

**PROCEEDINGS AT HEARING  
OF  
FEBRUARY 25, 2021**

**COMMISSIONER AUSTIN F. CULLEN**

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**February 25, 2021**

**(Via Videoconference)**

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

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

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

MS. PATEL: Thank you, Mr. Commissioner. There are two witnesses today. The first is Mr. Raheel Humayun from the Office of the Superintendent of Real Estate and the second Mr. Michael Scott from the Real Estate Council of British Columbia, both in the Investigations units of those entities. Just so you know, Mr. Commissioner, I have conduct of Mr. Humayun's evidence, and Ms. Rose will be stepping in for Mr. Scott.

THE COMMISSIONER: Thank you, Ms. Patel.

MS. PATEL: Madam Registrar, I believe that Mr. Humayun has indicated that he will affirm.

**RAHEEL HUMAYUN, 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: Raheel Humayun. R-a-h-e-e-l

1 H-u-m-a-y-u-n.

2 THE REGISTRAR: Thank you.

3 MS. PATEL: Thank you. Madam Registrar, if you could  
4 please bring up Mr. Humayun's bio and CV.

5 **EXAMINATION BY MS. PATEL:**

6 Q Mr. Humayun, do you recognize this document as  
7 the bio that you provided to the commission?

8 A Yes, I do.

9 MS. PATEL: If we could just scroll down to the next  
10 page, please, Madam Registrar.

11 Q Do you recognize that below this, attached to  
12 the same document but below the bio is a CV?

13 A Yes, I do.

14 Q And that's your CV?

15 A Yes.

16 MS. PATEL: Perfect. Madam Registrar, you can scroll  
17 back up to the top.

18 Q I understand, Mr. Humayun, your current role is  
19 the managing director of investigations for the  
20 Office of the Superintendent of Real Estate?

21 A That's correct.

22 Q And if from now on I just refer to that office  
23 as OSRE, are we on the same page?

24 A Yes.

25 Q Perfect. Can you just describe for the

1 Commissioner what your responsibilities are as  
2 the Managing Director of Investigations?

3 A Sure. Yeah, the Office of the Superintendent of  
4 Real Estate is the British Columbia government's  
5 real estate regulator. So we are a department  
6 of the Ministry of Finance within the BC public  
7 service. I lead the enforcement function of the  
8 office. That means I manage a team of managers,  
9 investigators, intake staff who respond to  
10 allegations of misconduct in respect of the real  
11 estate legislation that we administer and  
12 enforce at OSRE. Our enforcement staff respond  
13 to complaints of unlicensed activity, improper  
14 real estate development marketing, these types  
15 of alleged breaches of real estate legislation  
16 to deliver on our consumer protection mandate in  
17 the real estate sector.

18 Q And you joined the office in 2017; is that  
19 right?

20 A February 2017, yes.

21 Q And prior to joining OSRE, you had a senior  
22 role, a senior officer for the BC Ombudsperson;  
23 is that correct?

24 A I was an Ombudsperson Officer for this  
25 province's Ombudsperson, yes.

1           Q     Can you just briefly describe what your role was  
2                   there?

3           A     Sure.  So the BC Ombudsperson is tasked with  
4                   administrative oversight of public authorities  
5                   in this province under the BC *Ombudsperson Act*.  
6                   As an Ombudsperson Officer I responded to  
7                   complaints of allegations of maladministration  
8                   within BC's public authorities, conducted  
9                   investigations and authored reports for various  
10                  entities on the results of investigations of  
11                  procedural and administrative fairness at  
12                  BC public authorities.

13          Q     And you were at the -- you held that role, the  
14                  Ombudsperson, from 2013 to 2017; is that  
15                  correct?

16          A     Yes.

17          Q     And before that I understand that you served  
18                  with the RCMP?

19          A     I was a civilian member of the Royal Canadian  
20                  Mounted Police National Forensic Services 2007  
21                  to 2013.

22          Q     And in that capacity with the RCMP, did you  
23                  receive any specialized financial crime  
24                  training?

25          A     No.

1 Q Okay. But you did later take -- you have later  
2 taken training in anti-money laundering and  
3 fraud examination?

4 A Yes. So I carry a certified anti-money  
5 laundering specialist status from the  
6 Association of Certified Anti-Money Laundering  
7 Specialists. I also have a CFE or certified  
8 fraud examiner credential from the Association  
9 of Certified Fraud Examiners. I also have a  
10 certified financial crimes investigator  
11 certificate from the Association of Financial  
12 Crimes Investigators -- International  
13 Association of Financial Crimes Investigators.

14 Q Are those certifications that you obtained while  
15 working at OSRE?

16 A Yes.

17 MS. PATEL: Madam Registrar, I've lost track of the  
18 number so you'll have to assist me but,  
19 Mr. Commissioner, I'd like to ask that this CV  
20 be marked as the next exhibit.

21 THE COMMISSIONER: 656.

22 THE REGISTRAR: Exhibit 656.

23 **EXHIBIT 656: Biography of Raheel Humayun**

24 MS. PATEL: And we can take down the CV now. Thank  
25 you, Madam Registrar.

1           Q     Mr. Humayun, can you just back up for a moment  
2                   to the jurisdiction of the Office of the  
3                   Superintendent of Real Estate, what is its  
4                   mandate, and maybe with reference to the  
5                   legislation would be a convenient way to get at  
6                   that?

7           A     Sure, happy to. Yes. So as you signalled, the  
8                   Office of the Superintendent of Real Estate  
9                   receives its authority through legislation. The  
10                  *Real Estate Services Act* is the piece of  
11                  provincial legislation which defines how real  
12                  estate services must be delivered in this  
13                  province, sets the licensing requirements for  
14                  activities that require a licence under the act.  
15                  OSRE's role in administering and enforcing that  
16                  act is ensuring compliance with persons who  
17                  provide real estate services, making sure that  
18                  they are delivered in accordance with the act.  
19                  That means that persons who provide real estate  
20                  services without a licence or without reliance  
21                  on an acceptable exemption from the requirement  
22                  to be licensed cease doing so.

23                         The act contemplates significant penalties  
24                         and consequences for a person or corporation  
25                         that acts contrary to that piece of legislation.



1 Under the *Real Estate Services Act*, unlike the  
2 other pieces of legislation that I'll discuss in  
3 a moment, we have shared accountabilities with  
4 our partners in regulation, the Real Estate  
5 Council of British Columbia. The Real Estate  
6 Council of British Columbia has primary  
7 authority since 2005, since the creation of the  
8 *Real Estate Services Act* in 2005, to govern the  
9 activities of its licensees to maintain a  
10 licensing program, to deliver education, initial  
11 and continuing, to take action in response to  
12 allegations of misconduct by those licensees,  
13 and to ensure that brokerages and licensee  
14 records are maintained to a standard acceptable  
15 to the Real Estate Council of British Columbia.  
16 So in that way OSRE and the Real Estate Council  
17 of British Columbia co-regulate real estate  
18 services under the *Real Estate Services Act*.  
19 There is some duplicative authority. And in  
20 addition, the Office of the Superintendent of  
21 Real Estate has some oversight accountabilities  
22 in respect of the Real Estate Council of British  
23 Columbia. So the oversight accountabilities are  
24 set out in statute at 89.1 and contemplate  
25 directing the real estate council to conduct an

1 investigation or further investigation to issue  
2 a notice of discipline hearing.

3 The Office of the Superintendent of Real  
4 Estate's oversight also extends to appeals to  
5 the financial services tribunal of decisions  
6 made by the Real Estate Council of British  
7 Columbia. In addition, the OSRE has authority  
8 to act autonomously in respect of real estate  
9 licensees where the superintendent of real  
10 estate determines that allegations are  
11 sufficiently seriously detrimental to the public  
12 interest to pursue an investigation under  
13 legislative authority.

14 The next piece of legislation from which  
15 OSRE derives its authority is the *Real Estate*  
16 *Development Marketing Act* of British Columbia.  
17 That piece of legislation sets expectations for  
18 development marketing in this province. The act  
19 is referred to as *REDMA*. *REDMA* requires that  
20 developers provide materially true disclosure to  
21 consumers of real estate developments in this  
22 province and that they protect deposits and  
23 place them in trust. So *REDMA* is a disclosure  
24 and deposit protection regime in respect of real  
25 estate development. So OSRE has sole authority

1 to take enforcement action against real estate  
2 developers who may not comply with that act and  
3 also maintains a rigorous compliance function to  
4 accept disclosure statements which are highly  
5 detailed documents that disclose material facts  
6 about the development such as the ability of the  
7 developer to provide clear title, the granular  
8 details of the development itself such as  
9 whether necessary approvals are in place and  
10 permits and material facts about the development  
11 itself. And so we have enforcement -- both  
12 compliance and enforcement authority under that  
13 act. The superintendent delivers policy  
14 statements which are anchored in that  
15 legislation but give greater detail on the  
16 superintendent's requirements under *REDMA* in  
17 respect of disclosure and trust protection.

18 Under *REDMA* also exists the Condo and Strata  
19 Integrity Register of British Columbia. The  
20 province of British Columbia amended legislation  
21 in 2018 to eventually establish -- the programs  
22 is referred to as CSAIR -- to eventually  
23 establish CSAIR, which came into force in  
24 January 2020. Under CSAIR developers are  
25 required to report on assignments of their

1           development units, meaning if a purchaser  
2           purchases a development unit and later assigns  
3           that purchase agreement to another purchaser,  
4           the details of that assignment must be recorded  
5           by the developer and reported to the  
6           administrator. The administrator of CSAIR is  
7           not the superintendent of real estate. It is  
8           the Property Taxation Branch. PTB within the  
9           Ministry of Finance administers that program and  
10          the Land Title Survey Authority, or LTSA,  
11          manages the database or register itself. So  
12          OSRE has compliance -- sorry, were you going to  
13          say something?

14          Q     No, finish your sentence and then I had a  
15          further question about the registry.

16          A     Yes, so OSRE's sole function in respect of CSAIR  
17          is to respond to developer non-compliance under  
18          that program, meaning we at OSRE are empowered  
19          to investigate non-compliance with that  
20          reporting requirement under CSAIR.

21          Q     Right. So if there were any issues arising,  
22          taxation issues arising from on the purchaser's  
23          side, that's not within OSRE's scope of  
24          oversight?

25          A     Correct. So CSAIR -- government's stated

1 intention for implementing CSAIR was to improve  
2 tax compliance and to inform later future  
3 housing policy. If there are property transfer  
4 tax implications arising from the program, those  
5 are the responsibility of the Property Taxation  
6 Branch.

7 Q And the question I was going to ask you before,  
8 and you've touched on the answer just now, is if  
9 you can -- if you're aware of the issues that  
10 gave rise or the context that gave rise to the  
11 creation of CSAIR, of the registry.

12 A So CSAIR was -- is a program of the Ministry of  
13 Finance and as I indicated Property Taxation  
14 Branch, and their reasons for establishing the  
15 program I'm not privy to.

16 Q Okay. Is it fair to say that both of those  
17 pieces of legislation from which OSRE derives  
18 its mandate, *REDMA* and *RESA*, the *Real Estate*  
19 *Services Act*, are both in the nature of consumer  
20 protection legislation more than anything else?

21 A Absolutely. Because you mentioned it I'll just  
22 quickly state that OSRE does have limited  
23 accountabilities under the *Strata Property Act*.  
24 And they are we don't administer the act and we  
25 don't have enforcement powers under the act

1 per se, but because of the *Strata Property Act*  
2 interrelationship to real estate development  
3 marketing, we do have some limited  
4 accountabilities under that act. But as you've  
5 stated, *RESA* and *REDMA* are primary consumer  
6 protection pieces of legislation. OSRE's  
7 primary mandate is one of consumer protection  
8 and it's derived from those two enactments.

9 Q And we've heard about this prior but you can --  
10 you agree that neither *REDMA* nor *RESA* include at  
11 this time any express AML anti-money laundering  
12 mandate?

13 A That's correct.

14 Q And just to make sure we've got the full context  
15 here, it was announced in November of 2019 that  
16 OSRE and RECBC, the real estate council, would  
17 be amalgamated and put under the umbrella of  
18 BCFSA; is that right?

19 A That's correct.

20 Q And that process, I mean, that evidently has not  
21 taken place yet, but do you anticipate that that  
22 work is in progress and that is going to be  
23 happening soon?

24 A Certainly, yes. Since November 2019 when the  
25 Minister of Finance announced that the Office of

1           the Superintendent of Real Estate, the Real  
2           Estate Council of British Columbia would  
3           together join the newly established Crown  
4           agency, the BC Financial Services Authority,  
5           work has been undertaken to move towards that  
6           amalgamation and it continues.

7           Q    We're going to be hearing later from somebody  
8           from the Real Estate Council of BC with respect  
9           to their investigations and enforcement, but I  
10          want to clarify the scope of your jurisdiction  
11          of OSRE over licensees. You did mention this,  
12          but I just was wondering if we could slow down,  
13          unpack it a little bit. I understand there's  
14          two provisions in the act which give OSRE  
15          supervision over real estate licensees, 48(1) of  
16          the act and 89.1. Is that correct?

17          A    Yeah. So maybe it will be helpful if I kind of  
18          set the table by separating those areas that we  
19          have sole jurisdiction and perhaps as you're  
20          signalling somewhere where there may be shared  
21          jurisdiction. So OSRE has sole jurisdiction to  
22          investigate unlicensed activity under *RESA* and  
23          developer activity contrary to *REDMA*, allegedly  
24          contrary to *REDMA*. The area of licensee  
25          activity, so allegations of misconduct by a real

1 estate licensee in this province, OSRE does have  
2 authority to investigate those licensees under  
3 section 48.1(b) where that licensee activity may  
4 be seriously detrimental to the public interest.  
5 In those instances -- in any instance of alleged  
6 misconduct in respect of a licensee, the Real  
7 Estate Council of British Columbia has primary  
8 authority to investigate. The vast majority of  
9 investigations historically and currently in  
10 respect of licensees are conducted by the Real  
11 Estate Council of British Columbia, but we do  
12 have an additional authority at OSRE to  
13 investigate licensees in that way. Section 89.1  
14 in terms of -- doesn't necessarily -- as you  
15 know, it sets out oversight responsibilities  
16 which are -- I view them as distinct from  
17 investigatory, so those under 89.1, if those  
18 powers are exercised by the superintendent,  
19 those would typically be requiring the Real  
20 Estate Council of British Columbia to do a thing  
21 in response to the superintendent's direction  
22 versus the superintendent conducting  
23 investigatory activities in respect of  
24 licensees.

25 Q And so in that way, that's where OSRE's



1 supervisory role over the real estate council  
2 comes into play?

3 A 89.1 was established along with the end of  
4 self-regulation in 2016, so that is relatively  
5 new oversight powers that direct the activities  
6 of the real estate council in prescribed ways.  
7 There was some measure of oversight, meaning the  
8 superintendent even before these legislative  
9 changes had authority to appeal decisions to the  
10 financial services authority. But 89.1 is  
11 the -- is part of the 2016 changes to the *Real*  
12 *Estate Services Act*.

13 Q Okay. And I want to such on that power to  
14 appeal that you've just mentioned. So there are  
15 instances in which OSRE can appeal a decision of  
16 the real estate council?

17 A There are, yes.

18 Q And in what kind of circumstances would that  
19 take place? You may only be able to speak from  
20 your own experience of what you've seen, but  
21 what kind of instance would that take place?

22 A Yeah. Thank you for signalling that, yeah. So  
23 the enforcement function, my function, the  
24 investigatory function, is quite separate from  
25 OSRE's authority to take oversight action. So

1 as the head of our investigative function I  
2 don't participate in appeal proceedings or  
3 considering the facts in respect of same. So I  
4 don't have any duties, formal or informal, in  
5 respect of appeals. We have policy and  
6 oversight staff who work closely with the  
7 superintendent to review consent orders, any  
8 order of the real estate council whether  
9 discipline or consent. And they consider the  
10 facts and along with the superintendent may  
11 determine that an appeal to the FST is  
12 warranted. But my knowledge on the subject  
13 doesn't extend far beyond that.

14 Q As the Managing Director of Investigations would  
15 you have any role in a decision by OSRE to make  
16 a direction to the real estate council to  
17 investigate a particular matter?

18 A I may be consulted from an area of subject  
19 matter expertise on whether, you know, an  
20 investigation was sufficiently thorough or  
21 proper. So I may give sort of procedural advice  
22 on investigatory practices, reporting practices,  
23 things of that nature. But weighing the facts  
24 of whether an appeal is warranted would be  
25 reserved to the superintendent and its policy

1 and oversight staff.

2 Q Okay. And returning to the jurisdiction of OSRE  
3 pursuant to section 48.1(b) of the act, again  
4 that is a jurisdiction over conduct of licensees  
5 that is contrary to the public interest?

6 A Yes. So section 48.1(b) states that the  
7 superintendent may investigate allegations of  
8 licensee misconduct that is seriously  
9 detrimental to the public interest.

10 Q Thank you. That's the wording I was looking  
11 for.

12 A Yeah, no problem. The term is not defined in  
13 legislation. The term is at the  
14 superintendent's discretion to determine whether  
15 the test has been met. But generally speaking  
16 seriously detrimental to the public interest  
17 could include issues that pose a substantial  
18 risk to the public interest, cause significant  
19 consumer harm or more broadly undermine the  
20 public's confidence in the real estate industry  
21 or the regulation of the real estate industry.

22 Q Okay. And I'm conscious that I don't want you  
23 to give me details of ongoing investigations,  
24 but at a very general level can you tell me what  
25 kinds of conduct might be considered seriously

1                   detrimental to the public interest by OSRE such  
2                   that 48.1(b) jurisdiction would kick in or that  
3                   authority would be exercised?

4           A       Certainly, yeah, I'm happy to do that. And  
5                   perhaps I'll caveat to say that like all  
6                   allegations of misconduct, even the ones that  
7                   I'll mention are on a spectrum, meaning simply  
8                   the existence of a conflict itself wouldn't  
9                   necessarily necessitate the somewhat  
10                  extraordinary step for OSRE to do an  
11                  investigation on a 48.1(b) but a conflict of a  
12                  serious nature not disclosed or improperly  
13                  disclosed would be an example of something that  
14                  would rise to that standard. Dishonest  
15                  practices, deceptive dealing, material  
16                  misstatements or material misleading statements.  
17                  Actions by a licensee that raise serious  
18                  questions about that licensee's competence or  
19                  diligence. Things of that nature. And, sorry,  
20                  as I led by saying not the mere existence of  
21                  those things but rather demonstrable misconduct  
22                  in those types of fact patterns.

23           Q       Okay. Are you able -- actually, Madam  
24                   Registrar, I'm going to give us a visual aid.  
25                   Madam Registrar, can you bring up exhibit 603,

1 page 44.

2 And, Mr. Humayun, you may not know what this  
3 document is. It's an overview report that has  
4 been prepared by the commission. It's been  
5 entered as an exhibit. It's an overview of  
6 legislation and regulations pertaining to real  
7 estate in British Columbia. And at  
8 paragraph 140 here under the heading "Complaints  
9 and Investigations" there's a chart which sets  
10 out that between 2017 and 2019 the subject  
11 matter of the superintendent's investigations  
12 were as follows. What I was looking for there  
13 was the -- whether there's an indication in this  
14 chart of how many -- of what percentage of your  
15 investigations would be related to licensees,  
16 and perhaps under that 48.1(b) jurisdiction?

17 A Yeah. So happy to. So as you can see from the  
18 chart the vast majority of our activity under  
19 *RESA* is in respect of unlicensed activity, so  
20 the percentages there reflect where the most of  
21 our enforcement activity occurs. There is some  
22 amount of licensee activity that we consider.  
23 Not everything that we see represented on this  
24 chart would we say is truly seriously  
25 detrimental to the public interest, but some

1 level of investigation is necessary in order to  
2 make some type of -- make a confident  
3 determination. So yes, these statistics were  
4 gathered by my enforcement staff and appear  
5 correct.

6 Q All right. And just as a refresher, trading  
7 services is what a member of the public might  
8 typically think of as the function of a real  
9 estate agent that they go to to assist them in  
10 the buying or the selling of a home?

11 A That's correct. So trading services are what  
12 most people would understand as the activities  
13 of a real estate agent assisting them in  
14 purchase of a home. However, the legislative  
15 definition includes trading services in respect  
16 of rental property, so -- and people may not,  
17 the public may not appreciate that immediately.  
18 So in our -- *RESA* includes trading services in  
19 all the activities around a licensee -- or,  
20 sorry, not a licensee, a person providing real  
21 estate services in respect of a rental unit,  
22 finding a party to acquire, showing the unit.  
23 These are all trading services just simply in  
24 respect to rental real estate. But largely the  
25 way you framed it is true. Trading services is

1                    what you mention a real estate licensee to help  
2                    you with.

3                    Q    And before we take this down I was looking at  
4                    the percentage of total investigations on the  
5                    right-hand column and what jumps out is that  
6                    almost 44 percent of your investigations at  
7                    least between 2017 and 2019 were in respect of  
8                    the unlicensed activity in trading services.  
9                    And does that -- this is up to 2019. Does it  
10                   accord with your experience in the last year and  
11                   a half or so that that continues to occupy a  
12                   significant amount of your investigative  
13                   resources?

14                   A    Yes. So these are representative of current  
15                   state as well, and the important caveat which I  
16                   think I've mentioned is that they would be  
17                   likely commingled with the notion of rental  
18                   property management services represented in that  
19                   statistic as well. So these could cover trading  
20                   services as we understood it, a piece of real  
21                   estate being purchased, but they could also  
22                   overlap with a rental property.

23                   Q    And before we take this down, I wanted to just  
24                   ask with respect to licensee conduct that you  
25                   investigate, that 12.9 percent of

1 investigations, are there any trends in the  
2 kinds of conduct that you see coming in by way  
3 of complaint or trends in the kind of conduct  
4 that OSRE is investigating with respect to  
5 licensees?

6 A So in terms of broader trends for real estate  
7 licensees, certainly the Real Estate Council of  
8 British Columbia is better placed to weigh in on  
9 those. However, from specifically a seriously  
10 detrimental to the public interest perspective,  
11 I'm happy to expand.

12 So most often the types of activity that  
13 would arise are those that are commingled with  
14 the primary legislative authority that OSRE  
15 exercises. So those with close interface to  
16 unlicensed activity. So sophisticated  
17 unlicensed operations which are operating on  
18 wholesale or larger business scale levels may  
19 intersect with licensee activities. Similarly  
20 misconduct under the *Real Estate Development*  
21 *Marketing Act* where licensee activity is closely  
22 related to that misconduct, that is much more  
23 likely to involve OSRE's role acting under  
24 section 48.1(b). So those are two trends I  
25 could identify for the commission today, and



1                   that is licensee activity relating to serious  
2                   unlicensed activity and serious developer  
3                   non-compliance.

4           Q       And are there any trends in those investigations  
5                   or complaints that you're seeing that you would  
6                   connect to money laundering concerns?

7           A       No, I wouldn't characterize them as money  
8                   laundering-related allegations.

9           Q       And I keep saying that I have one last question  
10                  based on this chart before I take it away, but I  
11                  do have one last question on this chart before I  
12                  ask Madam Registrar to take it down. With  
13                  respect to *REDMA* and you say your marketing  
14                  disclosure, deposit trust protection, can I just  
15                  clarify, OSRE doesn't have any jurisdiction --  
16                  again, sorry, you said that *REDMA* is a consumer  
17                  protection statute primarily; correct?

18          A       Exactly.

19          Q       And so OSRE doesn't have any oversight or view  
20                  into investment into development on the other  
21                  side; is that right?

22          A       That's correct. So if you're discussing capital  
23                  raising or things of that nature, OSRE has no  
24                  function. The only aspect of financing at all  
25                  that OSRE would consider under *REDMA* is the

1           notion of whether the developer has taken  
2           adequate steps to ensure clear title is provided  
3           to purchasers upon completion of the purchase  
4           agreement. So that means that those -- any  
5           mortgages or liens or other types of liabilities  
6           or encumbrances placed on title are  
7           appropriately removed before purchase  
8           completion. So *REDMA* does provide authority for  
9           the superintendent to test developer's  
10          compliance with the requirement to provide clear  
11          title.

12          MS. PATEL: Okay. Madam Registrar, we can take this  
13          down now, thank you.

14          Q     With reference to that line item that took up  
15          the most investigative -- that comprised the  
16          majority of the investigations or at least the  
17          largest number, the unlicensed activity,  
18          unlicensed trading activity, can you give us a  
19          sense of what are the types of matters that OSRE  
20          is investigating with respect to unlicensed  
21          activity?

22          A     Sure. Yes. So the largest share of our  
23          unlicensed work is in respect of persons  
24          providing real estate services in respect of  
25          rental units. So that is providing trading

1 services in respect of those units, which means  
2 advertising. Maybe I should step back a moment.  
3 So a person -- to give more of an example, a  
4 person engages an unlicensed property manager to  
5 manage their unit, their rental unit or units.  
6 The unlicensed rental manager advertises the  
7 unit, finds a party to acquire the unit, makes  
8 representations about the unit, accepts deposits  
9 from a tenant, conducts reviews on the  
10 suitability of that tenant, prepares a  
11 residential tenancy agreement or equivalent with  
12 the tenant and the property owner and then gets  
13 the tenant into the unit, continues to service  
14 the relationship both on the property owner's  
15 side and the tenant side. And all the while the  
16 unlicensed person receives remuneration or the  
17 promise of future remuneration. So remuneration  
18 is broadly defined in *RESA*, and all those things  
19 at first blush are non-compliant with *RESA* and  
20 the person acting contrary to *RESA* is the  
21 unlicensed property manager by conducting real  
22 estate services in respect of a unit and  
23 accepting remuneration or contemplating future  
24 remuneration in the circumstances.

25 Q So the majority, you understand, then, the

1 majority of the unlicensed trading activity that  
2 you are seeing at OSRE is not in respect of  
3 buying and selling properties but in respect of  
4 rental management?

5 A That's true. Yes.

6 Q Are there areas in your investigations of  
7 unlicensed persons where you run into issues of  
8 the use of cash?

9 A Yes. So in unlicensed rental property  
10 management services, we have seen instances  
11 where an unlicensed property manager by  
12 requirement sets expectations that rent be paid  
13 to them in cash and that they essentially  
14 without -- writing it down they require it as an  
15 aspect of maintaining your residence in the  
16 unit. That's how you make payments. And then  
17 you -- that rental property manager deposits the  
18 cash in bank accounts or provides it in some  
19 pre-agreed way with the owner of the rental  
20 unit.

21 Q And is this a practice that that would be not,  
22 that would be forbidden to a licensed -- to a  
23 licensee engaging in rental management?

24 A It's a good question. So the way that I -- in  
25 the way that I just described in the example, I

1                   can see a number of licensee concerns that would  
2                   be -- that would be raised. If a licensee were  
3                   to require that all payments were to be made in  
4                   cash simply -- at its simplest may be an unfair  
5                   requirement for tenants, but I can consider more  
6                   conduct concerns arising out of the practice.

7           Q       Are there any -- and I might be asking you to  
8                   speak beyond your specific knowledge, your  
9                   expertise, but are you aware of any legislative  
10                  provisions or rules governing licensees that  
11                  would address the acceptance of cash?

12          A       Certainly. Certainly. So as the commission is  
13                  aware, licensees have a requirement to report  
14                  suspicious transactions. I don't want to  
15                  venture into the hypothetical, but as we know  
16                  that includes minimum threshold cash reporting  
17                  requirements, but it also requires truly  
18                  suspicious transactions and I would view a  
19                  necessity to accept rental payments exclusively  
20                  in cash as suspicious by nature and requiring,  
21                  most likely requiring a report, at a minimum.

22          Q       With respect to -- are there limits to OSRE's  
23                  jurisdiction over rental management that you  
24                  have run into?

25          A       Certainly. Yes. So in the scenario that I

1 described where a person engages with a piece of  
2 rental property, and you asked the question in  
3 terms of how much of our time was spent, so I  
4 did focus on entirely leases, right, I was  
5 focused on rental. But there is trading  
6 services, more traditional that occurs,  
7 unlicensed alleged trading services that occurs.  
8 And this example is relevant to both, so I just  
9 wanted to quickly say that in the unlicensed  
10 trading services space that would mean an  
11 unlicensed entity is advertising property,  
12 finding a party to acquire a property, made  
13 representations about that property all for or  
14 in expectation of remuneration, and is doing so  
15 while unlicensed and while not relying on an  
16 exemption to be licensed. So in terms of limits  
17 to our authority to consider that type of  
18 activity, properly the *Real Estate Services Act*  
19 does not require a licence to provide real  
20 estate services in respect of yourself. Meaning  
21 a property owner quite properly can rent out  
22 their own unit without the assistance of a  
23 licensee, can receive payments, make  
24 representations. You know, that is enshrined in  
25 the *Real Estate Services Act*. Similarly they

1           can sell their property without the assistance  
2           of a licensed real estate licensee.

3                         However, that has evolved in some ways in  
4           respect of allowing persons who are providing  
5           activities like that on a wholesale or business  
6           scale, and what that means, maybe I'll first  
7           describe it in the rental context. So a person  
8           can hold a residential tenancy agreement for a  
9           unit they don't own and so they can engage with  
10          a property owner and say, I'd like to rent your  
11          unit for \$2,000. The property owner agrees.  
12          They enter into a residential tenancy agreement  
13          and now the person who holds that residential  
14          tenancy agreement, the tenant per se, they can  
15          assign that rental tenancy agreement to another  
16          person. They can sublet is a more accurate  
17          word. So they can sublet that agreement for a  
18          higher rate and they can put a different person  
19          in the unit. What we have seen is individual  
20          persons or corporations entering into multiple  
21          residential tenancy agreements and then  
22          assigning or subletting multiple residential  
23          agreements to multiple tenants. And so they are  
24          receiving payment for those services that  
25          they're providing through an increase in the

1                   rent for the downstream subletter. So they are  
2                   receiving payments, they are helping that party  
3                   acquire -- they're providing real estate  
4                   services, but they're providing them to  
5                   themselves in the same way the more traditional  
6                   thing you would imagine for a person renting out  
7                   their own unit.

8                   On the trading side or traditional trading  
9                   side in response to -- or relation to selling a  
10                  unit, a person can, as I stated, properly rely  
11                  on *RESA* to provide services to themselves and  
12                  sell their own unit; however, what a person can  
13                  also do is enter into a purchase agreement with  
14                  an individual to buy their unit without the use  
15                  of a licensee necessarily and simply say, I'd  
16                  like to buy your unit, and they create a  
17                  purchase agreement. And the purchase agreement  
18                  has a completion date in the future and money is  
19                  perhaps paid or not paid in term of a deposit.  
20                  Purchase agreement is satisfactory to both  
21                  parties and allows for the assignment of that  
22                  purchase agreement to a future party. Whether  
23                  or not that was explicitly explained to the  
24                  initial property owner is unknown; however,  
25                  that's what the contract says. And in that



1           example the person who holds that purchase  
2           agreement may assign it to another purchaser for  
3           a lift in the price if they desire to do so. So  
4           a person could hold multiple purchase agreements  
5           of that type and could assign those purchase  
6           agreements to multiple other parties. They'd be  
7           providing trading services, they'd be making  
8           recommendations, they'd be doing all real estate  
9           services, but they would be doing them on  
10          respect of themselves because they hold that  
11          agreement. They're a principal in the eyes of  
12          *RESA*.

13                        So OSRE does not have authority to act in  
14                        either of those circumstances. OSRE -- those  
15                        persons would technically be acting in  
16                        accordance with *RESA* in that they are providing  
17                        any real estate services that they're providing  
18                        to themselves.

19           Q       That last scenario you described of entering  
20                    into an agreement of purchase and sale of the  
21                    right of assignment onwards, do you agree that  
22                    this is a version of the activity that led to  
23                    the elimination of dual representation for  
24                    licensees?

25           A       I would say the fact that it is closely aligned

1 to the CSAIR, the Condo and Strata Assignment  
2 Integrity Registrar, so meaning because it  
3 contemplates assignment of a contract to another  
4 with kind of an unknown in the middle of what's  
5 going on in between transfers, who is receiving  
6 the benefit of this transfer. Is it the initial  
7 property owner? Likely not. Likely it's the  
8 person who is taking the risk by buying that  
9 purchase -- or entering into that purchase  
10 agreement and then assigning it. But you're  
11 quite right in that it does raise questions of  
12 conflict and who's being represented here. So  
13 typically something like that when we've seen it  
14 has not involved the use of real estate  
15 licensees. These are persons entering into  
16 agreements between themselves and assigning it  
17 in ways that don't necessarily require the use  
18 of a licensee.

19 Q And so when you as an investigator at OSRE run  
20 across this kind of conduct and you might have  
21 concerns about it, well, first of all, does that  
22 give rise to concerns for you?

23 A Sure. Yeah, completely. In both fact patterns  
24 initially we would pursue the issue with vigour,  
25 meaning we see what looks like traditional

1                   unlicensed activity; it looks to be on a scale  
2                   approaching a business scale or wholesale  
3                   activity. Investigators would attend, would  
4                   rely on the host of our enforcement powers to  
5                   begin investigating to obtain documentation,  
6                   records, circumstances, statements and to  
7                   conduct traditional robust investigatory work to  
8                   learn that underlying these agreements are these  
9                   contracts that effectively subvert the  
10                  regulatory regime, and then we're tasked with  
11                  what do we do in these circumstances. It is  
12                  clear that we don't have authority under *RESA* to  
13                  act under those enactments and so we have to  
14                  make a determination on the facts what's  
15                  appropriate to do given what we've learned to  
16                  date on the file.

17                Q     And what type of steps might you take once you  
18                      realize that your jurisdiction has simply run  
19                      out?

20                A     It depends entirely on the fact pattern but to  
21                      extend our example using cash. So in an example  
22                      where a rental property manager is unlicensed,  
23                      is operating in this wholesale way, but in  
24                      technical accordance with the *Real Estate*  
25                      *Services Act* but has structured their business

1                   in such a way that involves this problematic  
2                   activity under cash, we would make a prompt  
3                   referral to the Canada Revenue Agency based on a  
4                   suspicion of a tax evasion.

5           Q       And so for these activities to be brought within  
6                   OSRE's jurisdiction or the jurisdiction of  
7                   whatever entity succeeds OSRE, there would need  
8                   to be some kind of amendment to contemplate  
9                   that?

10          A       Likely the remedy would be in legislation, yes.  
11                   So *RESA*, as you know, came into force in 2005.  
12                   In OSRE's view, *RESA* did not contemplate the  
13                   type of wholesale or business scale activity  
14                   that might result. It's a very different real  
15                   estate market in British Columbia obviously than  
16                   it was in 2005. There's a lot to gain in just  
17                   simply even in the rental market, the high  
18                   market rate of rental units creates an incentive  
19                   for persons to operate in that space. And there  
20                   are a number of ways I suppose it could be  
21                   addressed in legislation. One area where we've  
22                   internally considered was the notion of setting  
23                   some type of threshold for the activity,  
24                   acknowledging that there is an enshrined right  
25                   in the *Real Estate Services Act* as it exists

1 right now to allow a person to sublet their own  
2 unit or rent out their own unit or in fact even  
3 sell their own unit and these exist in the law  
4 for good reason, but you're quite right that  
5 possibly the remedy is through legislation.

6 Q Turning back to your relationship, OSRE's  
7 relationship with the Real Estate Council of BC,  
8 what's the nature of the relationship at the  
9 investigation and enforcement level? What kind  
10 of communications and information sharing do you  
11 have?

12 A Sure. So as I stated before since 2005 under  
13 the *Real Estate Services Act* the Real Estate  
14 Council of British Columbia has primary  
15 authority to consider and investigate the  
16 actions of its licensees. We do have some of  
17 that duplicative authority that we discussed a  
18 bit on section 48.1(b), but we do communicate  
19 regularly. So we make referrals to each other  
20 with a high frequency, meaning any time the real  
21 estate council observes allegations of  
22 unlicensed activity, they promptly refer it to  
23 the superintendent of real estate and take  
24 action.

25 So they may receive that type of information

1           either from the public making a complaint to  
2           them where it was perhaps intended or better  
3           placed with our office, or it may be the result  
4           of their compliance and investigatory work that  
5           they uncover relevant allegations of unlicensed  
6           activity that they'll promptly refer to us. So  
7           in either way in a working model they would  
8           promptly remove -- refer those matters to OSRE.  
9           Similarly with real estate development marketing  
10          activity that they consider possibly  
11          noncompliant with *REDMA* they would promptly  
12          refer to our office. Those are kind of the  
13          informal or by-rote referrals that occur. The  
14          similar from our side, we would consider  
15          anything we receive that for whatever reason  
16          they didn't receive, RECBC didn't receive, we  
17          would consider and make focus referrals to them  
18          as well if they had anything to do with licensee  
19          activity that was properly addressed by the Real  
20          Estate Council of British Columbia. We would  
21          also -- we also rely on more formal  
22          information-sharing arrangements.

23                        So section 122 of *RESA* kind of provides  
24                        authority to share information with the Real  
25                        Estate Council of British Columbia, but beyond

1                   that we're both public bodies under the *Freedom*  
2                   *of Information and Protection of Privacy Act*;  
3                   we're empowered under that legislation to share  
4                   information in prescribed circumstances that we  
5                   do rely on to share. And all that occurs  
6                   informally or as it occurs.

7                   We also have in December of 2019 we entered  
8                   into a memorandum of understanding with the Real  
9                   Estate Council of British Columbia. The stated  
10                  purpose of the memorandum was to allow OSRE to  
11                  better exercise its authority under  
12                  section 48.1(b) of *RESA* to investigate licensee  
13                  activity that may be seriously detrimental to  
14                  the public interest. So in the  
15                  intervening years between, you know,  
16                  February 2017 and December 2019 when --  
17                  February when the first investigative member of  
18                  staff was hired, myself, and December 2019, we  
19                  really built our capacity over that time to be  
20                  able to deliver on our unlicensed mandate, our  
21                  real estate development marketing mandate, the  
22                  enforcement mandate to better deliver on those  
23                  existing mandates and also to take broader  
24                  action against licensee activities. Typically  
25                  complaints of licensee activity almost

1                   invariably are made directly to the Real Estate  
2                   Council of British Columbia, so from OSRE's  
3                   perspective we weren't necessarily seeing fact  
4                   patterns identified early on in processes by the  
5                   real estate council and we weren't able to  
6                   consider whether activity was perhaps seriously  
7                   detrimental to the public interest and that OSRE  
8                   wished to exercise its discretion and act.  
9                   Typically before the MOU, we would most often  
10                  act where licensee activity was commingled with  
11                  our core activities of unlicensed services or  
12                  non-compliant developer activity. And not just  
13                  standard allegations of non-compliance but again  
14                  allegations themselves that could be seriously  
15                  detrimental to the public interest if proven.

16                  So the creation of the MOU allows a more  
17                  proactive exorcism of those duties under  
18                  section 48.1(b) and gives the Real Estate  
19                  Council of British Columbia a mechanism to refer  
20                  those fact patterns to OSRE earlier and more  
21                  efficiently.

22                  Q       Does the MOU give OSRE and the real estate  
23                  council the ability to coordinate resources with  
24                  respect to what might be considered serious  
25                  investigations of serious complaints against



1 licensees?

2 A Yeah, so our ability to coordinate activity,  
3 share information, all those things, they exist  
4 already in the legislative framework, meaning  
5 our reliance on OSRE's law enforcement body  
6 according to the *Freedom of Information and*  
7 *Protection of Privacy Act*, we're a private body  
8 acting in a law enforcement capacity when we  
9 exercise our investigatory function. The Real  
10 Estate Council of British Columbia is a public  
11 body exercising enforcement duties. We're able  
12 to share all the information and coordinate our  
13 activities in accordance with those enactments  
14 already. The MOU gives greater function to that  
15 existing authority, so it kind of sets the terms  
16 of how OSRE will share -- or I should say how  
17 RECBC, Real Estate Council of BC, will share  
18 information with OSRE and may coordinate our  
19 activities to some extent.

20 MS. PATEL: I'm going to ask Madam Registrar, if you  
21 could please bring up document OSRE19.

22 Q All right. Mr. Humayun, do you recognize this  
23 document?

24 A Yes, I do.

25 Q And can you just tell us what it is?

1           A     Sure, this is the organizational structure of  
2                   the Office of the Superintendent of Real Estate  
3                   within the BC Ministry of Finance.

4           Q     Okay. We previously in our hearings have seen a  
5                   version of this chart, but this one is I see  
6                   it's updated to February 16th, 2021.

7           A     This appears correct, yes.

8           MS. PATEL: So I'm just going to pause and ask  
9                   Mr. Commissioner if we could please have this  
10                  marked as the next exhibit.

11          THE COMMISSIONER: Yes. Very well. That will be the  
12                  next exhibit.

13          THE REGISTRAR: Exhibit 657, Mr. Commissioner.

14                   **EXHIBIT 657: Organizational Chart - Office of**  
15                   **the Superintendent of Real Estate - February 16,**  
16                   **2021**

17          MS. PATEL:

18          Q     And, Mr. Humayun, we see your name there under  
19                  "Investigations" in the middle row, the Managing  
20                  Director. And I just wanted to take the  
21                  opportunity to ask you to describe the structure  
22                  of the investigations unit.

23          A     Sure, absolutely. So as you can see I lead  
24                  the -- I direct the unit itself. Three managers  
25                  report to me. Two senior managers of

1                    Investigations overseeing investigators and one  
2                    Manager of Market Conduct overseeing a Market  
3                    Conduct Officer. The market conduct function is  
4                    an intake and early compliance function of our  
5                    department, meaning they receive complaints that  
6                    come into our office, they enter them into case  
7                    management systems, they assign in coordination  
8                    with the senior managers of investigation.  
9                    There assign risk and priority to incoming  
10                   complaints or incoming fact patterns that we  
11                   intend to act on. And by way of assignment  
12                   files are managed through the three managers  
13                   assigned to investigators or carried at the  
14                   manager level as well to investigate allegations  
15                   of misconduct under *RESA* and *REDMA*.

16                Q     Do you -- each of these positions on this chart  
17                   under Investigations, are they all full-time?

18                A     They are all full-time, yes.

19                Q     And if an issue of capacity arises does your  
20                   office have the ability to hire outside  
21                   contractors to assist you?

22                A     If we felt that it was warranted, we are  
23                   empowered to hire outside investigatory  
24                   assistance, yes.

25                Q     And has that been necessary to date?

1           A     Not in my tenure.

2           Q     And we mentioned in the introduction looking at  
3                    your bio, that you've got certain specialized  
4                    training in fraud, financial fraud, and you've  
5                    got the ACAMS, the anti-money laundering  
6                    training. Does anybody else in your office  
7                    currently have that training?

8           A     Yeah, I'm happy to expand. So just looking at  
9                    the organizational chart in the Investigations  
10                   division, so every person on that chart with the  
11                   exception of the Market Conduct Officer  
12                   position, every person in that chart is required  
13                   to have or obtain special provincial constable  
14                   status as a condition of their employment. So  
15                   that means that they have to demonstrate the  
16                   necessary education, training, career experience  
17                   to obtain special provincial constable status  
18                   under our program that we -- that is a program  
19                   is accountable to the Ministry of Public Safety  
20                   and Solicitor General. We entered into a  
21                   memorandum of understanding with that ministry  
22                   to establish our special provincial constable  
23                   program to set the training requirements, the  
24                   minimum training requirements of that program,  
25                   to appoint all the members who I identified as

1 special provincial constables under the *Police*  
2 *Act*. So they all carry that minimum standard of  
3 training as a condition of their employment, but  
4 in addition as you've signalled, they carry  
5 individual designations that allow them to  
6 better deliver on their work both now and in  
7 our -- as we evolve as a regulator. So three  
8 members of staff on that organizational chart  
9 have certified fraud examiner credential, so  
10 they are CFEs. Two members of staff are  
11 certified anti-money laundering specialists.  
12 One -- a third, I should say, is in training  
13 currently to receive that credential. And they,  
14 you know, carry various other training largely  
15 deriving from the Ministry of Public Safety and  
16 Solicitor General's significant requirements to  
17 obtain special provincial constable status for  
18 our specific department and function. That  
19 means enhanced investigative interviewing,  
20 applying for search warrants, engaging with  
21 administrative -- issues of administrative law,  
22 criminal law from an investigations perspective,  
23 things of that nature. Minimum training  
24 standard to that level and beyond.

25 MS. PATEL: Okay. Thank you, Madam Registrar, we can

1 take this down now.

2 Q Mr. Humayun, do you recall participating in a  
3 response to a written question from the  
4 commission about access to information sources  
5 that would allow your office to better fulfill  
6 its mandate?

7 A Yes, I do.

8 Q Okay. And I'm going to ask Madam Registrar, if  
9 you could pull up a document. It's letter to  
10 commission from Rajotte re information request  
11 to OSRE June 9th, 2020. If you could scroll to  
12 the second page. Actually, bottom of the first  
13 page. Thank you.

14 So here I'm going to ask you about a couple  
15 of the items that are indicated in response to  
16 this number 1 here. And again the context, you  
17 agree, was that the commission had asked what  
18 information sources that you don't currently  
19 have access to that would be helpful to your  
20 office in fulfilling its mandate; correct?

21 A Yes.

22 Q And it says -- this one says:

23 "With respect to information request 5  
24 provide a brief description of which data  
25 points within each database listed would

1                   be assistive to OSRE's investigations  
2                   team, e.g., within MLS, sales history tied  
3                   to real estate agent, or whether it would  
4                   be necessary to receive access to the  
5                   entirety of the database."

6                   Just scrolling down, that's the question. And  
7                   then I understand the responses are here at the  
8                   bullet points. Is that right?

9           A        That's right.

10          Q        And you assisted in providing these responses?

11          A        Yes, I did.

12          Q        Okay. So just I wanted to cover this just  
13                   asking you from the perspective of the  
14                   Investigations branch what is the data that  
15                   you're indicating that you don't have access to  
16                   and how would it be helpful. And starting with  
17                   data from property taxation and Canada Revenue  
18                   Agency?

19          A        Sure. Yeah. So in this, in responding to this  
20                   question both in writing as we've got here and  
21                   now, I think it's important to maybe anchor it  
22                   in what we do collect because there is some  
23                   overlap between what we do collect and what  
24                   we've got on the screen today. So everything  
25                   that we're interested in collecting is related

1 to our mandate to take enforcement action under  
2 the *Real Estate Services Act* and the *Real Estate*  
3 *Development Marketing Act*.

4 So we access corporate registries that give  
5 us director information. We access land title  
6 registries that give us ownership information.  
7 In the future we'll access land owner  
8 transparency registries that will give us  
9 beneficial ownership information in addition to  
10 stated ownership information. We access certain  
11 motor vehicle branch records that relate to our  
12 work. And even some of the things that we've  
13 got on this list we are able to access through  
14 working with these agencies to obtain it in  
15 relation to specific files. But as I kind of  
16 articulated here, our work could benefit from  
17 broader access and more well-defined access to  
18 some of these things, and they all relate to  
19 core mandate to take action under *RESA* and  
20 *REDMA*. Did you want me to go through the first  
21 one?

22 Q Maybe I'll help you out by asking why would  
23 under Property Taxation Branch in CRA, you say  
24 purchase agreement assignment details. How  
25 would those details assist you in fulfilling



1                   your mandate?

2                   A     So if a purchase assignment is reported to  
3                   either the PTB or the CRA, there may be  
4                   underlying trading services that OSRE or really  
5                   the real estate services regime, both OSRE and  
6                   RECBC doesn't have insight into. So in a robust  
7                   data analysis program, our knowledge of what  
8                   trading services are being provided versus what  
9                   trading services are being reported to tax  
10                  authorities and any discrepancies in respect of  
11                  same could inform our enforcement work.

12                 Q     Okay. And how about information from the  
13                  residential tenancy branch. First of all, what  
14                  information do you currently have access to --

15                 A     Sure.

16                 Q     From the residential tenancy branch?

17                 A     The information that we have access to are  
18                  derived from our contacting the residential  
19                  tenancy branch in individual circumstances, so  
20                  because OSRE is a law enforcement agency and a  
21                  public body scheduled under the *Freedom of*  
22                  *Information and Protection of Privacy Act*, OSRE  
23                  and the residential tenancy branch rely on  
24                  exemptions to that enactment to share  
25                  information to further an investigation or to

1 further a law enforcement proceeding. In this  
2 case what we would be most interested in from  
3 the RTB is our persons who are unlicensed acting  
4 as rental property managers and, importantly,  
5 participating in residential tenancy branch  
6 proceedings against or in respect of tenants and  
7 acting in a capacity as rental managers when  
8 they do so, are they doing so while unlicensed  
9 and are they acting contrary to the act. So we  
10 have actually great success working together  
11 with the residential tenancy branch currently  
12 where we have suspicion that a person is an  
13 unlicensed property manager acting on a  
14 reasonable scale, reasonably high scale we'll  
15 contact the residential tenancy branch, seek  
16 their records of dispute proceedings and in  
17 accordance with *FOIPPA* they will share  
18 permissible details that allow us to further our  
19 investigation and further understand the extent  
20 of any non-compliance under the *Real Estate*  
21 *Services Act*. If this was done as the answer --  
22 or as the written document indicates, if this  
23 was done in a more coordinated way, the real  
24 estate regulatory regime would benefit from that  
25 type of access.

1           Q     I would imagine you could receive early alerts  
2                   that somebody was acting as an unlicensed  
3                   property manager?

4           A     Exactly. All these -- all the things we see  
5                   before us on the screen would better equip the  
6                   regulator to conduct market conduct-based work  
7                   that generates leads, early leads as you  
8                   indicated, to better deliver on enforcement  
9                   mandates.

10          Q     Then multiple listing service data, now, this,  
11                   first of all can you just briefly say what is  
12                   that database and what kind of information does  
13                   it contain.

14          A     Yeah, absolutely. So unlike the rest of the  
15                   databases on this the screen right now, this is  
16                   not a public database. This is a privately  
17                   held, the multiple listing services system is a  
18                   privately held system controlled by private  
19                   entities, both real estate boards in this  
20                   province acting as part of the larger consortium  
21                   that is the CREA, the Canadian Real Estate  
22                   Association. So this is privately held  
23                   information that OSRE does not have access to.  
24                   This contains the lion's share of marketing  
25                   information in respect of real estate services

1                   that are provided in this province, so  
2                   everything from the basics of property  
3                   identifying information. Multiple listing  
4                   services is referred to as MLS. So the MLS  
5                   numbers that are individually assigned, the  
6                   parcel identifiers in the land title office, the  
7                   strata plan numbers as relevant, contains key  
8                   details of the listing, sales dates, prices,  
9                   also contains relevant information for OSRE on  
10                  fiduciary relationships, so gives us insight  
11                  into who acted for whom, and importantly  
12                  remuneration in respect of same, so how are  
13                  commissions delivered, what were splits, things  
14                  of that nature all gives us -- would give us  
15                  insight into related brokerages, brokerages of  
16                  licensees involved. As you've indicated  
17                  earlier, this would -- access to this type of  
18                  data would considerably increase the real estate  
19                  regulatory regime's ability to conduct more  
20                  market conduct-based investigation, more market  
21                  conduct-based enforcement versus responding to  
22                  complaints and identifying complaints of our own  
23                  accord. This would allow us to apply robust  
24                  data analysis regimes to ensure compliance with  
25                  the regulatory regime.

1           Q     At the moment if OSRE wants to get a list of  
2                    transactions that a particular licensee has  
3                    participated in over the past, say, year, how  
4                    would you do that?

5           A     So as you've signalled, OSRE's authority to  
6                    obtain those details from an individual licensee  
7                    is explicit. So a licensee must comply, is  
8                    compelled to comply with OSRE's demands for  
9                    information of the type that you've identified.  
10                  So in individual circumstances when responding  
11                  to a complaint and investigating, we obtain the  
12                  information that you have listed from those  
13                  licensees on individual circumstances. We would  
14                  be relying on those agencies to provide that  
15                  information honestly and properly and we would  
16                  take steps to test the veracity of the  
17                  information that was provided to us.

18          Q     Would access to the MLS database, and I  
19                    appreciate I said database but more it's  
20                    properly databases, would that allow you to get  
21                    that information directly without going through  
22                    the licensee?

23          A     Ours would be based more on activities of the  
24                    licensee. So the records that they created in  
25                    relation to their work, the brokerage files

1           which contain these key details, those would all  
2           be within our legislative authority to obtain,  
3           but access to the system itself, not  
4           necessarily.

5           Q     Okay. But sorry, my question was more if you  
6           had access to the MLS data, would that allow you  
7           to get at that information which you've  
8           indicated you have other powers that you can --  
9           that allow you to get there, but again, you said  
10          depending on the veracity, the honesty of the  
11          person subject to the request, would it allow  
12          you to get more directly at information about,  
13          say, for example, the example I gave,  
14          licensees --

15          A     Yes, you're right. More directly and,  
16          importantly, more proactively.

17          Q     Okay. Then the next item is BC Housing data.

18          A     Yes. So BC Housing maintains a database of  
19          builders who are licensed and there's the  
20          category of builder that is developer, and so we  
21          are able to access the public facing registry,  
22          but BC Housing may have more detailed  
23          information in respect of builders who are  
24          licensed as builders and who are also developers  
25          according to our act, so that type of data may

1           inform our market conduct work around developers  
2           ensuring their compliance and that they have the  
3           necessary permits and approvals in place, but it  
4           will also give us potentially valuable  
5           information about developers and how they have  
6           structured their building activities.

7           Q     And you mentioned before with respect to the  
8                 LTSA you have access -- you can access  
9                 transaction data and as a part of the provincial  
10                government I understand you don't have to pay  
11                per search the way that a member of the public  
12                would have to?

13          A     I'm not entirely sure how the payment itself  
14                 works. It's through likely process of journal  
15                 vouchers or some types of intergovernmental  
16                 transfers that gives us the access. But we do  
17                 have access to the public facing land title  
18                 survey authority database which allows us to  
19                 search in a focused way. Similarly it's not  
20                 listed here but BC Assessment, the two systems  
21                 are very linked as you know, and we have access  
22                 to the public facing and paid service to  
23                 understand property ownership info and both  
24                 realtime and historical. So yes, we do have  
25                 that access. There may be some type of fee that

1 I'm not 100 percent sure of, but we access it  
2 regularly.

3 Q How would access to raw data assist you in  
4 fulfilling your mandate?

5 A So like many of these, many of these things  
6 signal on the page, without a robust data  
7 analysis program they don't mean much. So the  
8 raw data on MLS, on land title survey authority,  
9 those become useful when worked as part of a  
10 cohesive data analysis framework, something that  
11 allows us to search over -- search continuously  
12 over appropriate data points and make inferences  
13 and draw risk conclusions from data that is  
14 before us. So access to that raw data in this  
15 instance would considerably increase the power  
16 of any data analysis conducted by the regulatory  
17 regime.

18 MS. PATEL: Thank you. Madam Registrar, you can take  
19 this document down.

20 Q My last question for you, Mr. Humayun, I am sure  
21 you'll be happy to here, is with respect to  
22 OSRE's participation in the federal/provincial  
23 working group on money laundering and fraud in  
24 real estate. And I understand that you've taken  
25 part in that working group?



1           A     Yes.

2           Q     Okay.  And are you able to tell us anything  
3                    about your or OSRE's involvement in that and any  
4                    work that you've completed?

5           A     Sure.  Yeah.  So as you may be aware, the  
6                    federal/provincial working group is a joint  
7                    initiative of Finance Canada and the BC Ministry  
8                    of Finance.  There are three main work streams  
9                    to federal/provincial working group's work and  
10                   the first is data.  The second is regulatory  
11                   gaps and the third is enforcement.  So I  
12                   participated in data work stream -- or I should  
13                   say work stream 2, regulatory gaps, and work  
14                   stream 3, enforcement.

15                         So when the initiative started it was called  
16                   the ad hoc working group on anti-money  
17                   laundering in BC real estate and it's evolved  
18                   since that time to its current state.  On the  
19                   regulatory gaps, that work group, including  
20                   OSRE, was tasked with identifying just that,  
21                   potential gaps in legislation or gaps in  
22                   regulatory frameworks that are either  
23                   problematic or contribute to issues of consumer  
24                   harm and of course create weaknesses for the  
25                   anti-money laundering regime.

1                   So OSRE has made submissions to the  
2                   regulatory gap working group. The one  
3                   submission was focused around what we just  
4                   discussed today, around for sale by owner and  
5                   for lease by owner activity that occurs on a  
6                   wholesale or business scale level. So shared  
7                   many of the same details that the commission has  
8                   heard today. Yes.

9           Q     Are there any other regulatory gaps you  
10           identified for the purpose of that working group  
11           that we haven't discussed today?

12          A     No, not that I can recall.

13          Q     Okay. And on the enforcement work stream?

14          A     The enforcement work stream, we didn't make any  
15                submissions to the working group.

16          MS. PATEL: Okay. Mr. Commissioner, those are my  
17                questions for Mr. Humayun.

18          THE COMMISSIONER: Thank you, Ms. Patel. I think  
19                rather than take the break now we'll forge ahead  
20                with the participant's questions as they total  
21                25 minutes, but if anyone, including you,  
22                Mr. Humayun, need a break, please let me know.

23          THE WITNESS: No, thank you, Mr. Commissioner.  
24                That's fine.

25          THE COMMISSIONER: All right. Thank you. We'll

1 start, then, with Ms. Shelley on behalf of  
2 Canada, who has been allocated five minutes.

3 MS. SHELLEY: Thank you, Mr. Commissioner. I can  
4 confirm that we have no questions for this  
5 witness based on his testimony.

6 THE COMMISSIONER: Thank you, Ms. Shelley. Mr. Usher  
7 on behalf of the Society of Notaries Public of  
8 British Columbia.

9 MR. USHER: Thank you, Mr. Commissioner. Having  
10 heard the evidence I have no questions.

11 THE COMMISSIONER: Thank you, Mr. Usher. Ms. Tweedie  
12 on behalf of the British Columbia Civil  
13 Liberties Association.

14 MS. TWEEDIE: Thank you, Mr. Commissioner. Similarly  
15 in light of Mr. Humayun's evidence we no longer  
16 have questions for him. Thank you.

17 THE COMMISSIONER: Thank you, Ms. Tweedie.  
18 Mr. Rauch-Davis on behalf of Transparency  
19 International Coalition, again has been  
20 allocated five minutes.

21 MR. RAUCH-DAVIS: Thank you, Mr. Commissioner. I  
22 have just a few questions for this witness.

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

24 Q Mr. Humayun, you mentioned in your evidence this  
25 morning that your office anticipates using the

1                   beneficial ownership registry to further your  
2                   investigations. Do I have that right?

3           A        Correct.

4           Q        I'm wondering does a lack of beneficial  
5                   ownership ever frustrate your office's purposes,  
6                   and if so how?

7           A        I would say it's important to understand the --  
8                   all participants that are involved in either a  
9                   individual real estate transaction or an  
10                  instance of real estate services. So  
11                  understanding not only the persons who present  
12                  themselves as the principals to the transaction  
13                  but knowing whether there are underlying  
14                  beneficial ownership relationships that exist is  
15                  an important aspect of delivering on our real  
16                  estate services and even *Real Estate Development*  
17                  *Marketing Act* mandate.

18          Q        And you'd say that is within OSRE's mandate as  
19                   well as just kind of the broader AML regime with  
20                   respect to the real estate sector?

21          A        Both the AML regime and the real estate  
22                   regulatory regime would benefit from  
23                   understanding who are the true beneficiaries of  
24                   any particular transaction.

25          Q        Right. And when my friend was taking you

1 through the June 9th, 2020 letter, with respect  
2 to the LTSA, you there was some talk about raw  
3 data, and I'm just wondering what type of raw  
4 data do you mean under that heading?

5 A So just give me a moment to turn to the page.

6 Q Sorry, I don't have the exhibit number,  
7 otherwise I would ask Madam Registrar to bring  
8 it up. I'm looking at the June 9, 2020 letter  
9 to the Cullen Commission of inquiry.

10 THE REGISTRAR: This letter is not an exhibit.

11 MR. RAUCH-DAVIS: Oh. I wonder if my friend intended  
12 to have this marked as an exhibit.

13 Q It's on page 2, Mr. Humayun, under LTSA.

14 A That's great. I found it. So as I indicated to  
15 Ms. Patel, access to the LTSA's raw data would  
16 enhance OSRE's ability to build the data or the  
17 real estate regime's ability to build a data  
18 analysis matrix, and so as the commission is  
19 aware, the land title survey authority contains  
20 information about property ownership  
21 information, parcel identifiers, dates of  
22 transfer. So access to when I say raw data, I  
23 mean access to that data in such a way that it  
24 can be accessed and searched without interfacing  
25 with a search function or interfacing with a

1 menu of searching by parcel identifier or  
2 searching by relevant parties but rather  
3 accessing that same database in a broader way.

4 MR. RAUCH-DAVIS: Okay. Thank you, I understand.

5 Those are all my questions for this witness.

6 THE COMMISSIONER: Thank you, Mr. Rauch-Davis.

7 Ms. Patel, did you want to mark that letter as  
8 an exhibit?

9 MS. PATEL: Thank you, Mr. Commissioner. Yes. I do.

10 THE COMMISSIONER: All right. Madam Registrar, we'll  
11 mark that then as the next exhibit.

12 THE REGISTRAR: Yes, that will be exhibit 658.

13 **EXHIBIT 658: Letter to the Commission from**  
14 **Chantelle Rajotte, in response to Commission**  
15 **counsel's information request - June 9, 2020**

16 THE COMMISSIONER: And finally Ms. Rajotte for the  
17 province who similarly has been allocated  
18 five minutes.

19 MS. RAJOTTE: Thank you, Mr. Commissioner. I have no  
20 questions.

21 THE COMMISSIONER: All right. Thank you,  
22 Ms. Rajotte. Anything arising from  
23 Mr. Rauch-Davis's questions, Ms. Patel?

24 MS. PATEL: No, thank you, Mr. Commissioner.

25 THE COMMISSIONER: Thank you, Mr. Humayun, I'm very

1 appreciative of your sharing your time with us  
2 to educate us as to the scope and reach of the  
3 enforcement and regulatory functions of OSRE.  
4 It's been very helpful. Thank you. You are  
5 excused from further evidence now.

6 THE WITNESS: Thank you, Mr. Commissioner.

7 (WITNESS EXCUSED)

8 THE COMMISSIONER: And, Ms. Patel, I think we'll take  
9 a 15-minute adjournment during which our next  
10 witness can be brought on board.

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

12 THE COMMISSIONER: Thank you.

13 THE REGISTRAR: This hearing is adjourned for a  
14 15-minute recess until 11:12 a.m. Please mute  
15 your mic and turn off your video.

16 **(PROCEEDINGS ADJOURNED AT 10:57 A.M.)**

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

18 THE REGISTRAR: Thank you for waiting the hearing is  
19 resumed, Mr. Commissioner.

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

22 MS. ROSE: Thank you, Mr. Commissioner. I have with  
23 me today Mr. Michael Scott, a witness from the  
24 Real Estate Council of BC, and I understand that  
25 he will be sworn.





1 Risk Analysis in Toronto.

2 Q You've also held similar investigation and  
3 senior managing investigation roles with the  
4 Workplace Safety and Insurance Board of Ontario?

5 A Yes, that is correct.

6 Q And you are now the Director of Compliance with  
7 the real estate Real Estate Council of BC?

8 A That's correct.

9 Q And prior to that role you were Manager of  
10 Compliance at RECBC?

11 A Yes.

12 Q And could you describe what that role entails?

13 A As a director and/or manager I have oversight of  
14 compliance and investigation functions for the  
15 council, that is for RECBC.

16 MS. ROSE: Mr. Commissioner, I would ask that this be  
17 marked as our next exhibit. And I would be  
18 indebted to Madam Registrar if she could remind  
19 me what the exhibit number would be.

20 THE REGISTRAR: Exhibit 659, Mr. Commissioner.

21 THE COMMISSIONER: Thank you. It will be marked.

22 **EXHIBIT 659: Curriculum Vitae of Michael Scott**

23 MS. ROSE: Thank you, I have no further need of this  
24 document, Madam Registrar.

25 Q Mr. Scott, you understand that RECBC has created

1 a course on anti-money laundering?

2 A Yes, that is my understanding.

3 Q And you understand that that course is being  
4 administered through UBC?

5 A Yes.

6 Q And by that I mean the University of British  
7 Columbia?

8 A Yes.

9 Q And that course was released in January of 2020;  
10 is that right?

11 A Yes, that is correct.

12 Q And are you aware that RECBC has obtained some  
13 feedback relating to that course?

14 A Yes, I've been advised that they have, yes.

15 MS. ROSE: Madam Registrar, could we please have the  
16 document UBC RECBC AML course feedback. A bit  
17 of an alphabet soup there.

18 Q Mr. Scott, do you recognize this document?

19 A Yes, I do.

20 Q And what is this document?

21 A This document is the document that relates to  
22 the feedback solicited and sought.

23 Q In relation to the RECBC AML course?

24 A Yes.

25 MS. ROSE: Okay. Mr. Commissioner, I would ask that

1                   this document be marked as exhibit 660.

2                   THE COMMISSIONER: Very well.

3                   THE REGISTRAR: Exhibit 660.

4                   **EXHIBIT 660: UBC RECBC AML in Real Estate**  
5                   **Course Evaluation Report - November 17, 2020**

6                   MS. ROSE: Thank you, Madam Registrar, I have no  
7                   further need of this document on the screen.

8                   Q     Mr. Scott, I'd like to start by asking you a few  
9                   questions that the general powers that the Real  
10                  Estate Council of BC has with respect to  
11                  investigation and enforcing compliance.

12                  A     Yes. Well, there's two relevant sections for  
13                  us. Sections 37 and 11 of the *Real Estate*  
14                  *Services Act*. I'll refer to the first. Of  
15                  course 37 deals with the investigative powers  
16                  with respect to what we would largely consider  
17                  discipline investigations. And the second  
18                  section, section 11 deals specifically with  
19                  those powers that follow from licensing  
20                  applications intended to establish good conduct  
21                  and qualifications to be licensed.

22                  Q     And those sections you are referring to are  
23                  sections of the *Real Estate Services Act*?

24                  A     Of BC, yes.

25                  MS. ROSE: And, Mr. Commissioner, I note that much of

1                   the details of the powers of the Real Estate  
2                   Council of BC are set out in the overview report  
3                   on legislative and regulatory structure of real  
4                   estate in BC and that is at exhibit 603. And  
5                   this specific section begins at page 46.

6                   THE COMMISSIONER: Thank you.

7                   MS. ROSE:

8                   Q     So, Mr. Scott, could you describe your role with  
9                   respect to investigations at the real estate  
10                  council. What are the set of activities that  
11                  you engage in in your role?

12                 A     As the director I'm responsible for the  
13                  investigative product that arises out of the  
14                  actions of my team and will exercise discretion  
15                  as it relates to some of the product in terms of  
16                  outcomes of the investigations. I'm responsible  
17                  for the team's development, their conduct, their  
18                  reporting and in terms of the director's role, I  
19                  would review the work product where  
20                  circumstances suggest that it does require my  
21                  review.

22                 Q     How many staff do you have?

23                 A     Current complement including myself would be  
24                  21 -- 22, my apologies. 21 excluding me. At  
25                  the time -- sorry.

1 Q Sorry, I didn't mean to interrupt you.

2 A The team has grown over the time I've been with  
3 council.

4 Q And could you speak to the volume of complaints  
5 and investigations that that team services?

6 A Yes. You know, we are on average -- I can speak  
7 fairly clearly on that. We are on average 840  
8 to -50 complaints per year over the last year,  
9 three years. That's the average. We're on  
10 track for the current year to receive the same  
11 number. That translates to an average anywhere  
12 between 60 to 100 per month of new complaints.  
13 So it's a significant number.

14 Q And could you describe the training or  
15 backgrounds that your staff members have to  
16 respond to that volume of complaints?

17 A Well, they came to the team and of the  
18 three years, two and almost three years I've  
19 been with council, we've hired 16 new additions  
20 to the team. We've lost some staff as well.  
21 And they have come from a variety of  
22 backgrounds. I have seasoned criminal  
23 investigators. I have experienced private  
24 sector compliance people. I have people with  
25 real estate experience. I have people with just

1                   some public sector regulatory experience as  
2                   well. In terms of the training that is afforded  
3                   them, they all as new employees undergo an  
4                   orientation and training program which we  
5                   instituted and that takes about three months,  
6                   and in addition to hands-on training that's  
7                   provided, we've offered several courses and  
8                   encouraged development opportunities for the  
9                   staff as well to develop their skill sets.

10            Q     And is there a specific anti-money laundering  
11                   component to that training?

12            A     No, there is not. It is expected that they will  
13                   take the council's offering of a new offering of  
14                   the course and that is included in their most  
15                   recent development, but aside from that, no,  
16                   there is no additional anti-money laundering  
17                   training.

18            Q     Do any of your staff have the ACAMS  
19                   certification?

20            A     None currently, no.

21            Q     Okay. You mentioned that you are seeing about  
22                   50 to 60 complaints a month; is that right?

23            A     It's actually more than that. It's between 60  
24                   and 100. The high watermark is about 100. It  
25                   is anywhere between that 60 and number of 100

1                   that we would expect to see.

2                   Q     And so could you just explain how a complaint or  
3                   other investigation would move through your  
4                   office. Is it assigned to an investigator right  
5                   off the bat, or how does the process work?

6                   A     Well, subsequent to mid July 2019, we had  
7                   instituted a slightly different and revised  
8                   framework for handling complaints. And what we  
9                   have is a structure within the team that has two  
10                  components. The first of the components is the  
11                  intake component. And a complaint is received,  
12                  it can be received in any number of ways. It  
13                  can be received by hard copies, regular mail.  
14                  It can be received by email. Can come by way of  
15                  an anonymous tip. And those complaints from the  
16                  public, generally speaking they move through a  
17                  process now that includes a triage where there's  
18                  a preliminary assessment done where there's  
19                  determinations made on if there's sufficient  
20                  evidence to pursue it and where additional  
21                  evidence if it's suggested it's required is  
22                  sought. And it moves through a triage to a  
23                  secondary assessment stage and with the intent  
24                  that we are able to screen out those matters  
25                  which clearly are not ones for us to pursue, and

1 but for those matters that suggest that there  
2 has been something that which would fall to us  
3 in terms of jurisdiction, they are given another  
4 review to determine whether there's a full  
5 investigation required. If that full  
6 investigation is required, that triggers a  
7 movement to the second group which would be the  
8 investigations group. The intent is that we are  
9 able to essentially sift out only the most  
10 important matters for full investigation and the  
11 other matters may be dealt with in other ways.

12 Q And currently approximately how long on average  
13 does a complaint -- is the lifespan of a  
14 complaint?

15 A Yes, well, we've actually taken a point in time  
16 and divided up the complaints. As you may be  
17 aware, we are dealing with a significant  
18 inventory of matters, and currently that  
19 inventory stands at around 900, and that's 900  
20 complaint investigations.

21 So what we've done is tried to differentiate  
22 between older matters which we refer to as aged  
23 and the newer matters. So in answer to your  
24 question, matters dated post-April 1, 2019, are  
25 on average 190 days to disposition. Now,



1 matters pre-April 2019 are about 800 days to  
2 disposition. Those are the older inventory  
3 matters. And that current inventory that would  
4 fall within that grouping is at approximately  
5 150 files. So of the larger 900, 150 of those  
6 are older matters.

7 Q And you've touched a little bit in your  
8 answer so far on how things have changed under  
9 your tenure at the council.

10 A Yes.

11 Q Can you just expand on that a little bit. What  
12 procedures did you implement? And I understand  
13 you joined the real estate council in 2018.  
14 Perhaps you could give us a month, if you  
15 recall.

16 A M'mm-hmm. I do recall. April 30th, 2018, I  
17 joined council. So what's changed. Well, I  
18 think the largest change, there's a couple of I  
19 think significant changes. We have moved from a  
20 paper, a combination paper soft copy environment  
21 where there was some duplication and over the  
22 course of a few months, I would say, we assessed  
23 how we were doing business and made changes that  
24 took us to a paperless environment. And then I  
25 think the second -- in addition to the changes

1           that we made in the intake and compliance and  
2           the building up of the capacity within those  
3           individual teams with respect to their abilities  
4           to assess and decision, I think the most  
5           significant change beyond that would be we've  
6           moved to a web-based -- cloud-based, I suppose,  
7           is the more appropriate -- incident management  
8           platform. And what that has allowed us to do is  
9           keep all of our investigative records in one  
10          location and to better monitor, track and  
11          prioritize those matters.

12                    Tied to that we've gone on an online  
13          complaints portal for our complainants, so now  
14          they have the opportunity to submit a complaint  
15          directly to us into our system for triage. So  
16          that eliminates paper coming to us. It  
17          streamlines, it gives our public an additional  
18          channel in which they can bring matters to our  
19          attention. And most conveniently, and I think  
20          this is a very significant one, we've started  
21          to, because the facility available in the  
22          application we are using does allow for it,  
23          we've framed prioritization into the actual  
24          complaints we receive so that we can raise the  
25          more significant matters to the top. Previously

1                   we would have had difficulty doing that because  
2                   of combinations of the way we kept our records,  
3                   and quite frankly, you know, the volume of work  
4                   that we are confronted with.

5           Q        Have you hired additional staff?  Could you  
6                   compare the approximately how many staff there  
7                   were when you joined and how many staff there  
8                   are now?

9           A        Yes.  When I came to council there were 11  
10                   staff, legacy staff.  Within the next few months  
11                   I lost six of those staff and over the course of  
12                   the period essentially I would think, and this  
13                   I'm working from memory on this, I may be off a  
14                   month, I would say from July of 2018 through to  
15                   October 2020 we've hired 16 staff.

16          Q        And are there -- are you able to compare -- you  
17                   mention there's a 190 day timeline for files  
18                   that are dated after April 1st, 2019?

19          A        That's correct.

20          Q        What was the timeline like before your tenure?

21          A        Closer to 400 days.

22          Q        And what would you attribute the shortening of  
23                   that timeline to?

24          A        I would attribute it to skills building within  
25                   the team.  That is a refined process with

1           respect to how we move matters forward. More  
2           contemporary law enforcement practices, ones  
3           that I would have pore borrowed from my  
4           experiences in the variety, as my CV speaks to,  
5           from a variety of location. But largely  
6           establishing a more consistent and streamlined  
7           approach to moving matters forward.

8           Q     When you or your team is undertaking  
9           investigation, what powers do they have to  
10          compel cooperation by licensees?

11          A     As I touched on at the very beginning, 37, if  
12          it's a discipline related matter, we would use  
13          37 to compel books and records, meet with and  
14          compel the individual, the licensee, to meet  
15          with us to discuss the concerns that have been  
16          raised in the complaint. If it's a new  
17          applicant for licensing we would use 11 to  
18          establish the qualifications where questions  
19          were evident in the application.

20          Q     So in compelling books are there -- do you have  
21          measures to compel attendance at an interview,  
22          for example?

23          A     We use 37. There is an obligation for them to  
24          respond to us and to cooperate and assist.  
25          That's the power that we have.

1           Q     And where an individual is non-cooperative and  
2                    does not comply with that provision, what  
3                    measures do you have at your disposal?

4           A     Yes. Well, what we would do there, and this is  
5                    a process change again that we have addressed in  
6                    my time with council, is we have tightened the  
7                    timelines with respect to cooperation. And so  
8                    previously we would have -- those timelines  
9                    would have been allowed to be pushed out  
10                   considerably. What we've done now is ensure the  
11                   timelines are tighter. We typically start and  
12                   every one of these can be slightly different  
13                   only because the circumstances of the complaints  
14                   can be different. And so the standard would be  
15                   a two-week response requiring a followup with  
16                   the individual if they haven't responded to us.  
17                   And so why we try to accommodate and we do  
18                   accommodate our licensees in terms of their --  
19                   some of their matters that are unfolding in  
20                   their lives, we are more insistent on that.  
21                   Should an individual refuse, then that would be  
22                   documented of course and would be included in  
23                   any summary report for consideration by our  
24                   legal team.

25          Q     Just to go back for a moment you mentioned that

1                   prior to this change you have implemented to --  
2                   I'm not sure if you used the word "require" but  
3                   perhaps request a two-week timeline, prior to  
4                   that change that you have made, you mentioned  
5                   that the timeline for response might be pushed  
6                   out considerably. Could you give a ballpark for  
7                   what that range of time would be?

8           A       Well, the past practice would be to send,  
9                   continue to send letters. So it would vary by  
10                  circumstance and that is by individual complaint  
11                  and -- but I've seen them go as long as a couple  
12                  of years in my review where matters have been  
13                  allowed to be delayed for a couple of years.  
14                  And of course we've tightened that up and that  
15                  does not occur.

16          Q       And in your own view what sort of message does  
17                   it send to the industry when these timelines are  
18                   pushed out in a way like that?

19          A       Well, I think it sensitizes people to -- the  
20                   risk of course is I think that it sensitizes  
21                   people in a way that is inconsistent with the  
22                   intent of regulation, that is the real estate  
23                   regulation, and, you know, establishing tighter  
24                   timelines and I think reaffirms the need for a  
25                   response to us.

1           Q     Would you say that allowing timelines to go for  
2                   months or years sends a message to industry that  
3                   compliance with the real estate council's  
4                   investigations is optional?

5           A     I think the risk is there that it could be  
6                   perceived that way, yes.

7           Q     Okay.  And you mentioned instances in which  
8                   licensees might refuse to cooperate, and this  
9                   would be documented and sent on to the council  
10                  with the summary of recommendations from your  
11                  team.  Aside from documenting that refusal, do  
12                  you have any means to compel them to attend or  
13                  to compel them to cooperate with your  
14                  investigation?

15          A     No, none other than I've mentioned.

16          Q     Do you have any sort of sense -- and I'm not  
17                  looking for specifics here, but a sense of how  
18                  often such a refusal is made?

19          A     To my knowledge we haven't had an outright  
20                  refusal since we've tightened the timelines and  
21                  parts of that I would attribute to the skill of  
22                  the team and the compliance investigators in  
23                  terms of explaining the need for the cooperation  
24                  and being insistent in their communications,  
25                  orally and in writing, with our licensees, that

1                   this is something you need to do and it's a  
2                   serious matter. And taking those steps I think  
3                   we've had some pushed out, but my assessment of  
4                   the delays are that they are reasonable. There  
5                   are often personal circumstances around it. And  
6                   those that kind of skirt, you might argue are  
7                   pushing the envelope, have come into compliance.  
8                   They have cooperated with us. So I think it's  
9                   been successful in that regard. Just tightening  
10                  the timelines and ensuring the communications  
11                  are regular, consistent and timely.

12                Q     And you also mentioned requirement to furnish  
13                    the real estate council with records. Do you  
14                    have the ability to obtain something in the  
15                    nature of a production order?

16                A     If by production order you're referring to  
17                    something that we would see in a *Criminal Code*  
18                    or provincial offences matter, no, but we do  
19                    have the ability, memory serves I think it's 38  
20                    of the *Real Estate Services Act* that allows for  
21                    an application to be made to the BC Supreme  
22                    Court for a search, powers of search, which  
23                    while not specifically a production order as  
24                    contemplated by the *Criminal Code*, very similar  
25                    to.



1 Q And has that been done before?

2 A To my knowledge only once in recent memory, and  
3 by recent memory I would say 2013 and that was  
4 in connection with a brokerage where efforts  
5 were required to be undertaken to secure the  
6 brokerage records.

7 Q Okay. Has there been any consideration by your  
8 team or by others that you're aware of to using  
9 that -- making use of that option more often?

10 A No, not from my perspective at this point in  
11 time. We have been, you know, successful, I  
12 believe, in getting the records. We ask and we  
13 do receive. It can take a bit of time, but we  
14 do get the documents.

15 Q So in your tenure with the real estate council  
16 it has not been necessary to resort to a measure  
17 like that?

18 A No, not from my perspective, no.

19 Q Okay. I'd like to turn now to your relationship  
20 with other regulatory agencies and law  
21 enforcement. So we already have into evidence  
22 some details about the RECBC's memorandum of  
23 understanding with FINTRAC and  
24 information-sharing agreement with the registrar  
25 of mortgage brokers. Could you describe

1 generally what sort of information is shared  
2 between yourself and other BC regulatory  
3 agencies and law enforcement.

4 A Well, generally speaking we do share information  
5 with the mortgage brokers. There has been a  
6 sharing of information in terms of both ways.  
7 Law enforcement there has not been any sharing  
8 of information, that is information from within  
9 a compliance perspective. Or nor has there been  
10 sharing outward from our organization, at least  
11 from the compliance and investigations group to  
12 federal bodies as well.

13 Q And if a matter came across your desk or the  
14 desks of your investigative team that seem to  
15 have an aspect to it that is more properly in  
16 the purview of a different regulatory agency,  
17 you would refer that to them?

18 A I might have a conversation with them to  
19 determine if there was an awareness. So I think  
20 it would be -- you would want to know so, for  
21 example, if the matter had -- you know, we have  
22 matters which are brought to our attention which  
23 suggest, that is referrals that suggest that  
24 there might be a criminal, for example, law  
25 enforcement criminal component to them, and so

1                   the question might be asked of that referral  
2                   source has it been referred. From a complainant  
3                   perspective is from a member of the general  
4                   public, if there was a suggestion that there was  
5                   a civil court matter, for example or a criminal  
6                   matter at play, we would ask the individuals and  
7                   to determine whether or not they had referred  
8                   the matter to law enforcement. You know, we  
9                   often get those type of complaints that involve  
10                  criminal matters and a decision on whether a  
11                  document hypothetically speaking was a  
12                  counterfeit or forged is a matter that's outside  
13                  of our ability to make that determination.

14                Q     And so am I right in understanding that your  
15                  approach might be to contact the complainant to  
16                  determine whether they have already complained  
17                  to the other regulatory body or reported to law  
18                  enforcement?

19                A     That would be correct. We would contact the  
20                  complaint. That is a process change that we've  
21                  instituted at the front end of the complaint  
22                  process. The triage and preliminary assessment  
23                  process involves compliance staff reviewing the  
24                  matter, identifying what the issue is and  
25                  determining whether or not it falls within

1 something that we can investigate, and  
2 oftentimes we find that there are matters at  
3 play which speak to contractual issues and so  
4 matters that relate to a civil court process  
5 and/or that touch on criminal matters, and so in  
6 that, a preliminary contact, we would have that  
7 conversation. My staff regularly has those  
8 conversations.

9 Q Are there instances where you would also take  
10 the matter into your own hands and issue a  
11 referral to the agency or would you  
12 predominantly leave that in the hands of the  
13 complainant?

14 A Well, we have not done that. But if you are  
15 asking me in a hypothetical way whether there's  
16 a set of circumstances that I can envision that  
17 occurring, I think we could see something like  
18 that occurring where we would go to the  
19 regulatory or enforcement agency and suggest  
20 that we have information, but again that would  
21 be context and case specific. We haven't done  
22 that at this point.

23 Q And why is it that you have not done that? Is  
24 it that there just hasn't been any overlapping  
25 subject matter, or ...

1           A     Well, you know, I think we could use the example  
2                   of a complainant who has suggested that there  
3                   has been some criminal activity at play and that  
4                   is in addition to matters that do fall to us,  
5                   for example, perhaps there's issues around  
6                   duties to clients, use that as an example, but  
7                   there's an outstanding suggestion of criminality  
8                   of some type. From experience, me referring  
9                   that to a law enforcement agency would not be  
10                  sufficient for the law enforcement agency. They  
11                  will want to speak to the witness, and if the  
12                  witness does not want to refer it to them, then  
13                  they don't have a witness with which they can  
14                  pursue the matter. And so a referral of the  
15                  type that suggests that I would refer that to  
16                  them would be a half measure, I would suggest.  
17                  The complainant needs to understand that in  
18                  order for law enforcement to pursue a matter,  
19                  law enforcement does require a witness. And if  
20                  they're not prepared to cooperate, then law  
21                  enforcement is probably not going to be in a  
22                  position to assist them. So my referral of it  
23                  to them doesn't get it any further ahead if the  
24                  complainant is not prepared to assist. I hope  
25                  that answers the question for you.

1           Q     Yes. I'm just wondering if there's any matters  
2                   that you're aware of that have come before the  
3                   Real Estate Council of BC in which you have  
4                   identified something that might be within the  
5                   purview of law enforcement, for example, in  
6                   which you have sort of assisted a complainant in  
7                   reporting that or taken on any active role. Or  
8                   is that something that is more left with the  
9                   complainant?

10          A     I don't -- cannot think of one. One does not  
11                   come to mind where we have taken an active role.  
12                   However, you know, I have had conversations and  
13                   my staff have had conversations with  
14                   complainants that have gone down that path of  
15                   this really does need to be a matter made or  
16                   referred to whatever, you know, hypothetically  
17                   Vancouver police or the RCMP because there's  
18                   evidence that it could come from that, that is  
19                   if it was investigated and a finding was found  
20                   that would assist us in terms of our work.

21          Q     And so now we've sort of covered the topic of  
22                   referrals out from the Real Estate Council of  
23                   BC. I'd like to ask you about referrals you've  
24                   received from other agencies. Could you speak  
25                   to, and again I'm not asking for specifics but

1 more an approximation, how many referrals you've  
2 received from other agencies?

3 A I think it would be fair to say three large  
4 referrals from other agencies, one recently.

5 Q And when you say three -- sorry, when you say  
6 three, do you mean referral of three licensees  
7 or three sort of fact patterns or what are you  
8 referring to with three?

9 A I would -- in referring to three I would say  
10 three from outside law enforcement type  
11 organizations, the number of licensees would be  
12 numerous as it relates to those three.

13 Q So the three is referring to a particular set of  
14 facts?

15 A Yes.

16 Q Okay. And what is the process for triaging  
17 referrals? Is it the same as with complaints,  
18 or is there a different process that you follow  
19 there?

20 A It typically has been a little bit different.  
21 It's a little outside of the norm, and the norm  
22 being they come in through either a written  
23 complaint, or the complaints that we've received  
24 to date that would be considered referrals have  
25 all been addressed and directed to me. And so

1                   they end up directly with me for review. So  
2                   they step outside of the -- and in fact are  
3                   prioritized in that way because they come from  
4                   the outside, they avoid or bypass the intake  
5                   process by and large. I don't want to  
6                   oversimplify it. I mean, if it did come in, my  
7                   intake team would see it likely first and then  
8                   would advance it to me. But I would be the one  
9                   that it rests with.

10                Q     Okay. And are there any particular  
11                   considerations that apply to those referrals as  
12                   compared to complaints received from other  
13                   sources?

14                A     Any particular considerations.

15                Q     Does it require -- perhaps does it require  
16                   different expertise or different priority, or  
17                   are there other sort of factors that apply to  
18                   those referrals that would not apply to the  
19                   other complaint pool?

20                A     Yes. Now, thank you for that clarification. I  
21                   would say yes, you know, in all three matters  
22                   they are ... I would say they touch on matters  
23                   that there's limited experience within my  
24                   investigative group with respect to some of the  
25                   more finer details of the referrals and would



1                   require in terms of interpretation some level of  
2                   experience in those areas. So yes, and so it's  
3                   for that reason they come to me.

4           Q        Okay. And I'm sorry, did you say that there  
5                   have been no referrals from law enforcement?

6           A        No, I said we have had three. We've made none  
7                   out. One of those would be a law enforcement  
8                   referral, yes. Correct.

9           Q        Sorry, I misunderstood. So the three that you  
10                   were referring to, were those -- they were  
11                   coming from law enforcement, or were those  
12                   coming from other regulatory agencies in BC?

13          A        One from a regulatory agency in BC, one from a  
14                   federal regulatory agency, and one from a law  
15                   enforcement, your more typical police agency.

16          Q        Okay. And are any of those referrals, have any  
17                   of those referrals been resolved?

18          A        No, they are all under active investigation.

19          Q        Okay. Mr. Avren in his testimony described a  
20                   process of triaging files, including referral  
21                   files, so that I think a -- I think he used the  
22                   word "flag" would be put on a licensee's file  
23                   but investigation might not be initiated right  
24                   away. Could you describe that process and the  
25                   reasons behind that choice?

1           A     Yes.  Yes.  So in one of the referrals there was  
2                   a significant number of licensees identified and  
3                   given the timing of the referral and the  
4                   capacity of the team and capacity related to  
5                   competency and the development of the team, the  
6                   decision by me was made to place a note on the  
7                   licensing files, that is of all the licensees,  
8                   that would serve to bring attention to the  
9                   matter in a manner that would ensure that we  
10                  were aware of what was moving forward, this  
11                  while the matters were being assessed.  So when  
12                  I say "moving forward" there is a significant  
13                  amount of movement typically within the licensee  
14                  population.  They do move among brokerages.  And  
15                  so the flag -- and it's not unique to this  
16                  particular fact pattern.  It's something we use  
17                  in an investigative way for all of our  
18                  investigations.  We place flags on any file in  
19                  which there is an investigation actively  
20                  ongoing.  But in this particular case before  
21                  files could be open and in order to bring some  
22                  coherence to the numbers, flags were placed on  
23                  those licensee records so that they would be  
24                  brought to my attention.

25           Q     And so when you --

1           A     Should a transfer -- oh, I'm sorry.

2           Q     I'm sorry. I should have waited.

3           A     Just so, you know, there is, as I say, movement.  
4                 So the application when the -- the expression is  
5                 used when an application is made it can be referred  
6                 to a transfer application or a renewal  
7                 application and there is considerable movement  
8                 in that area, and this serves to bring it  
9                 forward for us to ensure that if there is an  
10                issue with respect to that particular licensee,  
11                it brings it -- it would bring it to my  
12                attention specifically. I would be able to  
13                review the fact pattern as it relates to that  
14                specific licensee and determine what, if any,  
15                risk was evident by the movement or by the  
16                suggested movement.

17          Q     And so the movement that you're describing, when  
18                 a licensee transfers from one brokerage to  
19                 another brokerage they're required to renew  
20                 their licence?

21          A     It's a transfer application, and so the language  
22                 that is used is an application essentially, but  
23                 it's an application to transfer. So they  
24                 provide real estate services within a brokerage  
25                 and often will move between brokerages. So a

1                   licence will become -- and again I'll use  
2                   language, the licence will become -- it may be  
3                   terminated at one brokerage and made operable in  
4                   another brokerage at a fairly coincident time  
5                   frame, but those all move through licensing, and  
6                   those notes that I speak to are a trigger for  
7                   licensing to bring the matter to my attention.

8           Q       And when you refer to licensing, you're  
9                   referring to the licensing department of the  
10                  Real Estate Council of BC?

11          A       Yes, that's correct.

12          Q       And so those transfer applications require  
13                  approval from the RECBC?

14          A       They require a review from my -- if they move in  
15                  a way that I've just described, then they would  
16                  require me to make a positive comment to them  
17                  that either I am okay with the transfer or that  
18                  I want to speak with the licensee so hold the  
19                  transfer until I have an opportunity to reach  
20                  out to them.

21          Q       And so maybe you could just expand on that a  
22                  little bit. What type of review is done in  
23                  response to a transfer application?

24          A       Are we talking generally, or ...

25          Q       Just generally.

1           A     Well, in a general way if there's a flag on the  
2                    licensee record and there's an active  
3                    investigation and there is an individual  
4                    compliance investigator assigned to that matter,  
5                    licensing would go to them and determine whether  
6                    or not the individual is okay to transfer, for  
7                    all intents and purposes. And a decision then  
8                    would be made by the compliance investigator  
9                    that yes or no. And it would be fact dependent.

10          Q     And if there's no flag on the file, for example,  
11                    it would be more of an automated process or  
12                    would there still be a review conducted?

13          A     Well, if there's no flag then it wouldn't be  
14                    brought to our attention necessarily. It might  
15                    be on the licensing department's own initiative,  
16                    but it might not be as well.

17          Q     The licensing department would just be able to  
18                    handle it in their own department. They  
19                    wouldn't need to refer it to the investigations  
20                    department?

21          A     Yes, that's correct.

22          Q     Okay. And so can you explain sort of just so  
23                    that we're clear, why is it that it would be --  
24                    why is it that you've chosen to put a flag up on  
25                    this file or put a note on the file instead of

1                   just opening up an investigation on that person  
2                   right away?

3           A       Well, you know, to be clear, the issue with  
4                   respect to the matter that we're discussing was  
5                   reviewed upon receipt and the choice to not open  
6                   a file had to do with capacity and, quite  
7                   frankly, the volume we were dealing with at the  
8                   time. While we're staffed at, you know, 21 at  
9                   the time we received this we were not -- had  
10                  many new staff and they were dealing with a  
11                  significant and sustained inventory of work.  
12                  Opening a file at that time would not have moved  
13                  the matter forward in any material way. I kept  
14                  those matters with me and they remain with me  
15                  today. Where matters are not assigned they  
16                  remain with me and I do monitor the situation.  
17                  So while there was not an actual file number  
18                  generated, the matter is alive and with me. And  
19                  you know, making something -- opening something  
20                  and not pursuing it would have just added to an  
21                  inventory of files that we were trying to  
22                  address and so it was my decision to make and it  
23                  was determined that I was best positioned to  
24                  review every one of these as they came up and I  
25                  do review them as they came up in terms of an

1 application. So ...

2 Q And you made a mention to this being a specific  
3 set of files. You're referring to the referrals  
4 of licensees associated with Mr. Jay Chaudhary?

5 A That's correct.

6 MS. ROSE: Madam Registrar, could we please pull up  
7 the letter from Registrar of Mortgage Brokers to  
8 Real Estate Council of British Columbia dated  
9 June 7th, 2019. Mr. Scott, do you recognize  
10 this letter?

11 A I do.

12 Q Can you tell me what this letter was?

13 A This was a letter that accompanied the referral  
14 to the counsel with respect to the actions of  
15 Mr. Chaudhary.

16 Q And it's addressed to you?

17 A It is, correct, yes, based on telephone  
18 conversations with the investigators at then  
19 FICOM now BCFSA.

20 Q Okay. And the date on this letter is June 7th,  
21 2019. That's accurate?

22 A Yes, it is.

23 Q Okay. Can you tell me how many licensees were  
24 associated with this referral.

25 A With this particular letter, my recollection

1                   there were four licensees identified in this  
2                   letter.

3           Q        Okay.  Could we scroll down, Madam Registrar,  
4                   please.

5                               And sorry, just to be clear, can you tell me  
6                   tell -- or tell the Commissioner how many  
7                   licensees were associated with a referral from  
8                   the registrar of mortgage brokers as related to  
9                   Mr. Jay Chaudhary?

10          A        Yes, I can.  There was a summary list of  
11                   licensees provided.  The list numbered as it was  
12                   received by us, the summary list numbered 28.  
13                   It was determined upon receipt and review by us  
14                   that of that number 26 were licensed and the  
15                   other two were not.

16          Q        And for those that were not licensed had they  
17                   previously been licensed?

18          A        My recollection -- my apologies.  My  
19                   recollection is no, they had not and they had  
20                   not been licensed at the time we had received  
21                   them.  We did create records for them in our  
22                   internal systems and placed flags on those  
23                   records that would trigger a referral to me.  
24                   And that referral would have been to me based  
25                   on, as I've touched on, the section 11



1                   qualification issue should they have made  
2                   application to us.

3           Q       Okay. And so 28 files in total, two of which  
4                   were not licensed. And so the meaning for that  
5                   for you is of course that you're only able to  
6                   commence investigations into those that are  
7                   licensed by under the *Real Estate Services Act*?

8           A       That's correct.

9           Q       Okay. And so of the 26 remaining, can you tell  
10                   me what the status of those files is?

11          A       So of the 26 we have 16 open investigative  
12                   files, 11 are under active investigation, five  
13                   are pending assignment and 10 are to be subject  
14                   to file opening and will be pursued  
15                   investigatively.

16          Q       Okay. Can you describe how you determined which  
17                   files ought to be opened and which were to be  
18                   pending?

19          A       Generally speaking the decision was made on the  
20                   facts of the individual licensee's suggested  
21                   behaviour and so where we had a situation, for  
22                   example, where the licensee was associated to  
23                   actions related to their own personal mortgage  
24                   activity, that is they were connected to  
25                   Mr. Chaudhary through their obtaining mortgage

1 products for themselves and also were identified  
2 in connection with referrals to external  
3 parties, those generally speaking were the  
4 priority.

5 Q Okay. And so in reference to that I want to  
6 take you to a specific portion of this letter.  
7 Do you see on your screen the paragraph that  
8 begins with the "registrar's investigation"?

9 A Yes, I do.

10 Q Okay. And the first line there says that:

11 "The registrar's investigation has  
12 obtained evidence that licensee referred  
13 their clients to Chaudhary to arrange  
14 mortgage financing for the licensees'  
15 clients."

16 You see that there?

17 A Yes, I do.

18 Q Okay. And so that was one type of conduct that  
19 you just described?

20 A Yes, that is correct.

21 Q Okay. And then if we could scroll down, Madam  
22 Registrar, to the second page.

23 And the first paragraph of this page you see  
24 it says:

25 "In addition to referring clients to

1                   Chaudhary, several licensees worked with  
2                   Chaudhary to arrange their own mortgage  
3                   financing."

4                   You see that there?

5           A        That's correct.

6           Q        And so that was the second type of conduct that  
7                   you described?

8           A        Yes.

9           Q        And are you able to say how many individuals --  
10                   how many licensees from your understanding  
11                   participated in the second category of conduct?

12          A        Well, I can tell you that of the number that  
13                   were referred to us, 12 were identified as  
14                   having financing for their own properties. And  
15                   of that 12, seven also made referrals to  
16                   clients. So they covered both. So the priority  
17                   for us was the 12 that would have obtained it  
18                   for themselves, but of the 12 that obtained it  
19                   for themselves, there were seven of that group  
20                   that had also made referrals for clients, which  
21                   is both then of course both fact patterns.

22          MS. ROSE: Mr. Commissioner, I would ask that we mark  
23                   this as the next exhibit and I believe that is  
24                   exhibit 661.

25          THE COMMISSIONER: Very well. That will be marked as

1 the next exhibit.

2 THE REGISTRAR: Exhibit 661.

3 **EXHIBIT 661: Letter from FICOM to RECBC, re**  
4 **Real Estate Licensees working with Jay Kanth**  
5 **Chaudhary - June 7, 2019**

6 MS. ROSE:

7 Q And I'm happy to keep this on the screen if you  
8 need, Mr. Scott, but I have no further need of  
9 it.

10 A I'm familiar with the document, but thank you, I  
11 don't need it.

12 Q Okay. Thank you. Madam Registrar, we can take  
13 this down.

14 So I just wanted to delve a little bit  
15 deeper into these two sort of categories of  
16 conduct, the first being you're familiar with  
17 the term "mortgage origination"?

18 A Yes. M'mm-hmm.

19 Q And you understand that to be a mortgage -- that  
20 is the case when a mortgage broker finds sources  
21 of financing for a client to obtain a mortgage?

22 A Yes.

23 Q And so fair to say that the first category of  
24 licensees that came to your notice were sending  
25 their own clients to Mr. Chaudhary for mortgage

1 origination purposes?

2 A That would be correct.

3 Q So in this category can you tell me -- or would  
4 you please describe for the Commissioner whether  
5 these licensees engaged in repeated instances of  
6 referral for the purpose of mortgage  
7 origination?

8 A Generally there are multiple references made.  
9 So yes, I would say in a general way what we see  
10 in the evidence that was provided to us is there  
11 are multiple referrals having been made of  
12 clients to Mr. Chaudhary.

13 Q And that would be multiple different clients  
14 typically?

15 A Yes.

16 Q Can you say over what approximate time period  
17 would those referrals have been made.

18 A My memory serves me it covers -- the information  
19 package that I reviewed covers a period 2015  
20 through 2018.

21 Q So for some of these real estate licensees they  
22 were making referrals over a period of years?

23 A Yes. Now, I would qualify that by saying it  
24 wasn't -- you know, I'd have to look at the  
25 facts for each one, so there were multiple

1                   referrals over a period of years. The number of  
2                   referrals I can't give you at this point.

3           Q       But fair to say that in some of the instances  
4                   there would have been multiple referrals and  
5                   that would have taken place over a period  
6                   of years?

7           A       Yes, fair to say.

8           Q       And have you seen evidence that would support  
9                   the allegation in the letter of June 7th, 2019,  
10                  that the licensees were receiving fees for  
11                  Mr. Chaudhary in the instances where they were  
12                  referring clients for the purpose of mortgage  
13                  origination?

14          A       The evidence that I had available to me was in  
15                  that -- the four corners of the referral. Have  
16                  I seen independent evidence? Is that the  
17                  question?

18          Q       Are you aware whether these licensees were  
19                  receiving referral fees from Mr. Chaudhary?

20          A       It appeared based upon my review that they were,  
21                  yes.

22          Q       Okay. And I'd like to sort of break this down.  
23                  If a licensee is knowingly referring a client to  
24                  an unregistered mortgage broker for the purpose  
25                  of mortgage origination, would that be -- would

1                   that be a breach of the *Real Estate Services Act*  
2                   in your view?

3           A        I think I would consider that a matter for  
4                   investigation under 35 with respect to conduct  
5                   unbecoming, whether or not a specific focus on  
6                   public confidence bringing the industry into  
7                   disrepute and of course the facts would then  
8                   determine whether or not it was a matter that  
9                   needed to be pursued. But for me, I think that  
10                  safe to say that would be conduct unbecoming.

11          Q        And I take it ultimately the determination would  
12                   need to be left to the council of the Real  
13                   Estate Council of BC and you're not able to --

14          A        That's correct.

15          Q        You're not able to propound on that  
16                   specifically, I understand, but in your view  
17                   it's at least a potential serious matter that  
18                   ought to be referred to the council?

19          A        Yes, I would agree with that, one that would  
20                   require investigation and a determination of  
21                   next steps.

22          Q        And if it was -- if the facts were made out, it  
23                   could be a serious breach of the act in the  
24                   manner you described as being conduct  
25                   unbecoming?

1           A     I would think so, yes.  It would be a matter I  
2                    would refer to legal, my legal counsel for  
3                    review based on the evidence.

4           Q     Okay.  And to your knowledge the allegations  
5                    that have been made against these licensees with  
6                    respect to again mortgage origination, are there  
7                    serious allegations that licensees referred  
8                    their clients to unregistered -- to an  
9                    unregistered mortgage broker knowingly?

10          A     Well, the allegation is that they did that.  
11                    Whether --

12          Q     Are you able to say -- sorry, I don't mean to  
13                    interrupt, but I'm trying to clarify my  
14                    question, which was rather awkwardly worded.  
15                    You mentioned before that sometimes when you're  
16                    doing your triage assessment of files you're  
17                    able to determine whether allegations are -- I'm  
18                    not sure if you'd use the word "frivolous," but  
19                    otherwise there's not a need for your office to  
20                    pursue them?

21          A     That's correct.  I wouldn't use the word  
22                    "frivolous"; you're right there as well.  I  
23                    would be looking at it through the lens of  
24                    whether this is a matter that we can pursue  
25                    within, you know, does it fall within our



1 jurisdiction. Clearly we can -- we receive a  
2 complaint and we can investigate the complaint,  
3 but a decision on next steps might be out of our  
4 hands just because this doesn't fall within our  
5 jurisdiction. So these matters were reviewed  
6 with a similar lens and it was my review and my  
7 finding that they were worthy of followup based  
8 on the facts presented.

9 Q And part of your analysis in determining whether  
10 something is worthy of followup is whether or  
11 not it's a credible or a serious allegation?

12 A Yes.

13 Q And you were not able to determine that the  
14 allegations related to these referrals were not  
15 credible or not serious?

16 A I would suggest that the allegations were, you  
17 know, credible which would require my followup.

18 Q Okay. And when you are describing the nature of  
19 those allegations, you're referring to the  
20 allegation that the licensee knowingly referred  
21 a client to an unregistered mortgage broker?

22 A That would be correct.

23 Q And also that the allegation that the licensee  
24 knowingly referred a client to an individual  
25 knowing that that individual will alter

1 documents for the purpose of mortgage  
2 origination?

3 A That would be correct.

4 Q And both of those allegations, if borne out,  
5 would be breaches of the act under the heading  
6 of conduct unbecoming, as you've described?

7 A I would make -- yes, I would suggest that that  
8 would be what I would advance them as.

9 Q Okay. And if these were found to be breaches,  
10 can you speak to whether this would be  
11 considered -- and again I'm not asking you to  
12 take over the role of the council in making a  
13 final determination, but can you make an -- can  
14 you indicate whether this would likely be a  
15 serious breach of the act if these allegations  
16 were borne out?

17 A So as you've described them, that is knowingly  
18 doing something specifically referring for  
19 unlicensed activity, I would suggest that that  
20 would be considered serious. What happens to it  
21 when it makes its way to through our legal team,  
22 you know, I don't feel that I can comment on  
23 that. I would consider it serious and I do  
24 consider it serious, which is why we are  
25 pursuing them.

1           Q     And is that seriousness reflected in any sort of  
2                    investigation measures that you've applied to  
3                    these files?  Is there a way for you to  
4                    prioritize files to reflect the seriousness of  
5                    the potential breach?

6           A     What I have done with these particular files  
7                    aside from the fact that they do sit with me is  
8                    when they're assigned I have attempted to limit  
9                    the assignments to team members who have  
10                   developed experienced and either developed it  
11                   through the course of their additional training  
12                   with us or come equipped to deal with it out of  
13                   the box, so to speak, and limited the number of  
14                   people who I would assign these to.  There's  
15                   quite a bit of material, as I'm sure you are  
16                   aware, and the expertise required to make  
17                   assessments on conduct as it relates to -- well,  
18                   really it comes down to a financial crime  
19                   matter, I want my most experienced people  
20                   dealing with these matters.

21          Q     And how many people in your office would you  
22                    apply that sort of category to, the most  
23                    experienced people in your office?  How many  
24                    individuals do you have that sort of meet that  
25                    description?

1           A     I would say I have four currently.

2           Q     Okay. So those are my questions with respect to  
3                   the mortgage origination category. I'd like to  
4                   now turn to licensees who have been alleged to  
5                   have used the services of Mr. Chaudhary to  
6                   obtain properties for their own benefit.

7           A     M'mm-hmm.

8           Q     And so you mentioned that there are 12 and of  
9                   those 12, 7 were engaged in both categories,  
10                  mortgage origination for clients and mortgage  
11                  origination for their own benefit. That's  
12                  right?

13          A     That's correct.

14          Q     It's too many Gs in those words. I was  
15                  stumbling over my pronunciation there.

16                         And so these individuals or these licensees  
17                         who are obtaining properties, those are  
18                         properties that are typically going into the  
19                         licensee's own name?

20          A     That's correct.

21          Q     And are you able to describe the types of  
22                  properties that these licensees obtained using  
23                  the services of Mr. Chaudhary?

24          A     Residential properties would be, I think, the  
25                  best description. No commercial properties that

1 I have seen.

2 Q And are those -- were those typically the  
3 licensee's only property? Was it a second home,  
4 or are you able to comment on that aspect?

5 A I would be -- I would be -- without taking a  
6 really deep dive into it, I would say, and I  
7 would want to qualify my comments, my review  
8 would suggest that these are homes for the  
9 licensee's use. And when I say "home," a type  
10 of residential property.

11 Q And from the facts that you've reviewed, did any  
12 of the properties obtained in this way appear to  
13 be investment properties?

14 A I would have to say yes, but I'd have to go in  
15 and look more carefully at which ones they might  
16 be. There seem to be several transactions and a  
17 few that come to mind where there were there may  
18 have been investments.

19 Q And without -- I understand that these are  
20 active investigations and so I want to be very  
21 careful that I'm not asking you to provide any  
22 identifying information regarding these  
23 individuals or their gender or any other aspects  
24 that would tend to reveal their identity. But  
25 what makes you say that these are likely

1 investment properties in some cases? What are  
2 the -- can you identify what the circumstances  
3 would be that cause you to reach that  
4 conclusion.

5 A Purchases are mortgages obtained for  
6 developments underway and developments and/or  
7 properties purchased by related entities of the  
8 individual licensee.

9 Q Related entities such as a corporation that's  
10 held by the individual?

11 A Family members.

12 Q Okay. And when you say "development," what  
13 exactly do you mean there, the property was not  
14 built yet, or what do you refer to as  
15 "development"?

16 A Properties, think of it in the terms of a strata  
17 property where they're advertising coming in  
18 2022, so you're buying off of plans.

19 Q Okay. And were any of these properties flipped in  
20 quick succession?

21 A I wouldn't say in quick succession. The  
22 properties in a couple of instances that come to  
23 mind changed hands but not flipped in the  
24 expression that we would think of that before it  
25 was built. I don't recall seeing that.

1           Q     Can you say whether any of these properties were  
2                    purchased and then sold within a period of under  
3                    five years?

4           A     Yes. I can say that. They were purchased and  
5                    sold within that window.

6           Q     And are you able to say whether a profit was  
7                    derived by that process?

8           A     I can't say with a level of certainty, but the  
9                    timing of the sale was coincident to the market  
10                   and it would be reasonable to infer that there  
11                   was a lift in the value of the property between  
12                   purchase and sale.

13          Q     Okay. Specifically returning to the facts  
14                   related to obtaining these mortgages on the part  
15                   of these licensees, from -- to your knowledge  
16                   can you speak to the ... Sorry. I'm just  
17                   collecting my thoughts here for a moment. So  
18                   with the mortgages that were obtained by  
19                   licensees using the services of Mr. Chaudhary,  
20                   is it the case that there's at least an  
21                   allegation of alteration of the licensee's  
22                   income in forms submitted to a lender?

23          A     Yes, that would be correct.

24          Q     And can you describe the magnitude of those  
25                   alterations?

1           A     Often significant. Typically misstatements of  
2                   income in the range of six figures. Often -- in  
3                   one case I can think of it was between 150- and  
4                   \$170,000 misstatement.

5           Q     And sorry, when you say it's a 150- to \$170,000  
6                   misstatement, can you give us -- and again I  
7                   don't want to say specifics, but can you give us  
8                   an indication of what the actual income would  
9                   have been and what the indicated income would  
10                  have been, speaking in again generalities.

11          A     In one that comes to mind there was -- the true  
12                  records spoke to an annual income, of an  
13                  approximate annual income between 15- and  
14                  \$20,000 a year. And the actual income that went  
15                  forward to the lender was in the area of 150- to  
16                  \$170,000. So a misstatement of approximately  
17                  \$150,000.

18          Q     So in the order of to the power of ten if I have  
19                  that -- no, that's not quite right.

20          A     Not quite ten.

21          Q     Never ask a lawyer to do math, especially in  
22                  live time. But essentially in a case you've  
23                  described it would be adding a zero at the  
24                  bottom of the person's income?

25          A     Yes. I think, you know, oversimplifying it



1                   would be a multiple of probably 6.-something and  
2                   adding a zero, yes, would do that, yeah.

3           Q       And in that circumstance are you able to recall  
4                   what the value of the mortgage obtained was?

5           A       Recollection, it was probably in the area of  
6                   480- to 490,000.

7           Q       Okay. And that mortgage was used to purchase a  
8                   residential property?

9           A       Yes, it was.

10          Q       And do you recall the approximate value of that  
11                  residential property?

12          A       The purchase price was in the vicinity of  
13                  600,000.

14          Q       Okay. And is this an outlier of the facts that  
15                  you've reviewed of the licensees that obtained  
16                  the services of Mr. Chaudhary for their own  
17                  benefit?

18          A       No, it's not an outlier.

19          Q       Okay. I'm going to ask you the same questions  
20                  that I did with respect to the mortgage  
21                  origination services. Have you been able to --  
22                  with respect to any of these licensees, have you  
23                  been able to determine whether the allegations  
24                  are un -- incredible such that they are not  
25                  worthy of being pursued by your office?

1 A No, no, they're all being pursued.

2 Q And that's because they're all -- the  
3 allegations contained you consider to be  
4 credible or serious?

5 A I do.

6 Q Okay. And having obtained financing through the  
7 services of an individual knowing that that  
8 individual would alter the documents, that would  
9 be considered a breach of the act?

10 A I would consider that as evidence of conduct  
11 unbecoming.

12 Q And in the cases you've described where we have  
13 an alteration to the tune of adding a zero on  
14 the bottom of the income of an individual, is it  
15 reasonable to infer is there -- do you think  
16 that there's evidence that these licensees were  
17 aware of the alteration of these documents?

18 A I think there's evidence, yes, that they were  
19 aware of it.

20 Q Okay. Have you received any indication from the  
21 council about the priority of these files?

22 A I'm not sure I understand the question. You're  
23 asking from council ...

24 Q I may be misunderstanding the sort of inner  
25 makeup of the real estate council, but I'm

1                   wondering if you've been given any sort of  
2                   instruction or you've received any indication  
3                   from elsewhere within the real council, perhaps  
4                   the council or perhaps other individuals with  
5                   the authority to you, whether these referral  
6                   files are considered to be a priority.

7           A       I've received no such direction from anyone in  
8                   council, but they are treated -- and I think  
9                   I've covered that off. I hope I -- if I  
10                  haven't, I want to reiterate that the matters  
11                  rest with me and in that sense they have been  
12                  prioritized because they rest with me. And I  
13                  review them -- I've reviewed them. I continue  
14                  to review them as they are surfaced by virtue of  
15                  the flags, so -- but I've received no specific  
16                  instruction. The decision on what happens in  
17                  terms of assignments and the like rests with me  
18                  and its decisions based on capacity and  
19                  competency.

20           Q       Right. And so it sounds as though I am mistaken  
21                   in the sort of inner workings of the real estate  
22                   council, and you've received no such instruction  
23                   because it would not be appropriate for you to  
24                   receive such instruction because the authority  
25                   and responsibility rests with you?

1           A     Yes.  I think that would be an accurate  
2                   assessment.

3           Q     Okay.  And you said that you are aware of  
4                   evidence, or an allegation at least, that these  
5                   licensees were paid referral fees from  
6                   Mr. Chaudhary?

7           A     Yes, the evidence -- the evidence is it does  
8                   exist within the context of the actual referral.

9           Q     And have you made -- has your office, are you  
10                  aware of any effort having been made to summons  
11                  bank records or to otherwise obtain records of  
12                  these referral fees?

13          A     We've not summonsed any records.  If we were to  
14                  require records, we would request them from the  
15                  licensee.

16          Q     And can you speak to whether that has been done,  
17                  whether your office has obtained bank records in  
18                  relation to the evidence or allegation of a  
19                  referral fee having been paid?

20          A     I can't speak to that.  I would have to go into  
21                  the individual files and look at them or at  
22                  least be briefed by the investigators on the  
23                  individual files to determine whether they have  
24                  made those requests.

25          Q     But in your view, the powers as you indicated

1                   under section 11, 37 and 38, would that be  
2                   sufficient for your office to obtain banking  
3                   records of the licensee?

4           A       We can ask for the records by virtue of 37  
5                   and/or 11. 38 would allow us to make  
6                   application before the supreme court. If your  
7                   question is are these sufficient, the powers  
8                   of -- within the legislative framework I think  
9                   are very -- I think they're good, they're strong  
10                  powers. I'm not sure if you're asking me to  
11                  project into the future in terms -- or into a  
12                  hypothetical are they sufficient, could we use  
13                  additional powers. I'm not sure if that's where  
14                  you're going. But 37 allows us to ask for those  
15                  records and it requires the licensee to provide  
16                  them to us.

17          Q       And I'm sorry, I didn't intend to ask you to  
18                  provide a legal opinion or to provide a sort of  
19                  crystal ball analysis, but I guess what I'm  
20                  asking is, in summary, section 37 allows you to  
21                  request banking records from licensees; is that  
22                  right?

23          A       That would be correct.

24          Q       And licensees are required to comply with an  
25                  investigation of the Real Estate Council of BC?

1           A     That's correct.

2           Q     And so they would be in your view required to  
3                 provide those records if --

4           A     Yes.

5           Q     Okay.  So you mentioned many of these are in  
6                 active investigation, some of them the file is  
7                 pending opening.  Have any of these files been  
8                 resolved?

9           A     No, they're all actively under investigation.  
10                Even instances where they're -- well, I guess  
11                what I would say is the matter even if the  
12                licensee was hypothetically speaking not  
13                licensed, that matter would be considered active  
14                if -- for our purposes because they could make  
15                application, and so it's alive for us regardless  
16                of the status of the licensee.  Does that --

17          Q     Okay.  Yes, that's -- I was just wondering if  
18                there had been a public order that had been made  
19                in respect of any of these files.

20          A     There have been conditions placed on certain  
21                licensees and those are public record.  In two  
22                instances.

23          Q     Okay.  And have any of the licensees that are  
24                the subject of these investigations ...  I'm  
25                going to reframe that question a little bit.

1                   Are any of the licensees that are the subject of  
2                   these investigations still practicing?

3           A       Yes. The majority continue to practice. We've  
4                   had two withdraw from the industry voluntarily,  
5                   but the vast majority remain in the industry.

6           Q       And when you say "withdraw," do you mean they've  
7                   given up their licence? Or could you expand on  
8                   that.

9           A       Yes, I can. Withdraw from the industry in this  
10                   context means they chose not to pursue a renewal  
11                   application.

12          Q       Okay. And with respect to those -- I was about  
13                   to say licensees, but those individuals, is the  
14                   investigation ongoing?

15          A       The investigation is alive to us as a result of  
16                   the fact they've withdrawn, they've -- and when  
17                   I say "withdrawn" they are no longer licensed.  
18                   But it remains alive for us because they could  
19                   re-apply or through our licensing department  
20                   attempt to renew at any point in time and then  
21                   this matter would become alive for them under  
22                   section 11 of the *Real Estate Services Act*.

23          Q       But you're not -- your office is not actively  
24                   pursuing those individuals given that they have  
25                   withdrawn?

1           A     No, we're not actively pursuing them.

2           Q     And why would you not pursue those individuals?

3           A     Well, the withdrawal, the expiry and withdrawal,  
4                   if their licence has lapsed we've lost  
5                   jurisdiction over them in that sense. We could  
6                   pursue them, though, for matters related to  
7                   activity while they were licensed, but it really  
8                   comes down, and this again, this is a decision  
9                   made based on volume capacity. We have active  
10                  licensees that we need to pursue and withdrawing  
11                  from the industry is a less than perfect issue  
12                  for us, but we really are not in a position to  
13                  pursue them at this point. We --

14          Q     And that's sort of a -- I'm sorry. Please  
15                  continue your thought.

16          A     It's just I'd much rather devote what resources  
17                  I do have to ones that are active in the  
18                  industry.

19          Q     Okay. So those are my questions with respect to  
20                  that particular referral. Are there other  
21                  investigation matters that are within the public  
22                  realm that have an anti-money laundering -- or  
23                  sorry, I should say that have a money laundering  
24                  component to them in your view?

25          A     In terms of our investigations do we have ones



1                   that speak to money laundering, or potentially  
2                   speak to it?

3           Q       Well, I think Mr. Avren has already given  
4                   evidence as to the existence of ongoing  
5                   investigations that might touch on money  
6                   laundering issues. I suppose what I'm asking  
7                   you is are there cases that have come to the  
8                   public realm by virtue of a consent order or  
9                   otherwise that may have a money laundering  
10                  aspect to them that you're aware of.

11          A       I'm aware of one investigation that is likely  
12                   one of our investigations that likely is in the  
13                   public realm by virtue of another agency.

14          Q       I'm sorry. Is that an active -- is that an  
15                   ongoing investigation?

16          A       Yes, it is.

17          Q       Okay. Are you able to describe the details of  
18                   that case without providing any identifying  
19                   information?

20          A       In a general way it involves the purchase of  
21                   obviously, to the risk of being obvious, real  
22                   estate, purchases of properties that are  
23                   reported to have been made with the proceeds of  
24                   crime, and of course because it's the purchase  
25                   of property, purchase and sale of property, a

1                   licensee is involved.

2           Q        Okay. I think I'm going to leave that one  
3                   there. Are you familiar with the case of  
4                   licensee Isabel Wen?

5           A        I have awareness of the matter, yes.

6           Q        Was that a case that was before your time?

7           A        Yes, it was.

8           Q        Okay. Mr. Avren has already given some evidence  
9                   about that case, so I won't ask you to speculate  
10                   unless there's anything that you had to  
11                   contribute on that particular file.

12          A        No. As I say, I'm aware of the matter, but the  
13                   matter was dealt with before I arrived at  
14                   council.

15          Q        Okay. I wanted to turn now to asking for your  
16                   perspectives on room for improvement in  
17                   investigations. So I might first start with a  
18                   similar question that was put to Mr. Humayun  
19                   this morning. Are there particular resources  
20                   that your office would like access to that would  
21                   be helpful to your investigation process?

22          A        Specific resources. Well, I think, you know, I  
23                   think there will be value in -- we have access  
24                   now to corporate registry documents. I think --  
25                   you know, I think, though, there would be value

1 in similar access to the land titles, the land  
2 transparency as it becomes more mature. I mean,  
3 there are any number of things that we could  
4 have, but as a regulatory, you know, the powers  
5 within the statute are very -- I think are  
6 strong.

7 Q I should say -- sorry, and I'm trying to just  
8 limit the -- I'm trying to be a bit more  
9 specific, I think, with resources. Are there  
10 other databases in addition to the ones you've  
11 described, the land owner transparency registry  
12 and the LTSA? Are there other databases that  
13 might be useful to you if you had access to  
14 them?

15 A Well, I come -- as you know, I come from a  
16 fairly long history of enforcement with the  
17 RCMP, so there are other data sets out there  
18 that from a -- would be valuable to have access  
19 to, but you know, I think that's -- I'd have to  
20 take that away and give some thought to it. I  
21 think that we are well positioned with the  
22 legislation in our ability to demand documents  
23 and compel documents, but as an investigator you  
24 always want as much information as you can  
25 obtain and you want to attain it from an

1 independent source because it does inform your  
2 investigation and it does inform the outcome in  
3 the investigation. So I would never say no to  
4 additional data or access to records. What that  
5 might look like, I don't know. I think there  
6 would have to be some thought given to that.

7 Q Does your office have access to MLS?

8 A No, we do not.

9 Q Is that one that might be of assistance?

10 A It would be but it is -- it doesn't belong to us  
11 and of course it would be helpful that we had  
12 access. Currently how we deal with that is we  
13 ask for it by way of the brokerage and/or  
14 occasionally through the Real Estate Board's --  
15 there's great deal of information. A brokerage  
16 deal file typically contains quite a bit of  
17 information with respect to MLS, but we don't  
18 haven an ability to go in and proactively look  
19 at things. So that would be one that would be  
20 helpful, yes.

21 Q With respect to the land title survey authority  
22 are there any -- is the manner of your current  
23 access sufficient for the purpose of your  
24 investigations?

25 A I believe so. We can access the documents and

1                   we can access title searches and the things  
2                   fairly quickly. I don't think we've run into  
3                   any obstacles with respect to that.

4           Q       Okay. In terms of, as you may know, the real  
5                   estate licensee, the real estate agent who was  
6                   involved in the sale or the multiple licensees  
7                   that might be involved in the sale is not  
8                   recorded by the LTSA, would that be -- if it was  
9                   recorded on those forms would that be of  
10                  assistance to your office?

11          A       I think, you know, it would be of assistance to  
12                   us in the way that I described that -- the  
13                   ability for us to independently verify  
14                   information being provided. That's always --  
15                   you know, one of the things as an investigator  
16                   you will hear individuals in the context of  
17                   statements given to you tell you a story and it  
18                   is their version. The ability to independently  
19                   corroborate things is really I think a key  
20                   component of a well-run and done investigation.  
21                   So, yes, short answer would be that would be  
22                   very helpful.

23          Q       Would it be of assistance if you were able to  
24                   then search for transactions associated with a  
25                   particular real estate agent?

1           A     Yes.  Again for the same reasons.

2           Q     Now, are there any other sort of -- you  
3                   mentioned, you said the corporate registry.  Are  
4                   there any other resources that you do not  
5                   currently have that would be of assistance to  
6                   you if you did have them, leaving aside your  
7                   comment about some of the law enforcement  
8                   databases?

9           A     I think, you know, if -- one of the things that  
10                   I have given some thought to would be if we were  
11                   able to make demands, for example, of  
12                   telecommunications providers and the banks  
13                   and/or financial institutions, whether it be in  
14                   the format of a production order before a  
15                   provincial court judge or justice or in the form  
16                   of a demand letter that essentially compels them  
17                   to provide us with information with respect to a  
18                   particular set of circumstances.  I think that  
19                   would be in the same way would assist us in  
20                   corroborating information and would provide for  
21                   a more complete picture of the investigation.

22           Q     What are the difficulties, to your mind, of  
23                   obtaining a court order as the legislation  
24                   currently provides?

25           A     Well, it entertains an application before the

1           supreme court which is a significantly different  
2           undertaking than one made to a JP or a  
3           provincial court judge in the context of a  
4           production order. It's a different undertaking.

5           Q     Can you just expand on that.

6           A     We would have to have our legal counsel  
7           represent us in the application, whereas I can  
8           envision a situation where one of my  
9           investigators could make application before a  
10          justice in a provincial court for a production  
11          order.

12          Q     In a provincial court if one of your  
13          investigators was able to appear before a  
14          justice of the peace, for example, that would be  
15          from your view a more efficient process?

16          A     Yes.

17          Q     And would that make it perhaps more likely for  
18          you to engage in that process?

19          A     I would think so, yes.

20          MS. ROSE: Okay. Thank you, Mr. Scott. Those are my  
21          questions for this witness, Mr. Commissioner.

22          THE COMMISSIONER: Thank you, Ms. Rose. I will now  
23          turn to Ms. Rajotte for the province, who has  
24          been allocated five minutes.

25          MS. RAJOTTE: Thank you, Mr. Commissioner.

1                   **EXAMINATION BY MS. RAJOTTE:**

2                   Q     Mr. Scott, can you hear me okay?

3                   A     I can hear you very well, thank you.

4                   Q     Mr. Scott, Ms. Rose asked you some questions  
5                             about RECBC's referral of files to other  
6                             agencies. Do you recall that?

7                   A     Yes.

8                   Q     And I just want to ask you a few questions to  
9                             clarify specifically RECBC's referral of files  
10                            to the Office of Superintendent of Real Estate  
11                            that I'll refer to as OSRE.

12                  A     Yes.

13                  Q     Does RECBC make referrals of files to OSRE?

14                  A     Yes, and I apologize for not covering that off.  
15                            I don't really see them as -- I see them as  
16                            co-regulating the same space and so I didn't  
17                            consider them in the same context as the other  
18                            agencies. We make regular referrals of  
19                            unlicensed activities to OSRE.

20                  Q     And am I correct that in December of 2019 OSRE  
21                            and RECBC entered into a memorandum of  
22                            understanding?

23                  A     I believe so, yes. I believe that's the date.

24                  Q     And that MOU formalizes RECBC's sharing of  
25                            complaint files with OSRE; is that right?



1           A     That's correct.

2           Q     And RECBC has referred files to OSRE under the  
3                    MOU?

4           A     That's correct.

5           Q     And in general the files referred to OSRE under  
6                    the MOU, do those relate to alleged misconduct  
7                    by licensees that may be seriously detrimental  
8                    to the public interest?

9           A     Generally, yes.

10          MS. RAJOTTE: Thank you, Mr. Scott. Those are my  
11                    questions.

12          THE WITNESS: Thank you.

13          THE COMMISSIONER: Thank you, Ms. Rajotte. Now,  
14                    Ms. Shelley on behalf of Canada, who has been  
15                    allocated five minutes.

16          MS. SHELLEY: Thank you. We have no questions for  
17                    this witness.

18          THE COMMISSIONER: Thank you. Mr. Usher on behalf of  
19                    the Society of Notaries Public, who has been  
20                    allocated five minutes.

21          MR. USHER: Thank you, Mr. Commissioner. I have no  
22                    questions for this witness now.

23          THE COMMISSIONER: Thank you. Ms. Tweedie on behalf  
24                    of the BC Civil Liberties Association similarly  
25                    has been allocated five minutes.

1 MS. TWEEDIE: And I similarly have no questions.

2 Thank you.

3 THE COMMISSIONER: Thank you, Ms. Tweedie. And

4 Mr. Rauch-Davis for Transparency International

5 Coalition, who has been allocated five minutes.

6 MR. RAUCH-DAVIS: Thank you, Mr. Commissioner.

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

8 Q Mr. Scott, your evidence of a few moments ago  
9 was that one of the further resources you  
10 anticipate utilizing is the land transparency  
11 registry when it becomes available?

12 A I hope to, yes. Yes, I hope to.

13 Q And I'm just wondering if you can expand on how  
14 do you expect the LOTA registry to assist your  
15 office's function.

16 A Well, obviously I'm looking at it from a  
17 future -- through a future lens, but I see it as  
18 being able, us being able to establish and  
19 confirm. For example, I'll use an example where  
20 there's a suggestion that there might be a less  
21 than arm's length transaction involving a  
22 licensee. If we were able to establish  
23 beneficial ownership that would be a helpful  
24 thing for us, I think. There are suggestions  
25 that come up in our investigations that suggest

1                   that the licensee might have an interest, and  
2                   that type of access would I see helping us.

3           Q        So the issue of beneficial ownership and the  
4                   distortion of the ultimate beneficial owner,  
5                   that's been an issue in the past for your  
6                   investigations?

7           A        I wouldn't say it's an issue. I think from an  
8                   investigative perspective, though, it's one of  
9                   those things that if you're trying to establish  
10                  a collection and that exists and you can  
11                  establish it, then that would go a long way  
12                  towards assisting us, yes.

13          Q        Right. And I take it you would agree with me  
14                   that the utility of the land owner registry will  
15                   only be as good as the quality of information  
16                   going into that registry?

17          A        Yes, I would agree with that.

18          MS. RAUCH-DAVIS: Yeah. I think those are all my  
19                   questions for this witness. Thank you,  
20                   Mr. Commissioner.

21          THE COMMISSIONER: Thank you, Mr. Rauch-Davis.  
22                   Anything arising from that, Ms. Rajotte?

23          MS. RAJOTTE: Nothing arising, thank you.

24          THE COMMISSIONER: Ms. Rose?

25          MS. ROSE: Nothing arising, Mr. Commissioner. Thank

1                   you.

2                   THE COMMISSIONER: Thank you, Mr. Scott. We very  
3                   much appreciate the time you've taken to share  
4                   with us your experience and insights into the  
5                   workings of the Real Estate Council of British  
6                   Columbia. It has been helpful. You are excused  
7                   from further evidence now. Thank you.

8                   And I think, Ms. Rose, we will adjourn until  
9                   tomorrow at 9:30. It's next week we've got the  
10                  early start, I think, isn't it?

11                  MS. ROSE: That's right, Mr. Commissioner. Tomorrow  
12                  we anticipate a 9:30 start as usual. Thank you.

13                  THE COMMISSIONER: Thank you. 9:30 tomorrow, then.

14                  THE REGISTRAR: The hearing is now adjourned until  
15                  February 26, 2021 at 9:30 a.m. Thank you.

16                  **(WITNESS EXCUSED)**

17                  **(PROCEEDINGS ADJOURNED AT 12:49 P.M. TO**  
18                  **FEBRUARY 26, 2021)**

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