

16            Q    That's fine. And I am going to help us out here  
17                   and return to that question of remuneration.

18            MS. PATEL: Madam Registrar, if you could scroll down  
19                   to paragraph 63 of this order. And I'll give  
20                   you -- it's page 86 of the PDF. Thank you.

21            Q    Here -- do you see at paragraph 63 there is a  
22                   description:

23                               "Staff reviewed SB's --"

24                   And for context do -- can you recall that SB was  
25                   a registered mortgage broker alleged to have

1                   been --

2                   A     Yes, it was.  Yes, it was one individual  
3                   registered.  Yeah.

4                   Q     Okay.

5                             "... reviewed SB's mortgage files between  
6                             2015 and 2018 and determined that  
7                             Mr. Chaudhary's referrals to SB resulted  
8                             in 165 mortgages funded, resulting in  
9                             compensation to Mr. Chaudhary as follows."

10                   And then there's a table that sets out for  
11                   the years 2015 through 2018 the commissions paid  
12                   to Mr. Chaudhary.  Do you see that?

13                   A     Yes.  So that's showing the volume of funding in  
14                   those given years facilitated by this one  
15                   particular registrant and the amount of  
16                   commission earned from the lenders that was paid  
17                   to the individual in question, yes.

18                   Q     And you said this one particular registrant.  To  
19                   your knowledge was Mr. Chaudhary referring  
20                   business or working with other registrants?

21                   A     Yes.  There was more than one.  I cannot  
22                   remember -- I wasn't -- you know, don't have  
23                   that level of detailed knowledge to tell you how  
24                   many, but there was more than this individual.

25                   Q     But it would be fair to conclude that the



1 transactions per year and identified at  
2 least 20 submortgage brokers and real  
3 estate licensees in addition to SB as  
4 referral sources for the transactions."

5 Does that -- my question for you is do you have  
6 any knowledge, and we'll speak -- we'll be  
7 speaking with a colleague of yours later this  
8 week.

9 That reference to 20 submortgage brokers and  
10 real estate licensees, do you have any idea of  
11 what -- how many of that number were submortgage  
12 brokers?

13 A I don't know what the split is between the  
14 number of brokers and real estate licensees.

15 Q Madam Registrar, if?

16 MS. PATEL: Madam Registrar, we could just please  
17 scroll down to paragraph 67. Paragraph 67:

18 "According to that document, from 2009 to  
19 mid 2018, Mr. Chaudhary worked on 875  
20 files, generated \$5,283,347 in client fees  
21 and \$642,344 referral fees paid by  
22 registered submortgage brokers who  
23 submitted the applications to lenders on  
24 his behalf and arranged --"

25 And I'm not even going to try.

1                   "-- [half a billion dollars] in mortgage  
2                   loans."

3                   Do you -- does that accord with your  
4                   recollection of this matter?

5           A       Yes.

6           Q       Yeah. And one thing I wanted to point out here  
7                   is that paragraph 67 refers to over \$5 million  
8                   in client fees. Are you able to explain what is  
9                   meant by client fees, and do you have any  
10                  knowledge of how those were being charged?

11          A       My recollection is that number is indicating  
12                  fees collected directly from the clients.  
13                  That's my belief. I don't know anymore details  
14                  about how that actually occurred or -- but that  
15                  is it my understand of what this is  
16                  communicating was fees collected directly from  
17                  the client, the borrower, somehow transmitted to  
18                  the individual in question.

19          MS. PATEL: Madam Registrar, we can take down this  
20                  document now. Thank you.

21          Q       Now, one question just make sure that this is  
22                  clear. Is the cooperation of a registered  
23                  mortgage broker necessary for a person like  
24                  Mr. Chaudhary to carry on business?

25          A       It depends on which lender that person is



1                   approaching. So mainstream institutional or  
2                   otherwise, you know, established organizations  
3                   will only accept business from registered  
4                   mortgage brokers and in fact confirm that they  
5                   are registered, and if they're not registered  
6                   will not accept business from -- so in order to  
7                   access the majority of the mainstream lending  
8                   market, you require registration.

9                   So to answer your question, yes, if you wish  
10                  to access those lenders who actually validate  
11                  the status of a person's registration.

12                Q     And what's the incentive for a registered  
13                  mortgage broker to undertake the regulatory risk  
14                  of fronting for an unregistered person?

15                A     Compensation. They're taking -- if you think of  
16                  it this way. The value chain is the  
17                  unregistered person does all of the work with  
18                  the borrower and provides a package -- a  
19                  complete package of information which an  
20                  individual would require in order to get a  
21                  mortgage application in for approval. So the  
22                  person who is in the position of fronting, the  
23                  registrant who is fronting, essentially has less  
24                  work and is compensated.

25                  Now, they're sharing their compensation as

1           that -- in that particular example that chart  
2           showed. In that particular case they are  
3           sharing. But I don't know what the split was in  
4           those cases, but, you know, you could be earning  
5           a 1 percent commission and splitting that  
6           50 percent. So there is certainly some  
7           pecuniary interest in an individual to  
8           participate in that and less effort than would  
9           normally be the case.

10                   I mean, mortgage brokers doing the --  
11           submitting the business -- and this is my  
12           experience speaking from having done the  
13           business. There's considerable effort in  
14           sourcing your clients. Doing the actual  
15           transaction is only part of the work that's  
16           involved. And so in a case here the registrant  
17           doesn't have to source the business, it just  
18           comes to them from this unregistered person. So  
19           less effort and still compensation.

20           Q     Does the regulator have any insight into the  
21           volume of business that's being done by a  
22           particular submortgage broker?

23           A     Not necessarily. Although many sub-brokers are  
24           celebrated by industry for their accomplishments  
25           at high volume business. And so sometimes you

1                   may see, you know, in industry publications the  
2                   high producing individuals they will just state  
3                   what their volume of business is: I did  
4                   X billion dollars last year in originations.

5                   So there is some anecdotal information  
6                   available depending on -- otherwise. You  
7                   would -- the Registrar would have to or the  
8                   staff of the Registrar would have to actually go  
9                   into a particular broker's records or just ask  
10                  them directly, but -- so other than some  
11                  anecdotal references through industry sort of  
12                  communications or publications, there's -- you  
13                  would have to look at an individual directly  
14                  from their records.

15                 Q    Would is significant increase in volume of  
16                     business or in total volume of commissions  
17                     received from one year to the next be a red flag  
18                     for fronting from your perspective?

19                 A    If you know the before and you have a pattern  
20                     and then you have an after, in my mind that  
21                     would be certainly a potential red flag.

22                 Q    Would that be valuable information for a  
23                     Registrar -- sorry, for a regulator to have  
24                     access to?

25                 A    I think that, yes.

1           Q     Just referring back to the paragraph 67 of that  
2                   document we were just looking at. We don't need  
3                   to go back to it. But, you know, my rough math  
4                   which is always unsafe, I take the commissions  
5                   earned from -- directly from clients plus the  
6                   commissions earned from referral fees from other  
7                   registrants, then you come up with a number over  
8                   that ten year period of about \$5.8 million that  
9                   was earned by Mr. Chaudhary in his -- is alleged  
10                  to have been earned by Mr. Chaudhary in his  
11                  unregistered activity.

12                           Is there any ability for the Registrar of  
13                           Mortgage Brokers to get at or to claw back or to  
14                           seek repayment of those commissions, those  
15                           unlawfully earned commissions?

16           A     There's no disgorgement provisions in the  
17                   current *Mortgage Brokers Act*, if that's what  
18                   you're asking. There's only the ability to go  
19                   up to \$50,000 in administrative penalty.

20           Q     Do you see a disgorgement provision as being a  
21                   tool that would be useful to have?

22           A     Not speaking on behalf of the Registrar, just my  
23                   own personal -- I think that is certainly  
24                   something that ought to be considered in the  
25                   tool kit.



1 mandate

2 - multiple local police jurisdictions."

3 And:

4 "- reported lack of police resources."

5 Did -- I mean, you had a role in authoring this  
6 document. Do you agree with that observation of  
7 limited uptake of police on apparent mortgage  
8 broker frauds?

9 A Yes, that's has been my experience in my time.

10 Q And specifically with reference to your  
11 experience --

12 MS. PATEL: Madam Registrar, we can take this down.

13 Q Specifically with reference to your experience  
14 with the Registrar, have you had opportunity to  
15 refer matters that appear to involve fraud --  
16 mortgage broker fraud to law enforcement?

17 A Yes.

18 Q And what's been your experience with the uptake  
19 by law enforcement of such referrals?

20 A To date I've never seen any enforcement -- like,  
21 criminal enforcement action taken in any of  
22 those cases. In some cases explicit decline to  
23 take that file on.

24 MS. PATEL: Madam Registrar, the next document I'm  
25 going to ask you to pull up is not to be

1 displayed on the livestream. FSA0019.

2 Q Mr. McTavish, are you familiar with this  
3 document?

4 A Yes.

5 Q Okay. And it's titled "Financial Institutions  
6 Commission of British Columbia; Investigative  
7 Services; Grant Brian Curtis: Review of Sample  
8 Mortgage Transactions."

9 Now, I just want to stop before we get into  
10 this document and I'm going to confirm a couple  
11 of things with you. One is this -- the  
12 investigative document that we're about to look  
13 at, no conclusion was made by the Registrar of  
14 Mortgage Brokers that there was a contravention  
15 of the *Mortgage Broker Act*; is that correct?

16 A That's correct, there was no findings or  
17 outcome.

18 Q And what from flows from that, there was no  
19 disciplinary action and no finding?

20 A No.

21 Q Okay.

22 A Correct.

23 Q And similarly, arising from the matters that are  
24 described in this document there was -- no  
25 criminal charges were filed that you were aware

1 of?

2 A Correct.

3 Q There's no criminal conviction or anything of  
4 that nature associated with the actions of the  
5 mortgage broker involved in this document?

6 A Yeah, nothing to my knowledge. No.

7 Q Okay. Now, this document, did you author it?

8 A I did.

9 Q And there's no date on the front, but are you  
10 able to recall approximately when it was  
11 authored?

12 A It was -- I believe it was in 2012.

13 Q And can you recall the circumstances which led  
14 to the writing of this report?

15 A I can.

16 Q Can you give us a kind of a high level overview  
17 of -- first of all, what brought this matter to  
18 the Registrar of Mortgage Brokers' attention and  
19 then what your findings were following that.

20 A Sure. So this was a file I inherited among  
21 other files that were handed off from someone  
22 who had been an investigator and left the  
23 organization. So I was fairly new to the  
24 organization and then took over an existing  
25 file.



1                   In this case -- this is a situation where  
2                   one file led to another. The initial  
3                   information received from a police agency was  
4                   that they were executing a search warrant for  
5                   another completely unrelated criminal matter on  
6                   a person, and they discovered what looked like  
7                   mortgage documents or -- I'm not sure what they  
8                   were but something related to mortgage --  
9                   arranging mortgages. And the file was opened  
10                  against -- you know, to look into whether that  
11                  individual was engaged in unregistered mortgage  
12                  broker activity.

13                  As it turned out, from my recollection there  
14                  was no finding or evidence to actually support  
15                  unregistered activity. Rather it appeared as if  
16                  this was a referral arrangement. And when we  
17                  say "referral" we mean passing on information  
18                  but without hitting the triggers of  
19                  registration. So nothing unusual about mortgage  
20                  brokers receiving referrals from other parties.

21                  And so in this case that first person, there  
22                  was, you know, no evidence to support, so that  
23                  file was concluded. And a file was opened on  
24                  the individual noted on this document. And the  
25                  reason was -- is because the referrals were made

1           to this individual. And then I took over.  
2           There was no allegations. There was no specific  
3           questions. It was just kind of an open -- you  
4           know, open approach to just understand the file,  
5           understand the transaction.

6                        So I conducted a review of the transactions  
7           that were available to me from different  
8           sources. And in reviewing them, I will say, you  
9           know, at the outset that there was no evidence  
10          of misconduct specific to those transactions on  
11          the part of the individual named at the top of  
12          this document.

13                       What was of -- became more interesting were  
14          the borrowers and circumstances around the  
15          borrowers was becoming unusual to see. For  
16          example, a number of those borrowers through  
17          open sources and some other information sources  
18          appeared to be potentially involved with  
19          criminal activity or associated to it somehow.  
20          So that was a significant sort of dimension to  
21          the review. That was a bit unusual. It's not  
22          unusual to see one, but to see a number of them  
23          was a bit unusual. There was other sort of  
24          things that when you looked at it in totality,  
25          the circumstances surrounding these borrowers

1           and properties were such that it raised some  
2           suspicion that certainly was not within the  
3           wheelhouse of the Registrar of Mortgage Brokers  
4           but would be potentially of interest to law  
5           enforcement.

6                     And, you know, the matter was not -- there  
7           was no regulatory issues arising from this  
8           review at all; however, there was a lot of  
9           interesting information around these borrowers,  
10          and that was what was referred to police.

11          Q        Okay. And in the second paragraph of this --  
12                    the first page of this document you say there  
13                    were unusual aspects that jumped out on review.  
14                    For example, that the mortgage broker was fairly  
15                    new to the business but appeared to be doing a  
16                    high volume of mortgage transactions. Was that  
17                    one thing that came to your attention?

18          A        That was one, but there's -- I've, in my  
19                    experience, seen a lot of people who have hit  
20                    the road running, to use a euphemism. That is  
21                    common. What was more interesting was the  
22                    number of unusual circumstances. So that was  
23                    one. By itself it's not necessarily anything  
24                    suspicious, but what was suspicious was there  
25                    was just a large number of different dimensions

1                   of the file, like, you know, not just the  
2                   individual broker but actually more specifically  
3                   the borrowers, that when you look at as a whole  
4                   was just unusual to see that many unusual  
5                   aspects in a portfolio of a broker's loans.

6           Q       From the perspective of how the process of an  
7                   investigator at the regulator works, you say --  
8                   on page 1, it was said:

9                               "Based on the presentation of unusually  
10                              aspects, a sample of mortgage transactions  
11                              was obtained and reviewed."

12                   Now, how do you go about obtaining records of  
13                   mortgage transactions with respect to a  
14                   particular broker?

15           A       Under the *Mortgage Brokers Act* you have the  
16                   authority to obtain information from  
17                   registrants. So the lenders in this case, most  
18                   of them were registrants. And so under that  
19                   authority we are able to compel those records.

20           Q       So it's a matter of physically going into the  
21                   brokerage and taking the records?

22           A       Not necessarily. They can be provided  
23                   electronically. At that time, you know, I  
24                   recall attending one lender, just to take a look  
25                   at their lender files. And the prior



1 unusual aspects are outlined in the  
2 attached spreadsheet. Taken as a whole,  
3 the various abnormalities led  
4 Investigative Services to hypothesize that  
5 a large number of these mortgage  
6 transactions may have been conducted to  
7 facilitate organized criminal activities.  
8 The following is an outline of information  
9 related to Curtis and some unusual aspects  
10 of the mortgage deals reviewed."

11 And I'm wondering if you could speak to -- you  
12 mentioned earlier that -- on review of these  
13 mortgage transactions that there were, you know,  
14 unusual -- there were red flags or very unusual  
15 aspects to them.

16 What -- and if you could, having a look at  
17 this document, identify what were the most --  
18 what are the indicators or the aspects which  
19 most caused you concern or which caused you to  
20 think that perhaps there was something out of  
21 the ordinary here?

22 A Well, probably the number one indicator was the  
23 number of individuals with criminal -- potential  
24 criminal connections to see, you know, more than  
25 one is unusual.

1 Q And there --

2 A That would be the primary ... Sorry, go ahead.

3 Q There are -- you go on here to identify  
4 characteristics or aspects of the mortgage  
5 applications themselves or the underlying  
6 documents supporting them that were suspicious.  
7 Can you speak to unusual -- some of those  
8 unusual characteristics?

9 A Yes. In this case some of the -- okay. So I  
10 should back up. The two lenders in question,  
11 one is a conventional lender that qualifies  
12 based on income. The other one is a private  
13 lender with -- I think they have some different  
14 mortgage investment corporations as well as  
15 other modes of private lending is less -- does  
16 less due diligence because it's a higher risk  
17 equity-based type of lender that charges a  
18 higher rate in exchange for less scrutiny and  
19 more emphasis on the equity and the property to  
20 manage the risk of the loan.

21 And so in the case of lenders that qualify  
22 on income, in some cases the property is going  
23 to be rented out, either part of it like a  
24 secondary suite or the whole thing, and in order  
25 to get an approval the income has to be

1           considered. And when you haven't -- when you  
2           don't own the property yet, the most common way  
3           to prove or validate that income is for an  
4           appraiser to opine on what the market rent is  
5           for that particular property at that given time.  
6           And the lender will utilize that number  
7           anticipating that the person will actually rent  
8           the property out and have that income.

9                        So what was unusual was just to see not one  
10           but a number of tenancy agreements. And these  
11           are coming from the borrowers or purported to  
12           come from the borrowers that were tenancy  
13           agreements contemplated. So they're signed  
14           prior to the buyer actually taking possession of  
15           the property. And then the dates on them seemed  
16           a bit strange because it would be from the 1st  
17           of the month to the 1st of the month of the year  
18           following rather than the last day of the last  
19           month in that year, which you would expect if  
20           you're going to see a tenancy agreement.

21                        So that just in my experience is odd. The  
22           other indicators were looking at properties that  
23           were financed -- doing land title searches  
24           revealed that a number of them were -- there's a  
25           high turnover rate. So a lot of them were sold.



1           And I'm trying to remember and I can't remember  
2           exactly, but it struck me that, you know, there  
3           was no obvious capital gain in many cases and  
4           it's just the large number of them turning over  
5           in short order was -- just struck me as unusual.  
6           And there's nothing wrong with a person buying  
7           and then selling a house subsequently for any  
8           number of reasons, but to see as many as I did  
9           just struck me as unusual.

10                   And really, you know, the first issue of the  
11           criminality -- potential criminality of certain  
12           individuals who are borrowers being a particular  
13           red flag, a lot of these you might see -- in  
14           totality there's just a lot of them and that  
15           totality is what gave rise to produce, you know,  
16           a sense that maybe there was something that the  
17           police needed to be looking at.

18           Q       At the top of this list it's indicated that the  
19           mortgage broker was "flagged on PRIME as being  
20           possibly associated to organized crime, but  
21           never charged." And we spoke a few minutes ago  
22           about suitability requirements.

23                   So first of all, the registrar has access to  
24           the PRIME database?

25           A       That -- at that time not directly. That was

1 provided by a law enforcement agency.

2 Q I see. And so was -- is a criminal background  
3 check a prerequisite for registration as a  
4 mortgage broker?

5 A Yes. Yes. And every two years at renewal.

6 Q And every two years. But the fact of somebody  
7 not having -- not being charged, not being  
8 convicted but as being possibly associated with  
9 organized crime wouldn't be something that would  
10 come to your attention at the time of  
11 registration?

12 A No, it would not.

13 Q And if it did would it be something which would  
14 necessarily lead the Registrar to conclude that  
15 the applicant was not suitable?

16 A I can't say that, but I can say that in my  
17 experience in order to get -- have the registrar  
18 contemplate disallowing a person, that  
19 decision's based on hard evidence upon which  
20 they can make findings. And so in a case like  
21 this it's a bit difficult because the Registrar  
22 would be hard-pressed to make a finding a  
23 person's a member of organized crime absent an  
24 actual criminal record or -- you know, someone  
25 suggesting someone might be is probably not

1                   enough.

2                   MS. PATEL: If we could scroll down to page 7 of this  
3                   document, Madam Registrar.

4                   Q     And at the top of this page, Mr. McTavish, do  
5                   you see that one of your observations was that:  
6                                 "Many borrowers are self-employed, with  
7                                 vague descriptions of business activities,  
8                                 and little to no corroborating presence on  
9                                 the internet or through BC Registry  
10                                searches. In the investigator's  
11                                experience this is unusual."

12                   Was that your comment that this was unusual?

13                   A     That's my comment, yeah.

14                   Q     Okay. And what is it that's unusual about it?

15                   A     Oh, so what's unusual is if a person owns a  
16                   business and carries on a business, you're more  
17                   often than not likely to see some presence or  
18                   footprint, for example, on the internet. A  
19                   person has a website, they're advertising a  
20                   product or a service. They have a way to  
21                   contact them. As well as checking corporate  
22                   registry searches, you know. What this is  
23                   telling me, and I'm going from a very lengthy  
24                   recollection here from ten years ago, is there  
25                   was not as much internet presence or BC registry

1 corporate or sole proprietor registrations of  
2 businesses that you might expect in the case of  
3 people who were purporting to be self-employed.

4 Q And not to belabour the point but does this give  
5 rise to suspicion that the self-employment  
6 income or the business activity is not  
7 legitimate?

8 A I can't say that. I wouldn't draw that  
9 conclusion. I would just simply say that from  
10 my perspective to not see that was unusual.  
11 There's of course many possibilities, some of  
12 which might be as you describe. But I didn't  
13 draw any conclusions beyond the fact that it was  
14 just unusual not to see that.

15 Q No, and I'm certainly not asking you to conclude  
16 that any of these borrowers were -- to draw  
17 factual conclusions. But would this kind of --  
18 would this situation indicate to you that  
19 there's -- would it give rise to a suspicion  
20 about legitimacy of business activities or  
21 source of funds?

22 A Well, in a case -- in this case putting it  
23 together with the other circumstances certainly  
24 gave rise to enough suspicion to think that this  
25 is something that is really looking like a

1                    police matter to look into. And so I would  
2                    agree that when you look at that and you look at  
3                    some of the other factors that it's painting a  
4                    higher level of suspicion around these borrowers  
5                    than would otherwise be the case.

6                    Q     The third bullet point says:

7                                 "Inconsistencies on tax documents provided  
8                                 to support borrowers' incomes."

9                    I know I'm taxing your recollection here but are  
10                   you able to elaborate on this point at all?

11                   A     I simply cannot remember what those were.

12                   Q     Would you agree that this point would seem to be  
13                   indicating that there might be problems with --  
14                   as to the authenticity of supporting documents  
15                   that were provided?

16                   A     You know, I'd be speculating to answer that for  
17                   you. I would just say -- I just can't remember.

18                   Q     Okay. And partway down there's a bullet point  
19                   that says:

20                                 "Gifted down payments from sources with no  
21                                 clear relationship to the borrower is  
22                                 typically only accepted by lenders if the  
23                                 gift is from immediate family."

24                   So the existence of gifted down payments from  
25                   unrelated or -- parties or parties with no clear

1 relationship to the borrower, is that -- that's  
2 an indication of -- was that a red flag for you?

3 A Yes, conventional lenders will not accept those  
4 gifts unless it is from a direct family member.  
5 A private lender might because they're less  
6 concerned about the sort of parameters of  
7 underwriting than conventional lenders are. So  
8 they might be more comfortable depending on that  
9 particular lender's risk tolerance to accepting  
10 that -- moneys coming from somewhere else and  
11 they're only financing a portion of that  
12 purchase.

13 Q Now, these are all indicators that in their  
14 totality, you know, gave rise to concerns on  
15 your part that there could be facilitation of  
16 criminal activity occurring; is that correct?

17 A That's one possibility. But I think more  
18 broadly based on this sort of -- you know, this  
19 review, there was just suspicion all around,  
20 around all of the individuals who are the  
21 borrowers. So it was more -- I mean, frankly,  
22 it was more about the borrowers than it was  
23 about the broker. I would be speculating as to  
24 what, you know, is underneath that in terms of  
25 the broker's relationship to these borrowers.



1                   "Based on this review it was determined  
2                   that it will be difficult to prove  
3                   misconduct within the scope of FICOM's  
4                   regulatory authority and capabilities, and  
5                   even if some breach of the *Mortgage*  
6                   *Brokers Act* was found, the potential  
7                   outcomes would not be sufficient to  
8                   revoke ... mortgage broker registration.  
9                   Further, the hypothesis that many of these  
10                  mortgage transactions may be facilitating  
11                  larger criminal activities, led to a  
12                  conclusion that this matter is more  
13                  appropriately a police concern and taking  
14                  substantive investigative and regulatory  
15                  steps would unduly alert [the mortgage  
16                  broker] to the intelligence gathered and  
17                  be counter-productive to effective police  
18                  action."

19                  So just I'm going to ask you to elaborate in a  
20                  couple of these statements. The first one is  
21                  why would it be difficult to prove misconduct  
22                  within the scope of FICOM's regulatory authority  
23                  and its capabilities given the list of  
24                  concerning factors that we just looked at.

25                  A       Well, in short the Registrar doesn't regulate



1                   borrowers. The Registrar regulates the broker.  
2                   And there was -- when you look at the actual  
3                   transactions themselves, they're not abnormal.  
4                   When you look at the circumstances around them,  
5                   you start to get a feeling that something's  
6                   unusual and potentially criminal given some  
7                   of -- the nature of some of the borrowers and  
8                   the information that was on hand.

9                   My recollection was there wasn't anything  
10                  that was substantive that would lead to a  
11                  regulatory breach and the significant effort --  
12                  you know, in short, what was looking  
13                  suspicious was frankly a criminal kind of  
14                  matter, not a regulatory matter. And the  
15                  Registrar is not a criminal investigation or  
16                  body and it doesn't investigate organized crime  
17                  by any means of course.

18                 So this was the type of information that  
19                 there was nothing that you could sort of say,  
20                 oh, there's an obvious regulatory breach. What  
21                 would be more the case is if in fact there was  
22                 some kind of connection between the broker and  
23                 these other individuals, if in fact there were  
24                 actual crimes being committed, we don't know.  
25                 That was pure speculation. If in fact that was

1                   borne out by a police investigation and charges  
2                   laid, then the registrar would have the  
3                   potential to look at suitability, not so much  
4                   take disciplinary action for specific  
5                   transactions, but look at the suitability  
6                   question to be registered in the first place.

7                   But absent criminal findings, frankly there  
8                   was -- in my recollection of the review at the  
9                   time was there was, you know, no sort of sense  
10                  of specific regulatory breaches that would be  
11                  addressed -- or sorry, could be addressed.

12                 Q     And there -- was there any basis on which merely  
13                   demonstrated connections with persons known to  
14                   be or suspected to be affiliated with organized  
15                   crime that would -- showing those connections  
16                   wouldn't be sufficient to disqualify a person on  
17                   the basis of suitability from registration?

18                 A     Yeah. In this case there was no admissible  
19                   evidence to establish that those connections  
20                   actually were *bona fide*. So what you have here  
21                   is suspicious circumstances, but mere suspicion  
22                   isn't enough for the Registrar to take  
23                   regulatory action.

24                 MS. PATEL: Mr. Commissioner, I'm going to ask that  
25                   this be marked as the next exhibit.

1 THE COMMISSIONER: Yes, very well. That will be the  
2 next exhibit.

3 THE REGISTRAR: Exhibit 650, Mr. Commissioner.

4 **EXHIBIT 650: FICOM Investigative Services,**  
5 **Review of Sample of Mortgage Transactions - Case**  
6 **file: INV11.343.48836**

7 MS. PATEL: Thank you. Madam Registrar, we can take  
8 this down now.

9 Q And so I think it's fair to summarize the  
10 conclusion was made that there wasn't any action  
11 that the Registrar of Mortgage Brokers could  
12 take in this case within its jurisdiction. Is  
13 that right?

14 A Correct.

15 Q And so what course of action was taken?

16 A The matter was referred by way of that memo to  
17 the RCMP "E" Division.

18 Q Okay. And do you have any insight into what  
19 happened with that referral once it was made to  
20 "E" Division?

21 A They did serve a production order on us to  
22 obtain all of our records which were provided  
23 and beyond that received no further information  
24 until I had a chance meeting with the police  
25 officer involved and just asked whatever

1                   happened to the file and was informed that -- I  
2                   think there was some interest initially but she  
3                   mentioned there was a refocus of priorities.  
4                   And at that time there didn't appear to be any  
5                   further action by the RCMP in this particular  
6                   file. Since then I don't know. I don't have  
7                   any information one way or the other.

8                   Q     Turning back to the -- to other -- well, turning  
9                   away from this matter, are you -- do you have a  
10                  recollection of being involved in referrals of  
11                  any other matters to law enforcement while you  
12                  were with the Registrar?

13                  A     I personally -- okay, there's two things.  
14                  There's specific referrals of specific cases,  
15                  you know, a direct referral to law enforcement.  
16                  The second is the Registrar and our staff  
17                  including myself participated in a number of  
18                  different fora which involved financial crimes  
19                  investigators, police, law enforcement,  
20                  regulators, private sector, individuals with an  
21                  interest in the space. There's an association,  
22                  the International Association of Financial  
23                  Crimes Investigators. There's -- the Security  
24                  Commission back then hosted regular meetings of  
25                  interested regulators and parties. So there's

1                   these different fora which we would present and  
2                   socialize different files we're working on and  
3                   share information there.

4                   The second is the direct referrals. So  
5                   there was -- I'm aware of -- I'm aware we've  
6                   made a number of referrals. Personally I was  
7                   involved with one and I'm aware of others that  
8                   were referred by the investigators or the  
9                   manager of investigations who are more directly  
10                  hands-on. I can't give you an exact number of  
11                  that.

12                 Q    And that one that you were directly involved in,  
13                   is that the one that we were just -- the matter  
14                   that we were just looking at?

15                 A    Sorry, there's two. The one we were just  
16                   looking at, as I described, and there was one  
17                   other one where we -- that was a matter that's a  
18                   cease and desist order in the public domain.

19                 Q    Okay. Are you --

20                 A    And that was referred --

21                 Q    M'mm-hmm.

22                 A    The one we discussed at the beginning.

23                 Q    Yeah. Are -- you're speaking about the matter  
24                   about Mr. Chaudhary?

25                 A    Yes.

1 MS. PATEL: Okay. And Madam Registrar, I'm going to  
2 ask you to pull up a document, RMB0380. And  
3 again let's just keep this one on the internal.  
4 Thank you. Not livestream. Thank you. For  
5 now.

6 Q Mr. McTavish, do you recognize what this  
7 document is?

8 A Yes.

9 Q Okay. And can you just tell us what it is.

10 A It's a case note document between -- a meeting  
11 that myself and members of the team had with the  
12 senior leadership of the RCMP's "E" Division  
13 group, specifically the financial integrity  
14 unit.

15 Q Okay. And so this is -- can you tell me what  
16 the purpose of the meeting was.

17 A It was to socialize the file in question and  
18 also to share information about -- so it was a  
19 dual purpose. One was to socialize the file, in  
20 particular to see if they would take it on. And  
21 the second was to also just take the opportunity  
22 to become more acquainted with each other and  
23 share what our mandate, what we can do, how we  
24 can support them. You know, as a regulator, if  
25 they have questions about mortgage transactions

1                   to consider us as a resource. And, you know,  
2                   just try to explore how we can better share  
3                   information and refer matters which we think  
4                   might be of interest to the police. And in this  
5                   particular case we were referring a specific  
6                   file which we described to them.

7           Q       And can you recall what the outcome of that  
8                   referral was?

9           A       They declined to take it, citing that it did not  
10                   fit within their -- my recollection is that it  
11                   didn't fit within their -- the stated reason is  
12                   it didn't fit within their mandate. It didn't  
13                   hit certain thresholds to qualify to be  
14                   something that would be within their mandate.

15       MS. PATEL: Mr. Commissioner, I'd ask that this case  
16                   note be marked as the next exhibit.

17       THE COMMISSIONER: Very well. That will be 651 is  
18                   it.

19       THE REGISTRAR: Yes, 651.

20       THE COMMISSIONER: Thank you.

21                   **EXHIBIT 651: Case note: Meeting with RCMP -**  
22                   **Case File: INV18.313.53758 - Filing date 03 Apr**  
23                   **2019**

24       MS. PATEL: I'm not sure -- and then -- we can take  
25                   this document down. Thank you very much, Madam

1 Registrar.

2 Q Mr. McTavish, I am not sure if you can speak to  
3 this from recollection, but the date on that  
4 document was April 9th, 2019. Do you recall  
5 that there was a later -- that that meeting  
6 actually took place on a different date?

7 A I vaguely recall there was an error in the case,  
8 but I cannot recall the specific error. And I  
9 remember 2019 being the year. I cannot remember  
10 specifically what month or day that was.

11 MS. PATEL: Okay. If we -- just very briefly, Madam  
12 Registrar, if you could pull up document  
13 RMB0381. And this should be just a subsequent  
14 case note which addresses that date issue.

15 Q Do you -- can you just tell the Commissioner  
16 what this document is.

17 A This is a case note from someone noting that I  
18 corrected a date from what that meeting was. It  
19 appears that it was created by the current  
20 manager of investigations for the Registrar of  
21 Mortgage Brokers, and I apparently -- or the  
22 notes document that I provided the specific  
23 correct date.

24 Q And that correct date was March 20th, 2019?

25 A That's -- yeah, that's what this is telling me.



1 Q Okay.

2 A I just can't -- I cannot recall in my personal  
3 memory that that in fact was the date.

4 MS. PATEL: Okay. I don't think we need to mark this  
5 as an exhibit, Madam Registrar. We can take  
6 this down. That's fine.

7 Q Okay. Did the lack of takeup of these two files  
8 leave you with a concern that there was either a  
9 lack of interest on the part of law enforcement  
10 or some other deficiency which was preventing  
11 them from taking up files that you thought ought  
12 to be pursued?

13 A I can't speak to what law enforcement's  
14 reasoning was other than what was communicated  
15 to us, which was a lack of a mandate in one  
16 case, in the other I guess a pivot in  
17 operational priorities or focus. Again, I don't  
18 know the full details of that, but it's  
19 suggesting to me there is some form of gap.

20 Q Did you ever form an impression as to whether  
21 these matters were perceived as serious criminal  
22 matters when you made those referrals?

23 A I can't say. I can't say.

24 Q I'm going to turn now to questions of regulatory  
25 gaps and areas for legislative amendment or

1                   other change. And I understand that you --  
2                   Mr. McTavish, you spent time, at least until  
3                   early 2020, contributing to the  
4                   federal-provincial working group on money  
5                   laundering and fraud in real estate; is that  
6                   right?

7                   A     Yes, I did. Yes. I participated, yeah.

8                   Q     And we'll hear more about that particular  
9                   endeavour later, but my understanding is this is  
10                  a joint effort between federal and provincial  
11                  levels of government to address the problem of  
12                  money laundering and fraud in real estate; is  
13                  that right?

14                 A     Yes. It was led by -- co-led by the federal  
15                  Ministry of Finance and the BC Ministry of  
16                  Finance.

17                 Q     And in fact that document that we looked at at  
18                  exhibit 610, that was a document that was  
19                  prepared in connection with this project; is  
20                  that right?

21                 A     Yes.

22                 Q     And in your work with this working group, did  
23                  you have an opportunity to consider the  
24                  legislative or regulatory gaps that present  
25                  opportunities or vulnerabilities to money

1                   laundrying and fraud in real estate as they  
2                   relate to mortgage brokers?

3           A        So yes, that was part of broader discussion.  
4                   Yes.

5           Q        Okay. And the followup to that is what -- do  
6                   you have thoughts and did you communicate these  
7                   thoughts on measures that could be taken to  
8                   address money laundrying and fraud through  
9                   mortgage brokering in the course of your work  
10                  with that group?

11          A        So I don't know what the current state is of  
12                   that group, and I don't recall getting to a  
13                   stage with those conversations where we were  
14                   drawing conclusions or making specific  
15                   proposals. So my recollection in what that  
16                   document is is sort of discussion points, things  
17                   to explore that came to mind personally as well  
18                   as canvassing the team. And part of a broader  
19                   conversation with our various partners and  
20                   colleagues who were participating in that  
21                   working group.

22                                And so I don't know what the current state  
23                   of that is, but at the time it was -- I would  
24                   suggest exploratory at that stage just to  
25                   understand what are the possible areas of

1                   vulnerability, what are the possible things to  
2                   look at. I don't recall prior to my departure  
3                   of that effort there being any sort of specific  
4                   proposals or recommendations.

5                   Q     Just to tie up a loose end, Mr. McTavish, can  
6                   you tell me -- you said that after you had  
7                   referred the first matter, the Curtis matter  
8                   we've discussed, to the RCMP, you heard back  
9                   from a female -- you had a chance encounter with  
10                  a female RCMP officer.

11                  A     That's right.

12                  Q     That you thought that she reported the matter  
13                  was not being pursued; is that right?

14                  A     Yeah, that's my understanding from that  
15                  conversation.

16                  Q     And who was that RCMP officer?

17                  A     I believe it was Karen Best.

18                  Q     Okay. We heard earlier today some suggestions  
19                  about measures that might be taken to improve  
20                  the *Mortgage Brokers Act* or to address gaps in  
21                  it. We heard from Samantha Gale that her view  
22                  was that the lack of a managing broker role was  
23                  the biggest gap in the legislation and that  
24                  accompanying that is a lack of appropriate  
25                  qualifications for that role and appropriate

1 education. Do you see that gap as being a  
2 significant one?

3 A I agree it's a gap. In terms of its relative  
4 weight compared to any other aspects, I would be  
5 reticent to take a position. I think what's  
6 important is in the context of regulating the  
7 sector, I mean, aside -- cast aside the money  
8 laundering piece, the legislation is quite  
9 antiquated. It was drafted in -- I think it was  
10 the early 70s, 1972 if I'm not mistaken, with  
11 some updates along the way. It doesn't reflect,  
12 I think, the state of the current industry.

13 And I agree that the absence of a managing  
14 broker role in providing oversight governed  
15 through some legislative requirements is  
16 certainly a gap, I mean, even just from an  
17 administrative perspective. In terms of its  
18 relative weight, I just don't have a position on  
19 that.

20 Q We spoke earlier in your evidence about your  
21 views on the inadequacy of the size of penalties  
22 that perhaps a disgorgement provision would be  
23 helpful. Are there any other general or  
24 specific deterrent provisions that you think  
25 could be added to the act or to the regulations

1                   that would specifically get at the issue of  
2                   unregistered activity?

3           A       Yes, I think what is a noticeable gap is the  
4                   fact that you can't address the conduct outside  
5                   of the mere fact of being unregistered. I think  
6                   an important area that I would think is  
7                   important to address in any new legislation is  
8                   to address that gap. So that there ought to be  
9                   some at least administrative remedies to the  
10                  registrar to address the conduct as if they were  
11                  registered.

12                         So if a registrant is subject to oversight  
13                         for that conduct, someone who's not registered  
14                         but ought to be registered in my mind, that's a  
15                         gap that the registrar cannot address, the  
16                         conduct that surrounds that unregistered  
17                         activity. Number 1.

18                         Number 2, with any financial penalty,  
19                         regardless of the quantum of it or a  
20                         disgorgement provision, is mechanisms that  
21                         enable the Registrar to collect and what those  
22                         are is something I wouldn't opine on, but some  
23                         meaningful tools to enable the Registrar to  
24                         actually collect on those would be an important  
25                         dimension to a deterrent. So that it's one

1                   thing to levy a penalty; it's another to collect  
2                   it.

3                   And so if a person is registered, they  
4                   have -- and if they value their registration,  
5                   they are more likely to satisfy their financial  
6                   obligations to the Registrar because it wouldn't  
7                   be renewed otherwise. If a person's not  
8                   registered, then they don't have the  
9                   registration to value in the first place. So  
10                  there's a moral hazard there that they have less  
11                  incentive to pay those penalties. And so I  
12                  think some meaningful effective manner of  
13                  collecting. I just don't know what those are.

14                  Q    Do you have any views on whether the current  
15                      educational and competency requirements for  
16                      mortgage brokers are sufficient?

17                  A    I don't see that being an area of concern  
18                      relative to the behaviours we're seeing in the  
19                      marketplace. They are not -- the areas that the  
20                      program has, up until my time anyways, focused  
21                      on largely involve behavioural issues, not  
22                      competency issues. So I'm not sure that  
23                      education -- I mean, education is important to  
24                      ensure competency, but I'm not sure that that is  
25                      the problem we're trying to solve for in this

1 context.

2 Q And do you have any thoughts on how to better  
3 foster a culture of compliance and reporting?

4 A I think -- I mean, one thing you could do is  
5 mandate it in legislation by having a positive  
6 duty to report suspicious activity as a  
7 participant in a regulated industry is one  
8 possibility. You know, in terms of the culture,  
9 it's -- that's a complex question. You know,  
10 what comes to my mind are incentive structures  
11 in the industry playing a role. And it's just I  
12 don't know that there's any one sort of silver  
13 bullet, but there's probably measures.

14 Effective enforcement is important. Seeing  
15 that collections are done and industry knowing  
16 they're done is important. If people are  
17 engaging in criminal consequences having  
18 criminal sanctions, I mean, which -- again  
19 beyond our scope as a regulator, but if that  
20 bigger picture is -- in those -- is being  
21 addressed holistically, then I think that -- so  
22 it's a complex solution with a number of pieces  
23 required in my mind to address.

24 MS. PATEL: Mr. Commissioner, those are my questions  
25 for Mr. McTavish today.



1 THE COMMISSIONER: Thank you, Ms. Patel. I'll now  
2 call on Ms. French on behalf of Canada, who's  
3 been allocated five minutes.

4 MS. FRENCH: Thank you, Mr. Commissioner.

5 **EXAMINATION BY MS. FRENCH:**

6 Q Mr. McTavish, can you hear me okay?

7 A Yes, I can.

8 Q Thank you. I just wanted to take you back to  
9 some of your testimony earlier. You were  
10 recalling the one referral that you did make to  
11 law enforcement and how you found out about the  
12 outcome of that investigation. Do you remember  
13 that testimony?

14 A You're talking about the female RCMP member I  
15 spoke to in an event, yes.

16 Q Yes. And so you do recall saying to Ms. Patel  
17 twice, I believe, that it was a chance encounter  
18 that led you to find out --

19 A Yes.

20 Q Thank you.

21 A Yes.

22 Q Do you recall exactly when that happened?

23 A No, I don't. I remember it was at one of the  
24 fora that law enforcement regulators -- and I  
25 believe it was the International Association of

1                   Financial Crimes Investigators. I cannot  
2                   remember the specific year or event. I just  
3                   remember that it was one of those events and  
4                   perhaps in the order of magnitude a few to  
5                   five -- three to four or five years ago.

6           Q     And you don't recall --

7           A     If not more.

8           Q     Thank you. And you don't recall if an email was  
9                   ever sent to you before or after that confirming  
10                  the reasons why the investigation was not  
11                  continuing?

12          A     I can't recall. No, I cannot.

13          MS. FRENCH: Thank you, Mr. McTavish.

14                         Those are all my questions,

15                         Mr. Commissioner.

16          THE COMMISSIONER: Thank you, Ms. French.

17                         I'll call now on Mr. Usher for the Society  
18                         of Notaries Public of British Columbia, who's  
19                         been allocated ten minutes.

20          MR. USHER: Thank you, Mr. Commissioner. Having  
21                         heard the evidence of the witness I have no  
22                         questions at this time.

23          THE COMMISSIONER: Thank you, Mr. Usher.

24                         And finally Ms. Friesen on behalf of the  
25                         province, who has been allocated ten minutes.

1 MS. FRIESEN: Yes. Thank you, Mr. Commissioner. I  
2 as well do not have any questions after hearing  
3 the evidence.

4 THE COMMISSIONER: All right. Thank you,  
5 Ms. Friesen.

6 Anything arising out of Ms. French's  
7 questions, Ms. Patel?

8 MS. PATEL: No, Mr. Commissioner.

9 THE COMMISSIONER: All right. Thank you. Thank you,  
10 Mr. McTavish, we are very appreciative of your  
11 time in sharing your experience and expertise  
12 with us of the area of the *Mortgage Brokers Act*  
13 and its regulations and the various strengths  
14 and weaknesses that exist within that framework.  
15 You're now excused from further testimony.

16 **(WITNESS EXCUSED)**

17 THE COMMISSIONER: And, Ms. Patel, I think we will  
18 adjourn until tomorrow at 9:30.

19 MS. PATEL: Yes, Mr. Commissioner.

20 THE COMMISSIONER: Thank you.

21 THE REGISTRAR: The hearing is now adjourned until --

22 THE COMMISSIONER: I'm sorry. Just before we do,  
23 Madam Registrar.

24 Ms. Patel, were you seeking any particular  
25 direction with respect to the two exhibits that

1                   you asked not to be shown on the livestream?

2                   MS. PATEL: Not at this time, Mr. Commissioner.

3                   There's -- we may have to return to you on

4                   that.

5                   THE COMMISSIONER: Fair enough. Thank you. We'll

6                   adjourn, then, until tomorrow morning at 9:30.

7                   THE REGISTRAR: The hearing is now adjourned until

8                   February 23rd, 2021, at 9:30 a.m. Thank you.

9                   **(PROCEEDINGS ADJOURNED AT 1:58 P.M. TO FEBRUARY 23,**  
10                   **2021)**

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