Mortgage Broker Fraud: What is it, and are lenders and regulators doing enough to prevent it?

Research Project for Emerging Issues/Advanced Topics Course

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Introduction

Over the past twenty years, the North American economy has gone on a bit of a roller coaster ride, with many ups, downs, twists and corkscrews along its path. Its financial health has experienced significant instabilities which has exposed weaknesses and gaps within the mortgage industry, a sector which contributed largely to the Global Financial Crisis of 2007-08 ("2008 Financial Crisis). Prior to the 2008 Financial Crisis, the U.S. economy was fueled with cheap credit and lax lending standards that ultimately created a housing bubble. While the Canadian economy and banking sector has largely become immune and resilient having survived the crisis, many experts and speculators still believe the Canadian market is on the same track with its ride coming close to its end, where it will finally burst.

If accurate, and resembling the U.S. market, a practice that is garnering much attention in Canada as a factor to the alleged housing bubble, is mortgage fraud. Mortgage fraud, a crime that is considered by most Canadians as 'harmless,' is a deceitful practice that threatens the financial stability of an economy and creates uncertainty and/or lack of confidence in the housing market. Behind most of the mortgage fraud, are mortgage brokers who enable such fraudulent activity by exposing known weaknesses/gaps within the process. The real estate market plays a vital role in the economy; therefore, it is imperative to scrutinize mortgage broker fraud and assess the effectiveness of current preventive and detective measures implemented by lenders and regulators.

There is not just one single method in which a mortgage broker can facilitate mortgage fraud. While there are many different types of mortgage fraud, mortgage brokers typically execute those frauds by fabricating documentation such as employment letters, falsifying tax and/or income statements (i.e., paystubs), inflating property values through appraisals, and steering buyers to products with greater benefits to them as opposed to their clients. These mortgage brokers are unethical perpetrators who knowingly commit the fraudulent act without the buyer's knowledge or in some cases, with their consent in a typical 'fraud for shelter' scenario. These frauds, if not prevented, can have a broad and lasting impact on the financial well being of unsuspected borrowers, which could be systemic and translate into farther reaching consequences such as the 2008 Financial Crisis.

Financial institutions and regulators in Canada have kept a close eye on both the housing and financial markets and in response have tightened lending requirements while implementing various standards and controls to mitigate risks of fraudulent behaviour and a housing bubble burst. This includes implementing stricter underwriting guidelines/standards, enhancing due diligence procedures, placing greater emphasis on governance and oversight, and creating transparency and awareness on how penalties/fines are enforced. But even with all the changes and tightening by both lenders and regulators, mortgage fraud facilitated by brokers continues to emerge, suggesting further tightening and measures be put in place to prevent and detect this fraudulent activity.

The primary focus of this research project is to understand the fundamentals of mortgage fraud, how mortgage brokers are involved in these deceptive practices, and the common methods utilized in executing the fraud. It will also look at the regulatory landscape and determine whether regulators and lenders are doing enough to protect themselves and the borrowers who unknowingly become victims to it. By examining the preventive and detective measures used by regulators and lenders, we aim to gain an understanding of the weaknesses and gaps in their processes that continue to contribute to the unnoticed occurrence of fraudulent practices. Through a detailed examination of these factors, we can aim to propose recommendations that will help safeguard the integrity of the mortgage industry, encourage further transparency, and reinstate consumer's confidence and trust in the mortgage brokerage sector. Lastly, based on the analysis performed we are able to gauge how an Investigative Forensic Accountant (IFA) can assist mortgage brokerages, lenders, and/or regulators in the fight against mortgage broker fraud.

1. Mortgage Fraud

1.1 What is Mortgage Fraud?

As the term suggests, mortgage fraud involves a scheme(s) that would constitute obtaining a mortgage in a manner that is illegal. It is deliberately and knowingly misrepresenting or omitting truthful and factual information on the mortgage loan application in order to obtain financing and insurance from lenders and insurers respectively without their knowledge. Per the Canada Mortgage and Housing Corporation (CMHC), a Canadian Crown Corporation who is governed by a Board and responsible to Parliament on issues such as housing and mortgage needs, research and advisory of the industry, mortgage fraud is defined as:

> "The deliberate misrepresentation of information to obtain mortgage financing that would not have been granted if the truth had been known."[1]

Mortgage fraud can be perpetrated many ways including allowing qualified buyers (i.e., those with excellent credit) to purchase a home in their name on behalf of the actual occupant who would not otherwise qualify for a mortgage. The purchaser who provided their information is known as a straw buyer. While straw buyers benefit financially in the form of a fee by providing their socio-economic information, they could still face criminal prosecution for misrepresenting

[1] (Mortgage Fraud, 2018)

transactions towards financial institutions and remain liable for any mortgage shortfall caused by the other party they are providing their information for. Other mortgage application frauds could include the following:

- Misrepresenting income that is earned through employment,
- Falsifying the status of employment (i.e., full time vs. part time), tenure, and position,
- Incorrectly disclosing source and amount of downpayment,
- Omitting negative historical financial information (i.e., debts or other liabilities/obligations) from ones' credit profile,
- Claiming mortgage is for an owner-occupied dwelling (also known as occupancy fraud) in order to exploit lower interest rates and down payment requirements,
- Colluding with an appraiser to inflate the fair market value of the property,
- Using identity theft to identify as the "homeowner" and having the proceeds directed to the fake homeowners accounts, etc.

The above does not intend to be an exhaustive list of mortgage fraud examples, however they do constitute some of the more common types conducted today. Mortgage frauds are typically classified/grouped into one of two categories, a) 'fraud for shelter', and b) 'fraud for profit'. The latter includes distinct types of fraud relating to profit.

1.2 Fraud for Shelter

In a 'fraud for shelter' scenario, the intent of the primary borrower is to have a mortgage registered that they would not otherwise be qualified for had they not misrepresented themselves and met their obligations via mortgage payments. Also known as 'soft fraud' as the intent is not for the entity lending the funds to incur losses, but rather make 'minor' (as determined by the borrower) false pretenses to qualify for a loan and eventually settle all outstanding debt obligations over the agreed upon term of the loan. The Financial Services Regulatory Authority of Ontario defines 'fraud for shelter' as, "fraud for shelter occurs when a borrower/lender/agent/broker provides false or misleading employment, income, or other documentation to qualify the borrower for a mortgage to purchase a home. In these cases, ownership of the property is the ultimate objective."[2]

"Fraud for Shelter" is committed for several reasons. Due to a shortage in housing within Canada, coupled with an increase in demand which has forced significant increases to housing prices over the past decade, many entrants to the market are unable to qualify for a mortgage. While lending institutions or their regulators have made it increasingly difficult to obtain a mortgage by implementing stricter rules or higher than normal interest rates and fees (typical for 'B' lending institutions), housing market participants willingly or unknowingly committing 'fraud for shelter' are confident they have the ability and means to meet the financial obligations of a mortgage. Therefore, they will misrepresent or omit key factual information that would otherwise reduce the amount of mortgage they would legitimately be qualified for.

Other borrowers, specifically those who are self-employed, may have the financial means to qualify for a mortgage, however, due to their deliberate attempts to minimize taxes payable, income is either omitted (especially if earned via cash, i.e., tips from waitering, coin collected from laundromats or car washes), or misrepresented. While this would constitute as tax evasion, a different fraud charged under the Criminal Code Act, for this particular application the applicant truthfully discloses their financial position even though the information provided to the

[2] (Preventing and Detecting Mortgage Fraud, 2023)

tax authorities do not match. "Others say the driving force behind mortgage fraud is to help clients who have the means to afford the mortgage, but who work for cash or otherwise aren't declaring all their income. That might make them tax cheats, but it doesn't necessarily put them at higher risk of defaulting on a mortgage."[3]

Alternatively, 'fraud for shelter' is also committed to qualify for lower rates. For example, mortgage lenders will have different risk appetites depending on the borrower and product being mortgaged. Borrowers could misrepresent a rental property transaction as owner-occupied in order to avoid paying higher interest rates and expenses that are usually charged by mortgage lenders for unoccupied owner dwellings.

'Fraud for shelter' can include the following types of frauds:

a) Misrepresenting income, employment information, and/or omitting liabilities – this is when the buyer will make false pretenses on the application in order to meet all lending requirements and rules.

b) Having a straw buyer assist in obtaining a mortgage – a friend, family member or acquaintance will pose as the buyer and provide their credit information without having any intention of moving into the home. Rather the person engaging the straw buyer for a fee promises to pay the mortgage and move in.

c) Stacking multiple mortgages either before or after closing – the purchaser will seek more than one mortgage (a second or even a third mortgage) to be able to close on deal. In order to obtain additional mortgages, different lawyers are usually engaged,

[3] (McMahon, The Dark Side of the Boom, 2015)

and funds are advanced on the same day as the mortgages may not be registered on title until a day or so after closing.

1.3 Fraud for Profit

With 'fraud for profit' there is no intention to own the property being mortgaged. 'Fraud for profit' occurs when a person(s) falsifies information to obtain a mortgage and profits from the transaction. Examples of 'fraud for profit' include: a) colluding with a property appraiser to inflate the property value more than its sales price to obtain a mortgage in excess of what is needed to purchase the property, b) using identity theft to obtain mortgage loans that would be put against a homeowner's property without their knowledge, or c) having one or multiple straw buyers obtain a mortgage for a property on behalf of someone else with the intentions of either inflating the value of the property, flipping it or registering the mortgage, and then disappearing with the proceeds.

With 'fraud for profit,' the motivation for perpetrators is financial gains. In most cases, the buyer is not interested in the property itself other than how the property could earn the buyer large sums of money in as little time as possible. Usually, such schemes require collusion, given the different checks and controls in place at lending institutions to validate/corroborate the information provided is factual, credible and true.

The three examples listed under 'fraud for shelter' previously can also be considered types of 'fraud for profit' with the slight twist that the property is not to be held/kept by the perpetrator. For example, in the case where a straw buyer is involved, he/she is paid a fee in return for their identity and excellent credit history to qualify for a mortgage loan which the perpetrator would accept and eventually disappear leaving the buyer whose identity and credit history was used, with the burden of meeting all mortgage and housing obligations. Similarly with the stacking of mortgages example, the perpetrator's intention is not to seek housing, but rather additional mortgage loan proceeds so they can flee without any attachments to the mortgaged property.

1.4 Who Is Executing Mortgage Fraud

Mortgage frauds can be executed by many individuals with varying interests. It can be done alone or with the help of many accomplices through collusion. Both the mortgage applicant and those they work with, such as a mortgage broker, lawyer, real estate agent, appraiser, straw buyer, and/or lending agent can assist in the facilitation of mortgage fraud.

Due to the number of players involved in the origination process, mortgage fraud can be executed much more easily given the impersonal nature of the mortgage lending process and the ability to collude with others. For example, most mortgage brokers are in complete control of the information relating to the mortgage application whom they have built relationships with. By collaborating with the appraiser to falsify information regarding the value of the home or renovations, borrowers can fraudulently apply for additional funds. Alternatively, lawyers could work with lending agents to fund mortgages by falsely verifying individuals' identities. For the purpose of this paper, the focus will be to evaluate the role mortgage brokers play in executing mortgage fraud, but prior to doing so, a distinction must be made between a mortgage broker that operates at arm's length from the lender (wholesale loan originator) and one who is directly employed by the lender (retail loan officer):

Wholesale Loan Originator – "a mortgage broker or correspondent who partially originates and processes a loan for a funding lender."[4]

Retail Loan Officer – "works for the funding lender, whether it is a commercial bank or a non-depository lending institution that uses secondary-market funds, correspondent relationships, or warehouse lines of credit."[5]

For the purposes of this paper, the discussion is centred around the 'wholesale loan originator' who is referred to as a 'mortgage broker' from this point forward whereas a retail loan officer will be known as the 'lending agent.'

1.5 Mortgage Broker Fraud

A mortgage broker is a licensed/regulated professional whose responsibility is to work with and provide advisory services to an applicant seeking out a mortgage. A mortgage broker's responsibility is to guide the applicant in gathering documentation necessary for the mortgage application, which would include documents supporting (and more depending on the situation): income/salary earned, employment status, and credit worthiness. The mortgage broker will have access to a number of lending institutions, whether they are regulated public banks, credit unions, trust companies or private lending institutions, with various mortgage products that they can evaluate and compare for their clients. Once all information is gathered from their client, a mortgage broker will assist the applicant in applying to the many lenders, negotiating on their behalf and advising them on the best mortgage product available that meets their lifestyle/goals. Once selected, the mortgage broker will work with the lender to process the application and finalize the transaction. The mortgage broker works for both the lending institution and the

[4] (Association of Certified Fraud Examiners (ACFE), 2019)
[5] Ibid

applicant; however, the broker is always paid by the lending institution in the form of a fee or commission they are contracted for. A mortgage applicant is never expected to pay a mortgage broker for their services as it is a cost of doing business with the lending institution as a finder's fee for directing and advising the applicant to choose/accept their mortgage product.

The mortgage broker is a facilitator to the mortgage transaction and may knowingly or unknowingly contribute to mortgage fraud by falsifying and omitting critical information that would be relied upon by an underwriter at the lending institution. The underwriter adjudicates a mortgage loan on behalf of a lender, using a borrower's creditworthiness, financial and employment data, along with an appraisal on the property. Mortgage brokers who charge applicants fees upfront are likely engaged to misrepresent their socioeconomic status in a mortgage application in order for them to be awarded the mortgage proceeds. Alternatively, mortgage brokers may falsify, omit or ignore information provided by the applicant/borrower for no additional upfront fee. They may be just as content to earn their regular commission on a deal that would not have otherwise qualified, without having to draw the attention of an additional fee charged upfront while claiming they were not aware of the misrepresented information, shifting the blame to the borrower.

1.6 Why Are Brokers Committing Mortgage Fraud?

Like most other frauds, those committing them must have a motive/pressure to execute the scheme. The motivation/pressure must be combined with an opportunity or a weakness that the perpetrator deems can be exploited with little to no chance/risk of being caught. This is the theory behind Donald Cressey's research who is considered the person who developed the 'Fraud Triangle,' which outlines three requirements for one to justify fraud. "The triangle states that individuals are motivated to commit fraud when three elements come together: 1) some kind of perceived pressure, 2) some perceived opportunity, and 3) some way to rationalize the fraud as not being inconsistent with one's values."[6] The 'Fraud Triangle' is used as a model guide below to explain why mortgage brokers may be inclined to commit mortgage fraud.

1.6.1 Pressure/Motivation

While not all mortgage brokers commit mortgage fraud, however, for the ones that do, the main motivator/pressure for committing this white collar crime is financial gains. The mortgage market is competitive with mortgage brokers and agents (those who work at financial institutions, credit union, trusts, private lenders, etc.) all competing for a limited number of clients. At times when the market is hot and the number of clients seeking mortgages is high, there are more than enough business to keep everyone busy and financially sound. It is when the market takes a turn for the worse or when a mortgage broker first starts in the industry and is trying to build a steady client base or reputation, when those pressures of financial gains could cloud one's judgement to look for other ways to be compensated quickly. As well, other life circumstances may arise where mortgage brokers are financially desperate and turn to mortgage fraud.

Mortgage brokers are paid commissions through lending institutions based on a percentage of the mortgage amount requested by the borrower. Typically, the commission percentage ranges from 0.5% - 1.2% in Ontario and most other provinces and territories within Canada and is generally referred to as a finder fee.[7]

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[6] (Albrech, 2014)
[7] (Grant, 2022)

Therefore, on a C$500,000 mortgage with a 1% commission rate, the broker would earn C$5,000 as a finder fee that may be split with the brokerage they are affiliated with, in some agreed upon method.[8] In deals where the mortgage broker is falsifying or omitting critical information in order for the deal to be accepted, it is not unheard of that the broker could charge fees as high if not higher than C$10,000. As it was discovered in CBC Marketplace's undercover investigation, one of the real estate agents was caught on camera saying that the charge to manipulate the documentation would be 1% of the mortgage amount which would be paid upfront.[9] And in another example, they are quoted stating, "and they profit as much as C$65,000 grand commission for them (Real Estate Agent), between C$5,000-$15,000 for the mortgage agent, and those fake documents get a bonus of C$10,000."[10]

Therefore, in a deal that requires a mortgage broker to fraudulently misrepresent information requested by a lender, the broker could pocket as much as C$10,000-$15,000 when the lender's commission and broker's fee to produce fake documents is all summed up. For one deal, the compensation earned is staggeringly high and if sustained could help any one broker get out from any financial woes quickly.

In the case of Jay Kanth Chaudhary (discussed in more detail in s. 4.2 Shadow Broker, Jay Kanth Chaudhary), a registered mortgage broker in the province of B.C., whose license lapsed following a suspension for suspected mortgage fraud, he went back to his previous profession of accounting for approximately six months to find himself struggling financially. Near the end of those six months, he started to get calls to see if he could still assist borrowers in getting mortgages. It was at that time he decided to return back to the industry as an unlicensed broker

[8] (Grant, 2022)
[9] (Foxcroft, Mortgage fraud caught on camera: Undercover Investigation, 2022)
[10] Ibid

who worked with other registered/licensed brokers who sent applications to lenders on his behalf for a small fee.[11] Upon completion of the investigation regarding allegations of mortgage fraud against him, it was alleged that he collected almost C$6 million in fees on more than 875 mortgage files.[12] As the case suggests, after being suspended and returning to his previous occupation as an accountant, Chaudhary found himself struggling financially. He returned as a 'shadow' mortgage broker, "an unlicensed person acting to use the services of licensed brokers and sub-brokers as a front for their own activities"[13] to assist borrowers in achieving their dream, and his, by leaving behind his financial struggles. This explains the pressure/motivation which took him from being financially unstable to financial freedom. For approximately a decade long, Chaudhary earned roughly C$600k per year, averaging approximately C$6,667 per mortgage application, a very rewarding and lucrative gig, which on top of everything, was paid all in cash. For Chaudhary, the first element of the "Fraud Triangle" was met.

1.6.2 Opportunity

The second element in the 'Fraud Triangle' is opportunity. In fraud schemes, 'opportunity' would suggest a control environment that is weak and vulnerable to exploitation. A mortgage fraud orchestrated or assisted by a mortgage broker can be executed numerous ways. The most common method is to falsify/misrepresent documents and/or omit critical financial information that a lending agent/underwriter would rely on in order to determine if one could qualify for a mortgage. In a study called, "Examining the Effects of Mortgage Fraud on the Community," the researcher interviewed seven participants who were of diverse backgrounds from the Greater

[11] (Proctor, Unregistered 'shadow' mortgage broker who made millions in fees says he was just meeting demand, 2021)
[12] (Carter, In the Matter of the Mortgage Brokers Act R.S.B.C. 1996 C. 313 and Jay Kanth Chaudhary Cease and Desist Order, 2019)
[13] (Proctor, Alledged 'shadow' mortgage broker's wife banned from industry in fallout from $500M case, 2020)

Toronto Area. The interviewees were a mix of real estate agents and mortgage brokers who responded to a series of interview questions. The most common trend related to mortgage fraud was identified as "...the process of falsifying documents like payrolls, information about the house and information related to their income."[14]

Falsifying information and creating almost authentic and credible documents cannot be any easier with the technology and resources available today to mortgage fraudsters. The internet has made the sharing of tools and applications necessary to create such documents accessible to everyone. For example, a simple search requesting 'generate fake bank statements' was conducted online using the Google search engine. The results generated more than twenty different sites which included fillable templates of popular banks across North America and their statements templates. The one site https://bank-statement-generator.pdffiller.com included a recognizable bank statement from the Royal Bank of Canada which to the naked eye looks identical to the real bank statement issued to its clients. Refer to *Appendix A: A Comparison of Bank Statements (Actual vs. Phony)* for a copy of a phony RBC Bank Statement taken from the site mentioned and a real Bank Statement that has been redacted. Both statements are similar to one another with a number of subtle nuances. However, even such subtle nuances can be recreated to look authentic using the right tools. As for the underwriters who review several of these documents a day, these subtle nuances are not necessarily as noticeable given they are not given very much time to sit down and compare every little detail within a document. "According to data from Equifax's enterprise fraud management solution, 'falsified account statements' and 'falsified documents' were the most prominent application tags, as reported by investigators.

[14] (Sahajpal, 2018)

The other was 'conflicting information'."[15] The latter would likely be a result of sloppy work on behalf of the mortgage broker or borrower by not corroborating or tying in various pieces of information from the different sources when falsifying the information.

Because of the many parties involved in validating, executing and registering a mortgage transaction, vulnerabilities may be exploited along the way during the adjudication and validation process. In any one mortgage transaction, a mortgage broker, real estate agent, property appraiser, borrower, lawyer, credit bureau agency, and lender could be involved. Collusion with any two of the parties to a transaction would make detection improbable, especially considering that all parties are expected to be arm's length partners that are unaffiliated. For example, a borrower looking to get additional equity/monies over and above any renovation costs to their home may turn to a mortgage broker to seek refinancing. The mortgage broker, if not allocated one by the lender may have their own property appraiser falsely appraise the newly renovated property (if renovated) based on inflated costs that are either communicated to them or handed fake invoices to support the fraudulent renovated appraised amount.

As Barack Obama stated in his speech at the U.S. President's Export Council on July 7, 2010,

"In the absence of sound oversight, responsible businesses are forced to compete against unscrupulous and underhanded businesses, who are unencumbered by any restrictions on activities that might harm the environment, or take advantage of middle-class families or threaten to bring down the entire financial system."[16] The quote is synonymous to what is happening here in Canada with hundreds if not thousands of mortgage brokers and

[15] (Equifax Canada, 2017)
[16] (Obama, 2010)

borrowers taking advantage of a lax oversight system that does not discipline nearly as often as it should. The absence of regulatory oversight, combined with lenient repercussions for transgressors, fosters an environment where the rewards far exceed the potential risks for those unafraid to manipulate or circumvent the law. For example, in 2016 the Office of the Superintendent of Financial Institutions (OSFI) Canada issued a public letter to its lenders regarding their concern of relaxed underwriting standards they had witnessed when compared to the B-20 – Residential Mortgage Underwriting Practices and Procedures Guideline issued by them. In 2017 an update was issued that came into effect as of January 2018 to address some of the key/emerging risks such as higher levels of consumer debt, historically low interest rates and housing imbalances. By tightening and revising the guideline, OSFI addressed those areas where they felt lenders were being lax in terms of their lending requirements. Changes included, requirements to place more scrutiny on property valuations, revising the minimum qualifying rate (stress test) and having the lenders apply more rigor when assessing a borrower's ability to repay their mortgage loans including the verification of employment status and income history.[17]

With housing prices soaring beyond the reach of many borrowers, a sense of hopelessness increases fearing that owning a home will soon be unattainable. One industry expert noted, "Runaway housing prices and a highly competitive mortgage industry are contributing to a growing problem with mortgage fraud across the country (Canada)."[18] As borrower's become more desperate, their moral values and standards start to decrease as they look for alternative ways to attain their objective, even if it means telling a little white

[17] (Office of the Superintendent of Financial Institutions Canada)
[18] (Canadian Press Newswire, 2006)

harmless lie, regardless of the fact it is still illegal. Desperate borrowers who seek the help of mortgage brokers are considered the first 'opportunity' a mortgage broker will encounter when deciding to facilitate mortgage fraud. Referring back to Jay Kanth Chaudhary's response to the B.C. Commission's Counsel when asked how this could have been prevented, his response was, "In reality I don't think it can be prevented. Because there always will be a need for individuals like us and what we did, and because the demand itself is there. The demand comes from the borrower themselves. The demand comes from the people who want a house and do not fit in the traditional guidelines."[19] As long as there is demand and borrowers are willing to pay whatever it takes to get the deal done, mortgage brokers will continue to find a way as long as the benefits outweigh the risks and consequences.

1.6.3 Rationalization

As noted previously, some mortgage brokers do not view these acts as criminal. They do not believe they are hurting anyone, and rather insist they are helping the borrower achieve their dream in owning a home. To quote Chaudhary, he rationalized and "…characterized his role as a 'moral' one in which he helped people who had the means to pay a mortgage – if not the documentation to prove it – avoid the dangerous world of private lenders. He claimed none of his clients ever defaulted on a loan, none of the banks who gave them money were ever hurt, and a booming B.C. real estate market meant he was always busy."[20] While Chaudhary may have been right at the time, if the market turned and interest rates rose like they have over the last year, he may have been singing a different tune.

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[19] (Proctor, Unregistered 'shadow' mortgage broker who made millions in fees says he was just meeting demand, 2021)
[20] Ibid

Often, mortgage brokers rationalize and compare this fraud to telling 'little white lies' that are harmless in the grand scheme of things. They are assisting "people who don't quite qualify in our tight market, who just need a 'tune-up' to somehow fit new lending rules. These are customers who are able to make the payment on a mortgage – they're just not willing to tell the Canada Revenue Agency where most of their money comes from."[21] This is especially true in a hot housing market where the goal is 'fraud for shelter,' as mortgage defaults are less likely.

Over the last 20 years in Canada, the housing market boomed and despite the 2008 Financial Crisis and the COVID 19 pandemic, it is still considered hot. Therefore, supply cannot keep up with demand and prices keep increasing, pressuring those in the market to buy before it is too late (for some, given the stringent lending requirements, it is already too late). This makes for a competitive market. When the housing market is competitive, mortgage brokers and other agents part of the real estate transaction will compete harder, even if it means bending the rules to assure themselves a greater share of the market. This opens the door for many mortgage brokers who know this type of activity is going on and justify that it is accepted because everyone else is doing it, so why can't they. When asked during an undercover operation by CBC Marketplace, where 25 cold calls were placed to agents in five hot real estate markets across Canada, whether or not they could create fake documents/papers to qualify for a mortgage, "1 in 5 say yes but the language can be coded."[22] Similarly, when CBC Marketplace investigators approached 10 real estate agents, "In total, 6 of the 10 Real Estate Agents openly offered to break the law for a fee"[23] and get them a mortgage that they would not otherwise qualify for using their network of mortgage brokers and lending agents.

[21] (Proctor, 'Breathtaking': Fake mortgage broker case reveals widespread problems, 2019)
[22] (Foxcroft, Mortgage fraud caught on camera: Undercover Investigation, 2022)
[23] Ibid

While mortgage brokers are well aware that what they are doing is illegal and wrong, they justify it by convincing themselves that if they do not do it, others will, and nobody will do anything about it because everyone wins in the end (lenders are paid and borrowers are able to purchase their home).

1.7 How Mortgage Brokers Facilitate Mortgage Fraud

There are many various methods mortgage frauds can be perpetrated and with that, there are many ways mortgage brokers can help facilitate those schemes. A fraud scheme can also be executed using different variations as will be discussed in some of the methods noted below. The fraud schemes can be executed by the mortgage broker with the borrower having a full understanding and intent to commit the fraud, or they may very well not know that the broker has committed fraud without their consent. Some of the more common frauds mortgage brokers have been known to facilitate include a) Income/occupational fraud, b) Identity theft, c) Straw buyer scheme, d) Loan flipping, e) Appraisal fraud, and f) Loan Steering.

Income/Occupational Fraud

Income/Occupational fraud is the most common scheme that mortgage brokers engage in. This fraud entails that the mortgage broker falsifies, misrepresents, and/or omits key information such as income, liabilities, employment information etc., that the lender's underwriter will rely on to adjudicate the loan application during the adjudication process. Common examples include generating fake or altered pay stubs, tax assessment letters, employment letters which can all be done online to look authentic. This type of fraud can occur in different variations; however, the main idea is to alter documents in order to portray the borrower's having the financial and employment means to meet the obligations of the loan for which they are applying. This is by far the most popular method of mortgage fraud. According to Equifax, "Approximately 71 percent of mortgage fraud is related to false information such as account statements, pay stubs, applications, and notices of assessment."[24]

Identity Theft

Identity theft involves the act of stealing the identity of a borrower (typically a mortgage broker would have their information from either a current or past deal) in order to obtain a mortgage without their knowledge or consent. A mortgage broker would falsify documents and use the stolen identity's name and personal confidential information to create a fake identity that would apply for a mortgage on a home, usually one that is temporarily unoccupied or is being used as a rental property, qualify and disappear with the mortgage proceeds. The mortgage broker in this theft would typically collude with a team of professionals (i.e., lawyers) to get the deal done.

Straw Buying

Mortgage brokers can assist a borrower obtain a mortgage using a straw buyer or identify one for themselves for a property they wish to purchase. A candidate known as a straw buyer would be identified and considered the primary borrower on the loan. A straw buyer is one who has excellent credit and wishes to assist someone else who does not, to obtain a mortgage loan in return for a fee. The straw buyer has no desire for property ownership including maintaining and paying back the funds issued as part of the mortgage. The initial borrower's intention is to either use the straw buyer in a 'fraud for shelter' type scheme, whereby they would qualify them for a mortgage loan, or they would use them to obtain the mortgage proceeds and disappear with the

[24] (Equifax Canada, 2023)

funds, leaving the straw buyer with the obligation to repay the mortgage ('fraud for profit'). There are many other variations of straw buying, however, they tend to be slight alterations to the way this fraud is perpetrated. The mortgage broker's role is to ensure the straw buyer qualifies and that the funds are directed to the right individuals depending on the fraud's objective.

Loan Flipping

With loan flipping the mortgage broker will convince a borrower that they should refinance multiple times over a brief period of time in order to maximize their fees/commissions. However, this could trap a borrower into higher debts, without the advantage of having a lower interest rate in the end. Loan flipping usually involves a borrower who currently has a mortgage loan but wants to refinance for such purposes as debt consolidation. A mortgage broker will offer to consolidate all the debt into another mortgage loan with better terms (e.g., longer amortization periods in an effort to decrease the payment amounts and lower interest rates) and occasionally offer access to additional funds. The borrower agrees to the new terms and refinances the previous loans with either the same or a new lender. The new loan pays off the old ones and provides access to additional funds if requested but does so at the cost of incurring additional debts such closing costs, fees or penalties for exiting the previous loan, and sometimes even a higher interest rate. This process is then repeated with the mortgage broker offering more incentives or deceptive promises to encourage the borrower to refinance again. The lender would pay the mortgage broker commissions each time the refinance is completed, helping them trigger potential volume bonuses if they remain with the lender. The mortgage broker could also fraudulently charge a fee to the borrower for the service if they are desperate or naïve enough to accept it otherwise, they could go to a private lender whereby it is not uncommon for mortgage brokers to (legally) charge a fee.

Loan flipping can also be the aftermath of ‘steering’ strategy, whereby the mortgage broker steers borrowers into the alternative/private lending space (similar to subprime mortgages), even if they have the necessary requirements and credit history to qualify for a conventional loan. The next step would be to refinance the borrower multiple times, in hopes to maximize on their commissions.

Appraisal Fraud

Appraisals are a valuation/assessment that can be conducted in several ways on a property to determine its value in the market at a specific point in time. It is usually conducted by an independent and qualified appraiser with formal education and experience valuing properties. Appraisals are critical to the mortgage lending process as its value helps support the loan amount as collateral and also affects the terms and conditions of the loan. Appraisal fraud can be executed either with the appraiser’s knowledge by colluding with them or without, in which case the mortgage broker would provide misleading information unknowingly to the appraiser that would deceive them as well. If the appraiser knowingly colludes with the mortgage broker, their role is to inflate the value of the property which is being acquired so that the borrower could qualify for a larger loan. The mortgage broker’s role is to submit false information regarding the property that could artificially increase its value. For example, invoices are altered for renovations that either existed (but at a lesser value than what is being artificially appraised at) or not. The property/collateral is such a critical piece to the overall adjudication process that fraudsters recognize it as an opportunity to extract additional funds from financial institutions easily without much effort.

Loan Steering

Loan steering is an act of directing a borrower into a mortgage contract that is least desirable to them but has features that can compensate mortgage brokers significantly if accepted. This type of activity is synonymous with predatory lending practices where the mortgage broker and possibly the lender work to secure a mortgage contract that is in the best interests for themselves and/or their organizations, rather than the end client. Loan steering could involve entering into mortgage contracts with highly unjustifiable interest rates, hidden fees/terms such as prepayment or early termination penalties or those that are just simply unaffordable for a borrower.

1.8 Victims of Mortgage Broker Fraud

A mortgage transaction involves many different parties/entities to eventually fund and register a mortgage. As a result, a fraudulent mortgage that eventually goes into default, could impact many victims including those not directly involved in the transactions. It is without a doubt that the after-effects of substantial mortgage defaults due to fraud will fall on the shoulders of all potential homeowners as interest rates, fees/costs to fund a mortgage and insurance premiums will rise to cover any past and/or future losses resulting from such frauds. Depending on the type of fraud committed, victims could vary or could very well be the same parties, subject to how the transaction eventually unfolds (i.e., default vs. non-default).

When 'fraud for shelter' is committed it is difficult to imagine borrowers can be considered victims. After all, why would they if they are eventually benefiting from home ownership, a reality that only came to fruition after the so called 'white lies' and falsification of documents. Well, they too can be considered a victim of their own crime. If the housing market cools off and interest rates increase, mortgage payments that were once manageable, are no longer sustainable forcing the borrowers to default and potentially lose some, if not all equity within the home. “As home prices continue to plummet, these buyers are at greater risk. If people obtain mortgages fraudulently and they thought their backup plan was to sell the house if I can’t afford it, that backup plan’s disappearing. It also keeps honest people out of the market as they compete for various homes.”[25] But one could argue, if the borrower knowingly committed mortgage fraud with the intent to defraud the system for home ownership, regardless of the market turning and they lose everything, the victim would be none other than the lender given the borrowers’ understanding of the risks before they engaged in the crime.

‘Fraud for profit’ is completely different. With this fraud (and there could be many variations), the borrower has little or no idea it is being perpetrated before them. Borrowers could be put in positions whereby mortgagees seeking financing from lenders, fall through last minute knowingly by the mortgage brokers, so that they can redirect borrowers into mortgage contracts with private entities. As a result, the borrowers are forced to pay staggering high interest rates and fees in order not to lose their deposits. “The impact of this crime, is really, in my experience, being felt by individual families that are involved and it changes their lives....negatively,”[26] said Jennifer Fiddian-Green, Partner at Grant Thornton LLP, after learning of a Guyanese family who recently moved to Canada to be defrauded and made to feel like criminals after working with a mortgage broker to obtain a mortgage on a home, they made an offer on. They were new immigrants who had been victimized by a mortgage broker who altered their employment letters and submitted fraudulent ones for a fee (C$5k – paid by the borrower) which they were led to believe was legitimate. This contravenes O. Reg. 187/08, s. 4 (1) of the

[25] (Foxcroft, Common, & Pierce, Business: Marketplace: Real estate agents caught on hidden camera facilitating mortgage fraud for a fee, 2022)
[26] (Foxcroft, Mortgage fraud caught on camera: Undercover Investigation, 2022)

Mortgage Brokerages, Lenders and Administrators Act of 2006, Mortgage Brokers and Agents: Standards of Practice, which states "a mortgage broker or agent shall not receive, directly or indirectly, any fee or other remuneration for dealing or trading in mortgages from a person or entity other than the brokerage on whose behalf he or she is authorized to deal or trade in mortgages."[27] They only learned afterwards they had been defrauded, and shortly thereafter, the bank forced them to close their accounts because they failed to represent themselves honestly throughout the application process.[28] New immigrants are especially prone to mortgage frauds perpetrated by brokers. New immigrants are not as knowledgeable and do not have a solid grasp of how the system works and therefore, can be easily conned into a mortgage thinking they qualified honestly without bending the rules.

Lenders are also victimized in 'fraud for profit' schemes as they are often left with the burden of trying to collect on unpaid mortgages while incurring costs associated with foreclosures (i.e., property management fees for maintenance, legal fees, and realtor costs) until they are eventually able to sell off the property. The same is true for lenders in 'fraud for shelter' schemes. However, for this type of fraud, the majority of the time the borrowers will meet their obligations. Only when the housing market cools off and interest rates begin to rise, the lenders' risk increases.

Potential qualified buyers are also victimized due to increased competition and rising housing prices as additional unqualified entrants are able to compete for homes they would not have otherwise qualified for. As a result, these potential qualified buyers are likely to pay more, settle for something that is less desirable or continue the prolonged search for the right property,

[27] (Government of Ontario, 2006)
[28] (Foxcroft, Mortgage fraud caught on camera: Undercover Investigation, 2022)

due to the added competition in the market. Depending on their situation, this could cost them more (i.e., pay additional rent vs. earning equity).

Mortgage insurers (i.e., Genworth and Canada Guaranty) and government entities like the Canadian Mortgage and Housing Corporation (CMHC), both whose purpose is to insure mortgages are also impacted by this type of fraud. They would likely be on the hook for any mortgages in default with a slight chance to recoup the monies paid to the lender if they can prove the suspected fraudulent deal was in fact perpetrated with the intention to defraud financial institutions and the lenders were negligent in their due diligence when adjudicating the loans.

Investors who partake in the purchase of mortgage-backed securities (MBS) containing fraudulent loans could also experience defaults which could lead to unexpected losses. An MBS is a financial product/instrument that includes pooled mortgages that are divided into tranches with similar criteria (i.e., credit profile, term and interest rates) that are backed by the cash flows from the mortgages.

And finally, other legitimate mortgage brokers who follow the rules and guidelines suffer due to their credibility being constantly questioned from all of the negative media the profession has garnered from the many recent scandals. "Its shoots our credibility….Anytime you talk to someone it's like, oh, can you make me documents, I need to get this property, but I don't have enough income"[29] said Sanjeet Mand, a mortgage broker from Brampton, ON responding to a question from a CBC Marketplace interview when asked, what this type of behaviour does to folks like him in the profession. From brokers to brokerages, uncovered mortgage fraud can

[29] (Foxcroft, Common, & Pierce, Business: Marketplace: Real estate agents caught on hidden camera facilitating mortgage fraud for a fee, 2022)

have damaging effects to one's reputation or brand, including the loss of consumer trust which would ultimately discredit them and a loss to the business.

1.9 When is Committing Mortgage Fraud Most Prevalent?

Mortgage fraud can occur at any time or throughout any stage of the mortgage loan lifecycle. However, there are times when mortgage fraud is thought to be much more widespread/frequent. The process of a mortgage loan is said to go through as many as three to five stages within its lifecycle. Refer to *Appendix B: Mortgage Loan Lifecycle and the Players Involved* for a snapshot of the various stages a mortgage loan passes through during its lifecycle and the many players that are involved throughout each of those phases. According to the Association of Certified Fraud Examiners, "…mortgage fraud can be perpetrated at any stage of the mortgage process, but the majority is perpetrated at origination—the process whereby a borrower applies for a new loan and a lender processes the borrower's application."[30] Similar to money laundering where the 'placement' of illicit funds into the financial system is noted as the first stage and considered the most difficult given the increased level of controls and risk of detection by institutions. The origination of loans is also subject to the same level of scrutiny and discovery given it is the initial phase of the process before loans are funded and registered with lenders.

Although there is an increased level of risk for detection, based on the number of players who are involved with the origination process (increases the opportunity for collusion) coupled with the impersonal nature of the mortgage lending process during adjudication, it is not unusual to think that the majority of mortgage fraud occurs at this stage.

[30] (Association of Certified Fraud Examiners (ACFE), 2019)

Aside from the stages within the mortgage process, there are specific times when mortgage fraud is more prevalent. Hot markets that are experiencing low interest rates, high demand combined with rapid increases in housing prices, are more susceptible to mortgage fraud. First time home buyers, new immigrants, those looking to upgrade the size of their home, or others eying to relocate to a better neighbourhood would feel that their time may be limited for taking advantage of fallen interest rates before prices become out of reach. Therefore, those buyers would be more inclined to commit mortgage fraud, even if it means telling a few trivial lies to get a deal funded. "There was a huge increase in fraud rates in 2021 with record high mortgage applications coupled with the race to qualify for high loan amounts,"[31] said Carl Davies, Head of Fraud and Identity at Equifax Canada. He also noted recently during Q1, 2023, "the housing market has cooled with rising interest rates and it's becoming more difficult to qualify for a mortgage, which may tempt some people to misrepresent their financial information."[32] In a declining housing market, despite the fact that interest rates rise, the downfall of home prices becomes appealing to those aspiring to enter the market. They see the decline in home prices as far more advantageous than facing the burden of higher interest rate costs, with an expectation that interest rates will decline again. While it might be considered a bit more difficult given the OSFI's minimum qualifying rate (stress test), unqualified borrowers may be tempted to misrepresent to eventually qualify, fraudulently.

It is also believed that certain fraud schemes such as loan flipping, are more likely to be committed when the housing market is hot. It is much easier to refinance/consolidate debt when

[31] (Kassam, 2023)
[32] Ibid

the housing market is seeing prices increase at a rapid rate and equity is being gained to allow for it.

1.10 Is Mortgage Fraud Concentrated In Certain Areas More Than Others

Mortgage fraud can have vast adverse effects on an economy and at a micro-level, individual communities. The question is whether mortgage fraud is considered more prevalent in various communities, regions, or provinces within the county. While it is known that mortgage fraud exists and is a problem throughout the country, signs do point to certain areas within the country, and in some instances, at different times facing higher than normal mortgage fraud.

For example, Alberta emerged as a hot market for real estate in the latter half of the first decade of the 21st century given the oil industry boom. Cities such as Calgary witnessed the demand and prices for housing increase significantly. It was not unusual at the time to see properties appreciate substantially in such a small amount of time. This assisted in the concealment of numerous frauds including those which exploited the lax laws within the province to easily assume someone else's mortgage, allowing mortgage brokers/lending agents to work with fraudsters to transfer properties multiple times between known parties in an effort to inflate the price and eventually walk away with the proceeds.[33] Essentially, these mortgage frauds were committed as follows:

1. The fraudster finds several people (i.e., friends, family, acquaintances) to exchange the property several times, each time at a higher price than before.

[33] (Sorensen, 2010)

2. Near the end of all those transactions, the fraudster finds a ‘straw buyer’ with excellent credit and no intention of moving or owning the property, but is willing to provide their name and credit, for a substantial fee.
3. The fraudster with the assistance of rogue mortgage brokers/lending agents and lawyers, has the proceeds from the mortgage forwarded to them leaving the ‘straw buyer’ with the mortgage.
4. However, the fraudster would likely find someone who unknowingly is unaware of the scam and is willing to move into the home and assume the mortgage from the ‘straw buyer’. The ‘straw-buyer’s’ good credit allows for assumption given they could still be liable for the mortgage if the those who assumed it defaults.[34]

In the case of R. v. Terry Lynn Ellis, the investigation was centered around a real estate crime ring that occurred in the Edmonton and Camrose, Alberta areas between 2001 – 2005 by Terry Lynn Ellis (“Ellis”), Gohar Pervez (“Pervez") and others. Essentially the crime was carried out as follows:

1. Properties requiring repair were purchased by numbered companies registered under other people’s names who had little to no control of the properties, including its payment, but had been paid a fee by Pervez for their consent to use the numbered company as the registered owner. De facto control was maintained by Pervez.
2. Pervez would plan and sometimes commit to superficial renovations to the properties.

[34] (CBC News, 2005)

3. Straw buyers were recruited to obtain mortgages either after acquisition or the so called superficial renovations. Their role was to obtain mortgage financing at the new higher sale price in exchange for a fee.
4. Mortgage brokers assisted in facilitating mortgage loans for these straw buyers by materially misrepresenting their applications (i.e., false employment letters, T4s, gift letters, occupancy by the mortgagee, omission of liabilities etc.). The mortgage brokers were also usually paid a fee over and above their regular commissions from the lender by Pervez.
5. Shortly after the straw buyer was registered on title and the mortgage amounts advanced, the mortgage would be assumed by Pervez or one of his associates and they would normally secure renters to pay the mortgages while they pocketed the incremental amounts.
6. In some cases, Pervez would recruit more straw buyers and resell the properties multiple times at higher amounts to obtain additional mortgage proceeds.

After it was all uncovered, the alleged charges were against 125 properties that secured mortgages from 19 lending institutions generating over C$14.4 million in mortgage proceeds. However, it was said almost C$30 million in mortgage proceeds have been secured by this operation.[35]

Whether it is Calgary, Vancouver, or Toronto, in a hot housing market where demand is high and interest rates are low, buyers who are concerned that waiting will further price them out of the market, force themselves to react even if they believe stretching the truth is not criminal and

[35] (Court of Queen's Bench of Alberta, 2007)

harmless to everyone. In a recent Leger survey conducted on behalf of BNN and RATEDOTCA that studied Canadian attitudes towards mortgage fraud by age cohorts, a few interesting observations were noted. British Columbia (B.C.), which is home to some of the most expensive and competitive mortgage markets, found it more acceptable to inflate their income when applying for a mortgage compared to the rest of Canada by 114% (30% more likely vs. 14%). Similarly, the same residents of B.C. find it acceptable to misrepresent employment information 129% more than the rest of the country (32% vs. 14%).[36] This could be largely because housing prices are out of reach and a significant number of borrowers find it acceptable to tell a few 'white lies' and commit 'fraud for shelter' so they can finally get a taste of home ownership.

Even organized crime groups who engage themselves in real estate laundering, geographically focus their efforts in various areas and provinces within Canada. Real estate laundering involves the purchase of real estate using illicit funds in an attempt to conceal its origin with the intention to eventually integrate the funds back into the financial system cleanly, through the sale of the property. However, if the use of a property is considered a rental, the rent paid could also be used as other means to place illicit funds into the system. "CISC found 8 major organized crime groups engaged in real estate laundering. Most are in BC and Alberta, and 'are reported to be involved in mortgage fraud.'"[37] These groups have real estate market knowledge and work with professionals such as mortgage brokers, lawyers, etc. to execute fraudulent activities. CISC identified 176 organized crime groups in Canada with Ontario, BC and Quebec representing 76% of the money laundering groups.[38] While Ontario and Quebec were not specifically called out for being ring leaders in real estate money laundering, it is likely

[36] (Khan, 2023)
[37] (Better Dwelling, 2022)
[38] Ibid

that this type of crime is common there as well. Those provinces represent the top four most populated in Canada with some of the hottest markets in the country. Laundering money is much easier in hot markets where housing prices are high to begin with and further inflated. By working with mortgage brokers, lawyers and private lenders, these organized crime rings understand, "mortgage brokers and private lenders have no statutory AML obligations, while lawyers are exempt from the PCMLTFA and offer a shield in the form of attorney-client privilege."[39]

The city of Brampton, Ontario, a suburb west of Toronto is informally known as Canada's mortgage fraud capital. A "Brampton Loan" has become synonymous with a mortgage fraud scheme conducted by brokers whereby they misrepresent documents to an application in return for upfront fees. The documents are usually fabricated to show higher incomes, fake employment letters and/or false gift letters to disguise the source of downpayment. The suburb's median household makes $87,300/year and the median home price is $1.15 million[40]. Given the median household income, only fabricated documents could qualify a family with an average home price of $1.15 million. This may largely be due to the vast number of new immigrants who have moved to cities like Brampton and would like nothing more than to qualify before housing becomes out of reach, even if it means committing 'fraud for shelter.'

Refer to *Appendix C: Historical Mortgage, Immigrant Households & Percentage in Core Housing Need in Brampton.* The first two historical charts (Appendix C, Fig. C1 & C2) illustrate an increase in immigrant households in Brampton from 2006 – 2016, with non-immigrant households declining. Similar trends were noted in reported households with mortgages and

[39] (Ross, 2019)
[40] (Better Dwelling, 2022)

those without, respectively. Based on the statistics provided by CMHC in collaboration with Statistics Canada, it is evident more and more households in Brampton are obtaining mortgages compared to previous years, largely driven by immigrant households (recent or mature), and non-permanent residents. To further illustrate, refer to Appendix C, Fig. C4, the need to obtain core housing (refer Appendix C, Fig. C4 for the definition of core housing need), by immigrants, is shown to have increased since 2006 from 15.9% to 16.7%, with recent immigrants having the highest need at 30.2% (down slightly from 2006 at 34.4% but higher than 2011 at 28.7%). The housing need would likely be accompanied by a mortgage. Therefore, the data presented aligns with the fact that immigrant households are increasing within the city of Brampton and who are looking to purchase core real estate. At the same time, households with mortgages are increasing just as quickly. As the majority of households in Brampton are made up of immigrants and non-permanent residents, it is fair to assume those households with mortgages are held by the same type of residents, suggesting the 'Brampton Loan' is not improbable to what is actually happening within that region.

While mortgage fraud is generally widespread and a problem throughout the country, if there is one characteristic that appears to be common with all three examples noted above, the majority seems to be concentrated in hot housing markets where home prices are inflated. And this could be attributed to the fact that real estate laundering money is considered easier in such markets or new immigrants and/or home buyers whose incomes are typically lower find themselves employed in markets that are hotter (usually due to the vast employment opportunities) but are just out of reach from qualifying.

2. Legal & Regulatory Framework Governing Mortgage Brokers

The residential mortgage industry in Canada has a relatively complex and comprehensive regulatory and legal environment that oversees the financial stability of institutions who originate non-private mortgage loans. These regulatory bodies oversee and provide a legal framework for mortgage brokerages and brokers to abide by, both directly and indirectly, and are governed at both the federal and provincial levels.

2.1 Legal Laws Governing Mortgage Fraud

Mortgage fraud is a serious criminal offense in Canada that comes with significant consequences. The Criminal Code of Canada contains several provisions by which mortgage brokers who help facilitate or execute the act of mortgage fraud on their own or with accomplices can be prosecuted against. The act defines the offense of fraud as,

> "**380**. (1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service…"[41]

When the offence exceeds more than five thousand dollars and the party accused is guilty, they can be liable to a term of imprisonment that will not exceed fourteen years. Unless the value of the offence exceeds one million dollars, the imprisonment punishment is no less than two years.[42]

[41] (Minister of Justice, 2023)
[42] Ibid

Other relatable indictable offenses mortgage brokers and others can be accused of relating to mortgage fraud includes, 'Fraudulent Concealment of Title Documents s. 385, Fraudulent registration of title s. 386, Fraudulent sale of real property s. 387, Falsification of Books and Documents s. 397, Falsifying Employment Record s. 398, and Identity Theft and Identity Fraud s. 402.1, 402.2, & 403.1'.[43]

Most Provinces have their own regulatory body who sets the framework for governing and overseeing mortgages. Under the Province of Ontario, the regulatory body, Financial Services Regulatory Authority of Ontario (FSRA) determines the framework which mortgage brokerages and individual brokers need to abide by. Part of the FSRA's responsibilities is to administer the Mortgage Brokerages, Lenders and Administrators Act, 2006. Within the Act, it states the following,

> 43. (1) No mortgage brokerage or mortgage administrator shall give, assist in giving or induce or counsel another person or entity to give or assist in giving any false or deceptive information or document when carrying on the business of dealing in mortgages in Ontario or the business of trading in mortgages in Ontario, when carrying on business as a mortgage lender in Ontario or when carrying on the business of administering mortgages in Ontario. Same (2) No mortgage broker or agent shall give, assist in giving or induce or counsel another person or entity to give or assist in giving any false or deceptive information or document when dealing in mortgages in Ontario or trading in mortgages in Ontario.[44]

[43] (Minister of Justice, 2023)
[44] (Government of Ontario, 2006)

The penalties/fines for committing the above offense can be steep from a monetary perspective as follows,

> "49. (1) Every individual convicted of an offence under this Act is liable to a fine of not more than $500,000 or imprisonment for a term of not more than one year or both a fine and imprisonment. For a corporation (2) Every corporation convicted of an offence under this Act is liable to a fine of not more than $1,000,000……Additional order for compensation or restitution 50. (1) If a person is convicted of an offence under this Act, the court may order the person convicted to pay compensation or make restitution in such amount and on such conditions as the court considers just, in addition to any other penalty imposed by the court."[45]

Furthermore, if a mortgage broker is accused of mortgage fraud and is found guilty, they could also face the following consequences:

- A criminal record will likely be filed which will likely affect their ability to travel and work in some professions thereafter,
- They may be forced to pay restitution to those impacted by the crimes which include any losses suffered,
- They would likely lose their license to operate as a broker and could face a long suspension or even a lifetime expulsion from the profession, and
- If they are not a citizen of the country, they could face deportation.[46]

[45] (Government of Ontario, 2006)
[46] (Nesto Mortgage Experts, 2023)

2.2 Federal Regulators

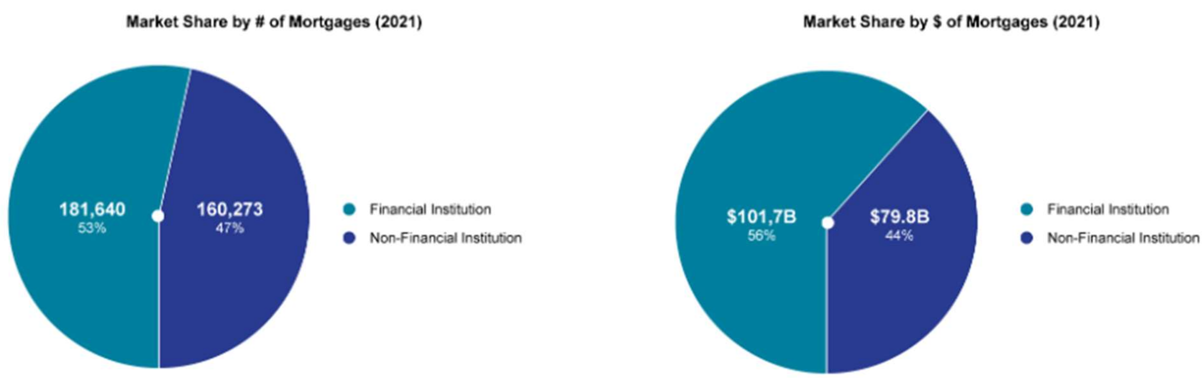
OSFI

The Office of the Superintendent of Financial Institutions (OSFI) is an independent agency of the Government of Canada, which was established to oversee the safety and soundness of the financial system in Canada. They set the guidelines to oversee and regulate federally registered banks, trust and loan companies, insurers (life and property & casualty), fraternal benefit societies, and private pension plans. While they do not regulate mortgage brokerages and brokers, they do set guidelines for federally registered banks who underwrite mortgages originating from mortgage brokers. As of Q3, 2022 approximately 5 million loans with a total loan value of C$1.55 trillion were funded and outstanding (out of a possible 7 million loans valuing C$1.93 trillion, ~80%) by federally regulated financial institutions (FRFIs).[47] Therefore, the majority of mortgage loans originated by mortgage brokers are funded by FRFIs that are regulated by OFSI. Since mortgage brokerages are regulated at the provincial level, a consolidated view across Canada is not attainable as not all provinces and territories request the same data. However, **Figure 2.2.1** illustrates that in 2021, the majority of mortgage loans originated through mortgage brokers in the province of Ontario, were funded by FRFIs.

Given that OSFI sets the standards and guidelines for which FRFIs must follow, indirectly they are also monitoring mortgage brokers based on the quality of loans originated through them but underwritten by FRFIs. Specifically, OSFI has issued a guideline under their 'Sound Business and Financial Practices' category called, B-20 – Residential Mortgage Underwriting Practices and Procedures, which sets their expectation for practical and diligent residential

[47] (Residential Mortgage Industry Data Dashboard, 2023)

Figure 2.2.1 – Market Share by # and $ of Mortgages



Source: Financial Services Regulatory Authority of Ontario
https://www.fsrao.ca/industry/mortgage-brokering/annual-information-returns/2021-mortgage-brokerages-and-administrators-annual-information-return-report#volume_mortgages_lending_sources

mortgage underwriting practices. These guidelines set the standards/principles for FRFIs to determine their own guidelines whereby mortgage brokers need to recognize and adhere to in order for their potential mortgage originated loans to be approved.

OSFI is also responsible for administering and overseeing a number of federal statutes, including the *Bank Act* (which governs federally regulated Banks) and the *Trust and Loan Companies Act* (responsible for trust and loan companies), which regulate the entities providing mortgage products. "When OSFI identifies issues that may impact the stability of the financial system, it reports them to the Financial Institutions Supervisory Committee ("FISC"). FISC meets on a quarterly basis to facilitate the exchange of information among OSFI, the Department of Finance, the Bank of Canada, Canada Deposit Insurance Corporation, and the Financial Consumer Agency of Canada on matters relating to the supervision of federally regulated financial institutions."[48]

FCAC

The Financial Consumer Agency of Canada (FCAC) is a federally regulated supervisory body whose mandate is to protect the rights of financial consumers "by supervising the market conduct of federally regulated entities, educating financial consumers about their rights and responsibilities, and strengthening financial literacy among Canadians."[49] Similar to OSFI, the FCAC does not regulate mortgage brokerages and brokers, but rather FRFIs who underwrite mortgage loans originated from either internal lending agents and/or external mortgage brokers. The FCAC oversees FRFIs compliance to legislation such as the *Bank Act*, and the *Trust and Loan Companies Act* and have approved two external complaints entities to assist with oversight, the ADR Chambers Banking Ombuds Office, and Ombudsman for Banking Services and Investments. While they do not oversee mortgage brokers in Canada directly, they do assist consumers by educating and providing them with relevant mortgage information so that they could make sound financial decisions.

OPC

The mandate of the Office of the Privacy Commissioner of Canada (OPC) is to protect and promote the privacy rights of individuals and their personal information. "The OPC oversees compliance with the *Privacy Act*, which covers the personal information-handling practices of federal government departments and agencies, and the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, Canada's federal private-sector privacy law."[50] The OPC

[48] (Office of the Superintendent of Financial Institutions, 2014)
[49] (Financial Consumer Agency of Canada, 2020)
[50] (Office of the Privacy Commissioner of Canada, 2019)

is considered an agent of Parliament who reports directly to the House of Commons and the Senate of Canada, which promotes its independence on issues relating to privacy both within the public and private markets. Mortgage brokers are required to comply with the rules under PIPEDA which govern the collection, use and disclosure of private and confidential personal information. Investigations into the mishandling/mismanagement of personal information subject to the Acts could be initiated by the OPC against mortgage brokerages and their agents. The OPC can enforce investigations either through complaints initiated by individuals or by the OPC themselves after learning about the issue/event that took place. This is evident through Section 18 of PIPEDA, which allows the Privacy Commissioner to perform an audit of the personal information management practices of an organization at any reasonable time with notice providing the Commissioner has grounds to believe an organization has contravened or continues to contravene any parts of the Act.[51]

2.3 Provincial Regulators

<u>MBRCC</u>

The Mortgage Broker Regulators' Council of Canada (MBRCC) is made up of regulators representing all the different provincial bodies setting the regulatory framework and administering mortgage broker legislation for their jurisdictions. The Council serves as a roundtable to discuss emerging issues and trends, share information, collaborate ideas/solutions to help address regulatory issues within the industry, and further strengthen consumer confidence and protection when dealing with a mortgage broker.[52] Members of the Council include those from each of the regulatory bodies governing their province. Refer to *Appendix D: Provincial*

[51] (Minister of Justice of Canada, 2019)
[52] (Mortgage Broker Regulators' Council of Canada, 2023)

Regulators & Acts Regulating Mortgage Brokerages, Brokers & Agents Across Canada for a listing of provincial regulators who sit as members of the Council. Currently, there are nine members to the council, representing all provinces within Canada with exception to Prince Edward Island the three territories. Each province operates autonomously, however the MBRCC serves as a council where various industry issues can be discussed in hopes for a more consistent and harmonized regulatory environment in Canada. While each of them have varying differences, the spirit of their work and mandate are relatively the same. Therefore, in this paper, only one of the nine provincial regulatory bodies will be discussed in greater depth, as noted in the next section. Currently the only standard that has been endorsed by all provincial regulating body members is the National Code of Conduct for the Mortgage Brokering Sector.[53]

<u>FSRA</u>

The Financial Services Regulatory Authority of Ontario (FSRA) is an independent regulatory agency in the province of Ontario overseeing specific industries within financial services such as, insurance (P&C, Life, Health, & Auto), credit unions and caisses populaires, pension plans, financial planners and advisors, health services providers (related to auto insurance), loan and trust companies, and mortgage brokerages/brokers. FSRA was established in June 2019, taking over from the Financial Services Commission of Ontario (FSCO) who was the regulatory authority since 1998. The transition from FSCO to FSRA was the Ontario government's way to establish a more effective and responsive regulatory framework in order to improve consumer and pension plan beneficiary protections in Ontario.[54] "As of March 31, 2023, FSRA regulated or registered: 1,231 mortgage brokerages, 2,881 mortgage brokers, 14,005 mortgage agents, and

[53] (Mortgage Broker Regulators' Council of Canada, 2021)
[54] (Financial Services Regulatory Authority of Ontario, 2023)

242 mortgage administrators."[55] The FSRA supports the governance and regulatory compliance standards from the Mortgage Brokerages, Lenders and Administrators Act (MBLAA) of 2006.

Under FSRA's oversight, supervision of mortgage brokerages, its brokers and agents rest with the Principal Broker who is responsible for assuring all brokers and agents are conducting themselves ethically with the client's best interest in mind. They are also responsible for ensuring reasonable steps have taken place to ensure proper policies and procedures have been implemented at the brokerages that are in line with the MBLAA and all employees follow and adhere to them. The FSRA is only notified when a mortgage brokerage has reasonable grounds to believe that a mortgage broker or agent is not suitable to be licensed. As well, similar to what FSCO did in the past, the FSRA has the ability to conduct compliance reviews of mortgage brokerages at any time according to their risk-based approach/methodology. Since taking over from FSCO, the FSRA has yet to complete a compliance review on its mortgage brokering industry. Dating as far back 2009 (in some cases earlier – invalid dates were noted), 822 (4.5% of today's mortgage brokering sector) enforcement actions have been concluded and enforced on individuals (i.e., brokers and agents) and entities (i.e., brokerages and administrators) by both FSCO and FSRA.[56]

2.4 Regulatory Oversight & Enforcement

Regulators overseeing Mortgage Brokerages and Brokers employ various approaches to enforce the legislation, rules and guidelines governing them. Depending on each circumstance, event and/or jurisdiction, they could exercise both proactive (preventative) and/or reactive (detective) oversight procedures/measures against them. A couple of examples from the OPC

[55] (Financial Services Regulatory Authority of Ontario, 2023)
[56] Ibid

and FSCO (now known as FSRA) are explained below to demonstrate their oversight of brokerages and why it may be viewed as not considered enough.

OPC

Governance and oversight by the OPC is self-regulated, whereby individuals and businesses will report complaints or breaches of security safeguards involving personal information. Complaints can be issued either directly through their self-reporting process or anonymously through the OPC's whistleblower hotline. It is through these two mechanisms the OPC conducts their compliance investigations/audits into reported questionable business practices. The OPC also provides businesses with educational material regarding legislation, best practices for handling and safeguarding private/confidential personal information, and customer/client rights regarding the use of their information by businesses. Furthermore, the OPC will also offer consultative/advisory services to those seeking information/guidance and provide research on emerging industry issues and events. However, there are no requirements stipulated in the legislation that states the OPC will execute proactive measures such as supervisory reviews or surprise audits on businesses to assure they are following guidelines.

In 2009, the OPC conducted an audit of selected mortgage brokerages based on various complaints it had received from 14 mortgage brokers from within Ontario. The breaches reported were pointed at one individual. The individual was unlicensed and posing as a legitimate licensed mortgage broker. The unqualified agent was able to obtain employment at each of the mortgage brokerages audited by OPC and was able to gain access to hundreds of credit bureau reports from individuals who did not enter into any agreements with the brokerage to obtain a mortgage. Since the audit took place well after the reported incidents, each of the brokerages had time to remediate some of the deficiencies which resulted in the breaches reported. As per the Audit Report, the OPC noted that the brokerages made significant improvements in their hiring processes and credited them for proactively reporting the breaches, however, there were still a number of inadequate security safeguards, processes and compliance requirements which needed to be addressed. In the end, three thematic recommendations were made which included a number of compliance requirements requiring improvements. Four of the five brokerages accepted the recommendations made, while the one that did not, ceased to continue to operate as a business. It was not noted if the brokerages faced any other disciplinary measures including fines, penalties and restitution to those affected.[57]

Given the magnitude of the breach and the number of the deficiencies noted at the individual brokerages, it would be inconceivable to think other brokerages have not experienced similar compliance gaps, given they are predominantly self-regulated and the consequence for non-adherence can be insignificant (while OPC can investigate complaints and publish public reports of findings it cannot enforce an order, but it could apply to the Federal Court for further legal action[58] who could initiate a fine not exceeding C$10K or C$100K for a summary or indictable offence respectively[59]) compared to the perceived benefits. Without adequate safeguards and controls at the individual brokerages, brokers with motives/pressures who can identify a weak control environment (opportunity) will exploit those gaps to their advantage. Fast forward to October 2022, during their undercover operation, CBC Marketplace uncovered a number of real estate agents and mortgage brokers alike, loosely sharing other individuals' confidential and personal information (including tax filings with Social insurance numbers) with unknown buyers. Similarly, 'shadow brokers' like Jay Kanth Chaudhary (noted earlier) and Dean Frank

[57] (Office of the Privacy Commissioner of Canada, 2010)
[58] (Personal Information Protection and Electronic Documents Act (S.C. 2000, c. 5), 2023)
[59] Ibid

James Walford, who were both ordered to cease and desist as mortgage brokers, returned to the industry only to operate as an unlicensed and unauthorized mortgage brokers accessing credit bureaus using other mortgage brokers' user IDs and submitting hundreds of mortgage applications through other brokers (referred as 'shadow brokers').[60]

FSRA (Formerly known as Financial Services Commission of Ontario (FSCO))

During 2009, FSCO executed an on-site review/inspection (referred to as the 'review') of the mortgage brokerage industry as part of its compliance review program. The review focused on the compliance requirements relating to the Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA), with a targeted focus on section 40 – 48 of the Ontario Regulation 188/08 – Mortgage Brokerages: Standards of Practice. The Act which had just come into effect on July 1, 2008 was new, and FSCO wanted to ensure by conducting this review, it would provide them with assurances that mortgage brokerages were meeting the newly enacted requirements in order to protect the end consumer. The program was tailored to review policies and procedures (P&P), oversight, and corporate governance at each of the brokerages that address the specific standards of the MBLAA. Because this was considered an on-site review rather than an audit, quality sampling and testing of controls and safeguards noted in their P&P were not performed. Rather, only the quality of their P&Ps were examined in detail (i.e., does the P&P address all aspects of the legislation thoroughly). The review essentially examined the design of the controls, P&P and overall corporate governance without testing them for operational effectiveness, which would in turn have provided stronger assurances of compliance with the legislation. The review/inspection consisted of a random sample of 128 mortgage brokerages, which at the time was believed to

[60] (Pawson, 2019)

cover approximately 10% of all existing brokerages in Ontario.[61]

At the completion of the onsite reviews, FSCO deemed that most mortgage brokerages had established P&Ps in accordance with the act. However, the findings indicated that the P&Ps were not thorough or sufficient enough to mitigate the risks associated with non-compliance of the act, which could potentially impact their clients negatively.[62]

As a result of the 2009 Compliance Review, FSCO determined that they would extend the on-site examinations over several years and report on any issues and/or deficiencies identified at the brokerages inspected in that particular year's cycle. FSCO examined nearly half (47%) of the licensed mortgage brokerages within Ontario, which included 571 brokerages between 2010 – 2014. These reviews also included follow-up examinations that were not as frequent and accounted for only 10% of the previous mortgage brokerages examined. At the conclusion of the reviews, a results summary report was issued noting that most mortgage brokerages understand the requirements of the MBLAA and that they have sufficient P&Ps in place to help guide and ensure compliance with the Act. They also went on to say, "In general, policies and procedures appear to be adequate for the nature, complexity and size of the mortgage brokerages examined. However, FSCO's findings reveal an unacceptable decline in the level of compliance regarding public relations materials and disclosure requirements."[63] In the report they went further to say that over the past 5 years, 83 Administrative Monetary Penalties (AMPs) were issued for violations resulting from these same brokerage reviews and other compliance reviews, of which fines of $250 - $25,000 were imposed. Issues included failures to demonstrate compliance with the Act, specifically disclosure requirements, and inadequate or lack of P&Ps to address it.

[61] (Financial Services Commission of Ontario, 2010)
[62] Ibid
[63] (Financial Services Commission of Ontario, 2015)

FSCO identified a number of mortgage transactions which it sampled randomly from 12 months preceding the brokerages' review. Numerous issues were noted including: "poorly documented or lack of disclosure documentation with regards to the suitability of a mortgage product or investment; non-disclosure of material risks or conflicts of interest; minimum wait times not being met; and a lack of disclosure to the investor/lender regarding the borrower's existing mortgage defaults in the preceding 12 months."[64] Furthermore, the issues worsened from 2010 – 2014, with each year the number of deficiencies/contraventions to the Act, increasing. Whilst it is unknown whether these findings resulted in suspected fraudulent activity by the brokers and the brokerages they represent, however, several deficiencies appear to have similar characteristics that could lead to such events. As well, the purpose and approach to the engagement was to review and inspect whether the brokerages had P&Ps in place to adequately address the Act, and that they were designed effectively. On the contrary, an audit would have tested the operational effectiveness of the brokerages P&Ps and examined in more depth the transactions that are required to adhere to them and the Act legislation. Although brokerages were issued AMPs, the penalties may not be considered significant enough to deter brokerages from any wrongdoing, if any, especially if the compensation/revenues outweigh the costs. Penalties and/or fines need to increase in terms of severity, and compliance oversight has to step-up with additional follow-ups which further examine and test the operational effectiveness of brokerages P&Ps to deter any fraudulent activity. Ultimately, it is the brokerages who are responsible for overseeing the brokers that are employed by them and who represent their business' brand and reputation. Therefore, by tightening up and increasing the number of compliance reviews with more of a in depth focus (audit vs. review) to each engagement, while

[64] (Financial Services Commission of Ontario, 2015)

increasing the severity of any fines/penalties for deficiencies, this should help force brokerages to strengthen their control environment and take a harder and proactive stance to comply with the Act.

3. Regulatory & Industry Trends

The mortgage industry and its accompanying regulatory landscape are in a perpetual state of transformation, constantly adapting to address emerging risks and trends driven by factors such as the rapid advancement and complexity of technology, macro and microeconomic conditions, and communities whose demographics keep evolving. The following sections will discuss the latest trends within the mortgage industry in Canada, recently enacted and proposed regulatory changes, how technology is being used to combat mortgage fraud and how pervasive and systemic mortgage fraud can impact the Canadian economy.

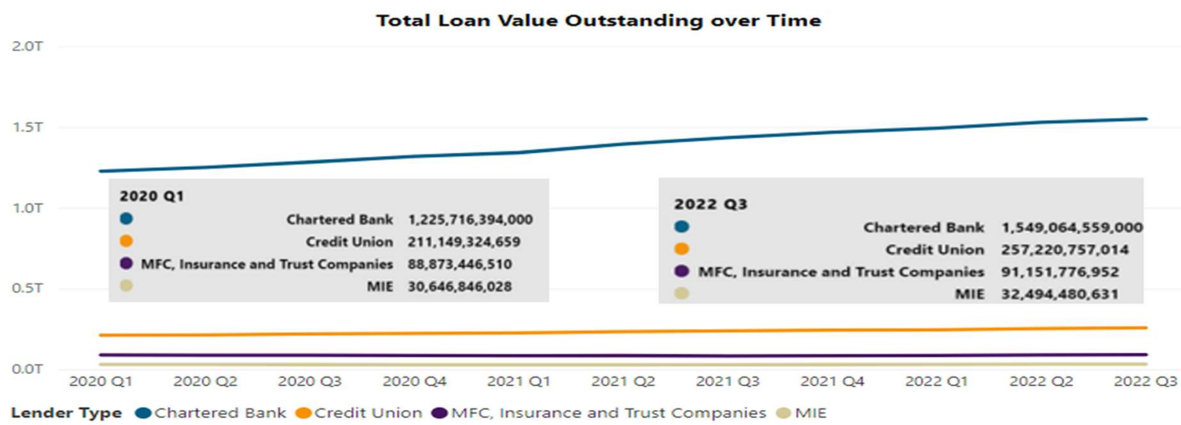
3.1 Latest Trends in the Mortgage Industry in Canada

At the end of Q3, 2022, the total amount of mortgage credit outstanding in Canada was a record C$1.93 trillion (see **Figure 3.1.1** below) of which C$536.65 billion originated in the first three quarters of 2022. According to a CMHC survey, mortgage brokers accounted for approximately 43%-51% of the mortgages originated during 2022.[65]

Canada's housing market is considered to be one of the most resilient globally and has for a number of years, having survived the 2008 Financial Crisis and several periods of economic slowdowns and slower growth since then. In an effort to encourage national investment and

Figure 3.1.1 – Total Loan Value Outstanding by Lender

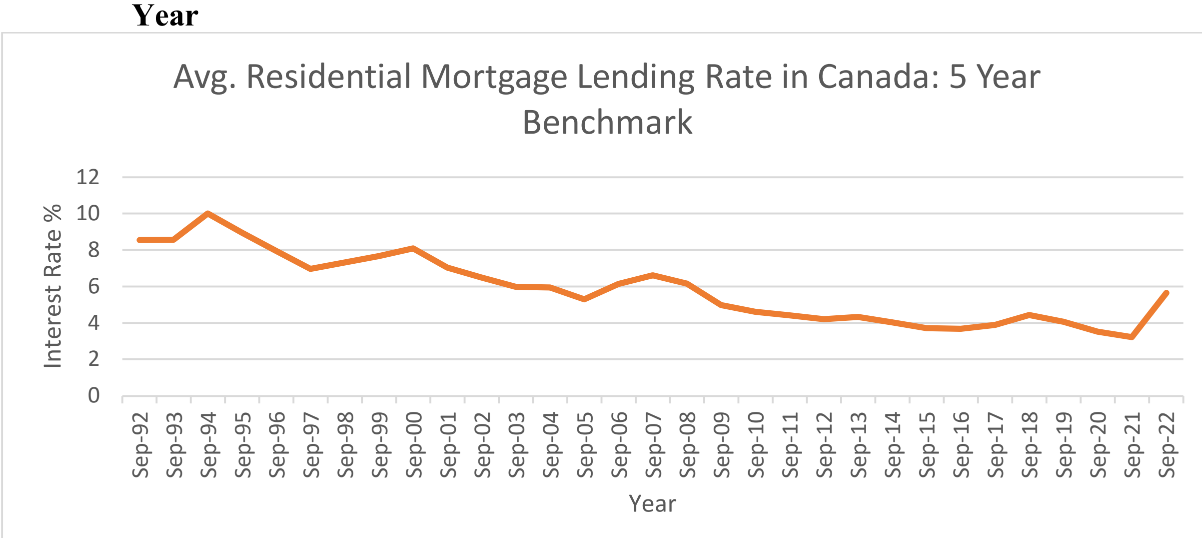
[65] (Canada Mortgage and Housing Corporation, 2023)



Source: CMHC's Residential Mortgage Industry Data Dashboard; https://www.cmhc-schl.gc.ca/en/professionals/housing-markets-data-and-research/housing-data/residential-mortgage-industry-data-dashboard

to avoid any recessions/economic slowdowns, the Bank of Canada has consistently lowered the target interest rates since the early 1990s. As noted in **Figure 3.1.2**, the average residential 5 year mortgage lending rate in Canada, decreased almost 67.8% (from 10.01% in Sep. '94 to 3.22% in Sep. '21) before rising to 5.64% in September 2022. The continued decrease in mortgage rates stimulated an increase in mortgage investments by consumers as noted in **Figure**

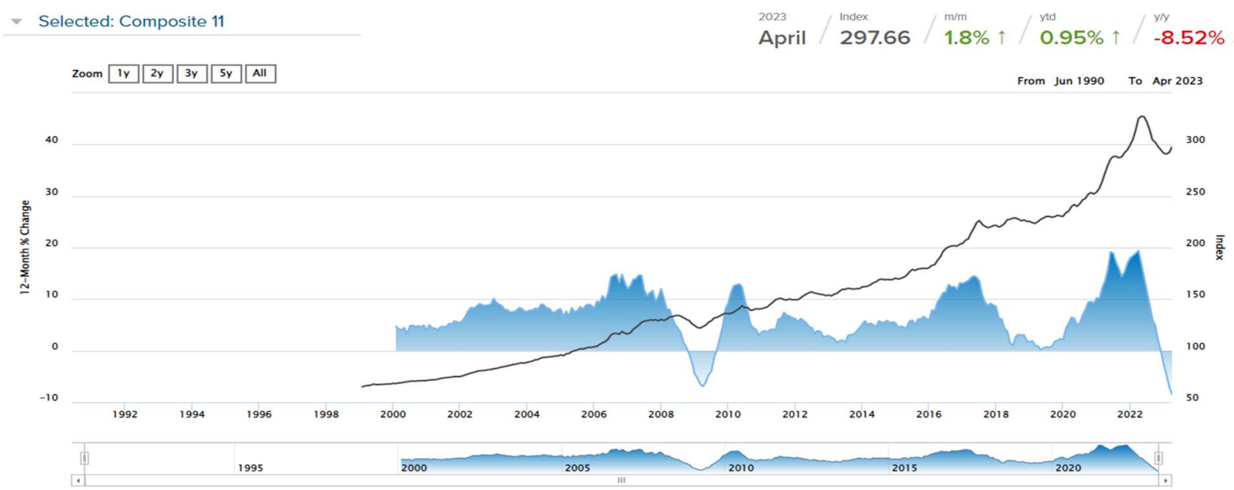
Figure 3.1.2 – Avg. Residential Mortgage Lending Rate in Canada: 5 Year Benchmark By Year



Source: Table 34-10-0145-01 Canada Mortgage and Housing Corporation; https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3410014501

3.1.1. Since 2002, residential mortgage credit outstanding has set new records with investment increasing 390% (from C$494.6 billion) since then. This increase has been fueled largely in part by major markets in Canada such as Toronto and Vancouver. Both of these markets have pushed the average housing price index (HPI) to a record high of 327.48 (see **Figure 3.1.3** below) as of May 2022 (16.99% increase YOY) before taking a dip as interest rates increased in an effort to curb inflation.

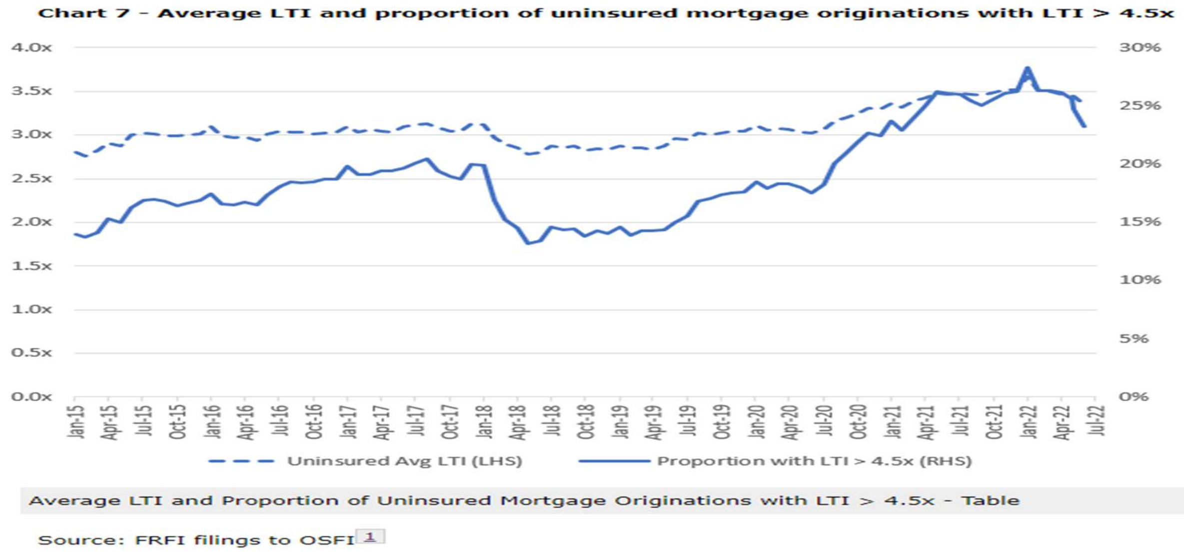
Figure 3.1.3 – Composite 11 House Price Index



Source: Teranet and National Bank of Canada, House Price Index; https://housepriceindex.ca/#chart_change=c11

As housing prices increase, the affordability of those homes slowly become out of reach for most Canadians. However, if interest rates become extremely cheap, it reduces the debt servicing costs substantially which would allow borrowers to take on additional debt. But if interest rates start to rise again, the ability to service the additional debt is reduced. As noted in **Figure 3.1.4** below, Canadians are leveraging themselves to the brink of unaffordability, with approximately 23% of uninsured mortgage originations qualifying with a loan-to-income (LTI) > 4.5x as of July 2022 (as high as 28.3% in January 2022). The average LTI was just shy of 3.4x

Figure 3.1.4 – Avg. LTI and Proportion of Uninsured Mortgage Originations with LTI > 4.5x



Source: Office of the Superintendent of Financial Institutions,
https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b20-nfo.aspx 2023-01-12

for the same period.[66] OSFI does not regulate financial institutions to have prescribed LTI limits, however, they have previously noted that 4.5x is considered on the high side.[67]

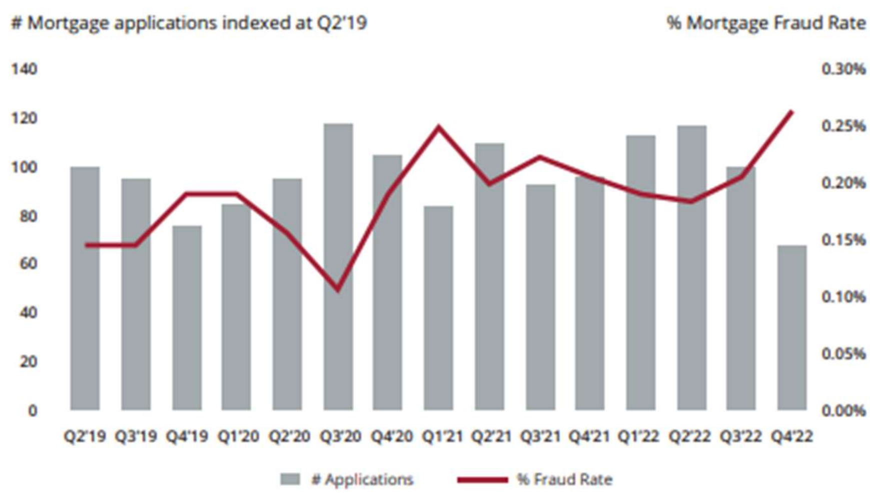
With the increase in housing prices, and debts surging to record highs, fraudulent activity may be the only opportunity for some to get into the market and for mortgage brokers to take advantage of additional compensation that would otherwise be lost. From a mortgage broker perspective who does not bear any credit risk similar to their lenders, they feel they have more to gain than lose. S&P was noted as saying they expected more evidence of fraud in Canadian residential mortgages,[68] quoting Equifax Canada whose data suggested that they had witnessed a 52% increase in suspected fraudulent mortgage applications since 2013, back in January 2017.[69] Equifax is an agency offering credit bureau information and other data and analytics to businesses including the financial industry. In the mortgage lending industry, Equifax is mostly

[66] (Office of the Superintendent of Financial Institutions, 2023)
[67] (Huebl, 2023)
[68] (McNeely, 2018)
[69] (Equifax Canada, 2017)

known to provide credit bureau data on individuals so financial institutions can better assess their creditworthiness when applying for a loan.

According to more recent data from Equifax Canada, mortgage fraud rates are up approximately 31.9% in Q4, 2022 compared to Q4, 2021 despite mortgage applications being down (refer to **Figure 3.1.5** below). Equifax goes on further to say, "When we look at the mortgage market, we see the continuing drop in housing value and availability. Add in the lack of affordability due to rising interest rates and economic costs, and it makes sense that debt levels and financial stress indicators have been rising – a potential indicator of increasing first party fraud risk."[70]

Figure 3.1.4 – % Mortgage Fraud Rate



Source: Equifax Canada
https://assets.equifax.com/assets/canada/english/EQ-H2-2022-FraudTrends-Report-EN-220315.pdf

A survey conducted by Leger on behalf of BNN and RATESDOTCA, attempted to research Canadians attitudes towards mortgage fraud. An astounding 47% of those surveyed was of the opinion that mortgage fraud is considered common in Canada, with 17% and 18% of respondents

[70] (Equifax Canada, 2023)

agreeing it is normal for one to inflate one's income and alter employment information, respectively when applying for a mortgage. Those who were in the age bracket of 55+, 85% noted it's never acceptable to inflate income on a mortgage application, while 89% stated that one should never misrepresent employment information on the same request. Evidently, 75% and 78% of those respondents respectively, already owned a home. This was much lower for those within the 18-34 age bucket who did not own a home (refer to *Appendix E: Survey By RATESDOTCA* for further information). "Perhaps this data is indicative of times when it was more affordable and easier to own a home, and an older demographic may be further removed from the realities of purchasing a home in the current market."[71] While not the least bit surprising given the 18-34 age cohort is largely made up of first-time homebuyers who are likely struggling to meet the stringent mortgage qualification guidelines. They are likely the least risk averse of the cohorts given they are just starting to build wealth and on average have little to no assets, compared to those 55+ who are much more established. Therefore, taking a risk by telling a few white lies and having documents fabricated to match, may just be worth it for them, otherwise they could face being priced out of the market for a long time.

3.2 How Technology is Being Used to Combat Mortgage Broker Fraud

Technology is rapidly changing the way we do things each and everyday including the way we process and adjudicate mortgages, and how related fraud schemes are identified, prevented and detected. On the flip side, technology has also enhanced and accelerated the way fraud perpetrators are now committing mortgage frauds. It is not the cause of mortgage fraud, but it is definitely making it much easier to conduct and conceal it at a faster pace. For example,

[71] (Khan, 2023)

automated appraisals provide instant market valuations that can be altered, electronic editing software allows for the creation of fake documents, and Voice Over Internet Protocol (VOIP) can hide call origins if confirming employment. These are all different forms of technology that are being used today which can provide a mortgage broker or anyone else for that matter an easy and anonymous means to perpetrate and conceal fraud without the fear of being caught.[72]

Many lenders and insurers have purchased or partnered up with leading edge technology firms to create adaptable software applications that can scan and scrutinize applications and corroborate them against their actual sources, license depending. In a recent survey conducted by Equifax (Feb. 2021), "Less than half (45 percent) of survey respondents, however, trust their broker to complete necessary forms on their behalf, 29 per cent admit they don't know if they should."[73] This is a sign of an industry that has been tarnished over the last decade due to repeated negative media publicity regarding borrowers and lenders alike who continue to be abused by both mortgage brokers and lending agents for their own personal gains. Like many other organizations, Equifax has developed a screening-tool that operates behind the screens of all other systems to validate three critical factors to a borrower's loan application: Credit Worthiness, Identity and Historical Negative Media. The objective of each solution is as follows:[74]

Solution	***Objective***
Client File Database	Accesses Equifax' robust data assets, including their proprietary credit file database, to check for anomalies in an individual's financial credit history.

[72] (Mortgage fraud can be stopped, 2006)
[73] (ClearPro(TM) aims to build consumer trust and fight fraud within the mortgage industry., 2021)
[74] Ibid

Identity	Cross checks the input information against Equifax data assets to identify and confirm any misuse of name, address, phone numbers by an agent or broker.
History	Searches current and historical negative media, both international and domestic publication, and sanctions lists, including international and government agencies. If a match is found to an employee, agent or representative, it is validated and confirmed.

While the application validates the data provided against various public or available authoritative sources and flags those requiring additional scrutiny, it is eventually up to the lender to determine what steps are taken next e.g., manual review or in depth investigation of the deal. However, applications like these can be customized to incorporate various rules which would help reduce the number of false positives faster and more accurately than any human, leading to quicker turnaround times on applications.

There are many tools in the market offering similar packages such as the one above or others specializing in just one aspect/niche (i.e., negative media searches). Other businesses are turning to virtual and Artificial Intelligence (AI) tools that can be used specifically to analyze data patterns and anomalies that relate to mortgage fraud. These AI tools also learn as they process more applications through their machining learning algorithms, making it more difficult for deals to go through adjudication without being flagged for suspected fraudulent activity.

Automated Valuation Models (AVMs) are automated electronic appraisals that gather information regarding a property and its neighbourhood from online public sources and other third-party data, including external photographs. AVMs are a cheaper and quicker alternative to having an independent appraiser conduct a physical appraisal on a property. No longer are the days where lending agents and mortgage brokers have to wait days before receiving an appraisal report. However, during the 2008 Financial Crisis, AVMs were viewed negatively, as lenders relied solely on these reports in order to turnaround mortgage applications quicker. As well, if lenders were not independently generating the AVMs and relied on mortgage brokers to submit or review them on their behalf, the risk of manipulation increased.

Because AVMs offer a quick, transparent, independent and most importantly cost-effective solution, it should be used alongside traditional physical appraisals to corroborate information. An AVM is capable of providing comparable property information, historical data, values, photos and other relevant information regarding the neighbourhood that can be corroborated against a physical property appraisal. This allows the lender an opportunity to identify and question any discrepancies (possible fraudulent misrepresentation) in order to validate an independent appraisal's assessment and appraiser's objectivity. An AVM can also help a lender assess the value of the property and determine if a deal makes sense early on in the process prior to incurring the costs of a physical appraisal. But while there are limitations to both an AVM and physical appraisal, the two together compliment each other and if used properly can combat any fraudulent activity associated with the property's valuation.

Most recently, digital identity verification solutions are being developed to allow users to authenticate a borrower's identity which could help to prevent identity theft and assist with Know Your Client (KYC) and Anti-Money Laundering requirements. However, if not controlled properly, issues such as the misuse of data and mass security breaches could occur and create far greater risks and concerns. The technology itself would definitely streamline processes to operate more efficiently and quicker, however many challenges and issues still need to be worked out before we see the mortgage lending industry adopt it.

While it is critical to employ technology in the fight against mortgage fraud, it should not be the only mechanism employed to combat it. Although technology can be used to fight fraud, fraudsters are also finding ways to use it against anti-fraud mechanisms. Therefore, a multi-faceted approach which combines technology with an appropriate mix of other risk management controls including frequent oversight and assessments on the operational effectiveness of those processes should be in place to help validate and corroborate information, thereby enhancing the mortgage lending process.

3.3 Recent Regulatory Changes or Proposed Changes to Assist in Preventing Mortgage Fraud

Proposed Regulatory Changes

Administrative Monetary Penalties (FSRA)

The FSRA recently issued Proposed Guidance: Administrative Monetary Penalties (AMP), Interpretation/Approach #GR0013APP for review and comments. The purpose of the guidance is to communicate how the FSRA exercises discretion when imposing AMPs and determining amounts. The goal is to support transparency, fairness, consistency and better decision making on those who the AMPs are imposed on.[75] While MBLAA Ss. 41 states the following maximum imposable General AMP amounts as,

i. Contravention/failure to comply by person/entity who is/required to be, licensed as a mortgage brokerage or a mortgage administrator - $500,000,
ii. Contravention/Failure to comply by individual who is/required to be, licensed as a mortgage broker or agent - $100,000,

[75] (Financial Services Regulatory Authority of Ontario, 2023)

iii. Any other person - $500,000,[76]

the proposed guidance is not intended to focus on changes to the maximum imposable General AMP amounts, but rather the approach and application of the regulatory provisions relating to AMPs as interpreted by the FSRA. While the method for imposing such AMPs is determined using a principles-based approach, tightening up the criteria which ultimately determines the severity and amount, will go a long way to deter mortgage brokers from facilitating fraudulent mortgage activity in the future. As well, there needs to be more awareness and communication into the decisions behind the AMPs issued so that all members understand that action is being taken and the crime will not go unpunished lightly.

Cybersecurity Preparedness (MBRCC)

The MBRCC recently provided guidance to support the mortgage brokering sector prepare for cybersecurity risks given the recent rise of threats/breaches that continue to plague most types of businesses at varying sizes. Given that brokerages and brokers/agents maintain client sensitive/confidential information, it was imperative that the MBRCC support the Security and Confidentiality Principle (Principle 8 of its recently issued MBRCC Code of Conduct) which aligns with federal (e.g., PIPEDA) and provincial legislation to protect personal and information. While the Principles within the guidance does not necessarily address the prevention or detection of mortgage fraud by a mortgage broker, it will provide brokerages with insights on how information is being used, restricted, stored and collected, including what electronic devices are susceptible to these types of incidents and whether these assets ensure least privilege access, meaning an employee has access only to the information required to carry out their job.

[76] (Financial Services Regulatory Authority of Ontario, 2023)

Understanding the above information, would also assist principal brokers in identifying gaps within their brokerages that could create opportunities for brokers and agents alike to abuse.[77]

Principles for Mortgage Product Suitability Assessments

On December 8th, 2022, the MBRCC announced it is developing a proposal for 'Principles for Mortgage Product Suitability Assessments'. These principles will serve as best practices to support mortgage brokers in assessing their clients' needs while recommending suitable mortgage products to address their requirements and/or circumstances. These best practices will further enhance consumer protection and ensure mortgage brokers are free from any conflict while keeping their consumers' interests as their top priority. Guidelines are to be finalized in 2023 for consultation.[78] While guidelines currently exist (in Ontario, "O. Reg. 188/08 s. 24 requires brokerages to take reasonable steps to ensure mortgages or mortgage investments presented to clients are suitable"[79]), they are not descriptive enough to illustrate how mortgage brokers should go about it, leaving it open for interpretation. These principles are a long time in the making, as the MBRCC conducted a mortgage brokering product suitability review back in 2014 in an effort to determine whether regulators and principal brokers were doing enough to protect individual borrowers from being offered unsuitable residential mortgages. It was believed following the 2008 Financial Crisis, that one of the main factors contributing to it was the vast amount of unsuitable residential mortgages offered to homebuyers. While the report highlighted many observations, a key finding which led to the creation of the suitability assessment, albeit 8 years later, was that only 68% of mortgage brokers document all of their

[77] (Mortgage Broker Regulators' Council of Canada, 2022)
[78] (Mortgage Broker Regulators' Council of Canada, 2022)
[79] (Financial Services Regulatory Authority of Ontario, 2023)

broking activities in writing, with 31% conducting their activities verbally and 1% doing nothing at all. The review targeted 1,488 mortgage brokers, agents and associates, with a 75% response rate of 1,113 from the provinces of Ontario, Alberta and Newfoundland.[80] Even if 31% declared they conducted their brokering activities verbally, without evidence of the questions, exercises or responses received, it can be argued that this type of action is the same as doing nothing at all since it cannot be evidenced.

The FSRA also conducted a review of 63 private mortgage transactions that found agents and brokers were not always documenting the borrowers' suitability assessment for products being recommended. The processes they followed did not necessarily guide them in documenting the rationale for product recommendations which meant non-compliance. Part of the issue was due to poor collection and retention of records to help re-create the suitability assessment. Proposing more detailed requirements will assist principal brokers (who ultimately are responsible for supervising and overseeing compliance of their agents) with insights regarding broker/agent compliance of the Act, their competence and whether further training is required. [81]

Recently Enacted Regulatory Changes

MBRCC's Code of Conduct for the Mortgage Brokering Sector

After consultation with various members of the industry during 2020-21, the MBRCC published a new Code of Conduct ("Code") that is effective for all jurisdictions that are members of the MBRCC, along with members of the Canadian Mortgage Broker's Association (CMBA) and Mortgage Professionals Canada (MPC). The Code consists of 10 common principles reflecting the regulatory standards within Canada's mortgage brokering sector. While each

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[80] (Mortgage Broker Regulators' Council of Canada, 2014)
[81] (Financial Services Regulatory Authority of Ontario, 2023)

jurisdiction has imposed their own code, at minimum the national standard should be followed, unless each province/territory has set more specific and stringent rules or standards, in which case those should be followed. This was part of an initiative to increase consumer confidence while establishing consistent and appropriate practice and education standards.[82]

<u>OSFI's Amendments to the Minimum Qualifying Rate for Uninsured Mortgages & Proposal for Consultation</u>

Effective June 1, 2021, OSFI announced that the minimum qualifying rate for uninsured mortgages (defined as residential mortgages with a down payment of 20% or more) is the greater of the mortgage contract rate plus 2%, or 5.25%. The latter was revised from the average 5-year benchmark rate published by the Bank of Canada that came into effect in 2018. This latest amendment by OSFI is an attempt to limit those from qualifying, thereby relieving some of the pressures resulting from economic issues such as rising home prices, a shortage in housing supply, high household debt and relentless competitive bidding. However, while this latest attempt by OSFI may help reduce some of those pressures, it could also open up the possibility that more individuals will still seek other ways, like falsifying information and documents to support a mortgage application.[83] After implementing the above and updating the B-20 Guideline (Residential Mortgage Underwriting Practices and Procedures Guideline), OSFI also kept a close eye on criteria such as amortization periods and debt service limits in order to prevent circumvention of this revised qualifying rate.[84]

OSFI also announced in Q1, 2023 that it will be launching a consultation for three newly

[82] (Mortgage Broker Regulators' Council of Canada, 2021)
[83] (Office of the Superintendent of Financial Institutions, 2021)
[84] (Office of the Superintendent of Financial Institutions, 2022)

proposed guidelines. The proposed guidelines include: 1) Loan-to-Income (LTI) and debt-to-income (DTI) restrictions, 2) Debt service restrictions (principal interest and other related expenses as a percentage of borrower income), and 3) Interest rate affordability stress tests (more risk sensitive tests beyond the minimum qualifying rate of the greater of contract rate +200 bps or 5.25%).[85] A decision to implement these proposed guidelines have yet to be made.

The recent regulatory changes and proposals for comments are critical factors that will help to enhance transparency, strengthen corporate governance and create a deterrent effect to dissuade mortgage brokers from conducting mortgage fraud. However, the question still remains, are the deterrents and proposed changes sufficient and suitable to dissuade fraudsters? It is unlikely these changes will further prevent mortgage fraud, simply because it does not change the way fraudsters commit fraud or are detected. While it has become harder to qualify for mortgages, fraudsters will still use the same methods to falsify documents in order to meet those new requirements. They may just have to be a little more creative when explaining the story. Without increased oversight (inspections, audits and investigations) and enforcement, which includes harsher penalties and fines than what previously existed, fraudsters will likely view the benefits as outweighing the costs and continue to defraud borrowers and lenders alike. Provincial regulators need to find ways to increase oversight and enforcement given the magnitude and how widespread these issues are. As well, regulators need to find more ways to collect information regarding suspected misrepresentation and transactional mortgage lending data that could be analyzed to identify red flags. The information collected needs to be shared amongst regulators so that intelligence can be gained to help identify patterns, detect red flags and develop solutions that will combat it more effectively.

[85] (Huebl, 2023)

3.4 How Mortgage Broker Fraud Impacts the Economy

Mortgage fraud is a serious issue that can have many lasting effects on the Canadian economy. While it impacts those individuals and/or entities who are directly victimized by it, however, if the issue becomes widespread or systemic in nature, a 'domino effect' could occur and hit the Canadian financial system with significant credit losses before impacting the rest of the Canadian economy. In an economy where interest rates rise rapidly after years of record lows, and household/consumer debt and housing prices are at record highs (similar to where we are today during Q2, 2023), the aftermath could lead to a collapse of the financial system resulting from a higher than normal possibility of mortgage defaults.

FRFIs in Canada are assessed/rated by credit rating agencies such as Moody's and S&P at minimum, annually unless the agency suspects significant changes or events have occurred that could impact an institution's creditworthiness, at which point they will assess it at that time. The agencies will typically review the economy's current market conditions and assess it against the FIs' performance, liquidity and capital positions, and its risk management practices. "Bank downgrades can, in turn, affect the supply of lending through their effect on a bank's access to funding, in particular to wholesale funding and public bond markets. Ratings directly affect whether some institutional investors, such as banks, insurance companies, and pension funds, can invest in a bank's debt securities, as well as Basel capital requirements for holding such securities on their balance sheets. Ratings are used in interbank markets to determine the eligibility of counterparties to participate in a transaction and to set exposure limits. Rating downgrades can lead to increases in bond coupons and loan interest rates, and trigger debt covenant violations. Downgraded banks can thus face impaired access to markets, higher collateral requirements, and higher funding costs due to rating triggers."[86] Basel capital requirements are referred to as the bank's core capital, equity and reserves that are disclosed to serve as a cushion in case the bank were to suffer financial losses due to economic or operational strains/stresses so that it can continue without disruption. Given Canada's oligopolistic financial system, which is made up of six large national banks, mortgages underwritten and outstanding make up approximately 80.27% (or C$1.55 trillion) of the total market share (C$1.93 trillion) as of Q3, 2022.[87] "High housing prices and debt loads increase incentives for fraudulent activity such as overstating a borrower's income to meet qualifying criteria. Additionally, a growing share of mortgages are being originated by brokers who don't bear the credit risk for the loans like lenders."[88] That being said, all it takes is for credit agencies to identify such undesirable events and ratings will be adjusted downwards, creating a negative impact to the institutions and potentially the economy.

In 2018, S&P was found stating that they expected more evidence of fraud from the Canadian residential mortgage market. They referenced a report issued by Equifax during January 2018 suggesting between 2013 to 2017, suspected fraudulent mortgage applications increased 52%. This resulted in a downward change to one of the risk weightings that was applicable to some risk-adjusted capital ratios which assist in determining the eventual credit ratings. This had minimal impact on the individual bank ratings and the overall Canadian financial systems as the overall credit ratings did not change.[89]

Similarly in 2017, Moody's downgraded the credit rating for all six big Canadian banks,

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[86] (Adelino, 2016)
[87] (Canada Mortgage and Housing Corporation (CMHC), 2023)
[88] (McNeely, 2018)
[89] Ibid

citing a "more challenging operating environment for banks in Canada for the remainder of 2017 and beyond."[90] Moody was concerned with the increased levels of consumer debts and housing prices at that time, noting Canada had a record-high debt-to-income ratio of 167 per cent, which was beyond any stress tests that measured whether the bank(s) could withstand any crisis scenarios.[91] The same concerns were also cited in 2013 when they last adjusted their credit ratings. Even though the rating adjustments did not have much of an impact, it could have, causing a ripple effect in the Canadian economy similar, but not to the extent of the 2008 Financial Crisis.

At a microeconomic level, those who buy into neighbourhoods that are subject to higher levels of mortgage fraud in comparison to others are also affected, even if it does not directly victimize them. Communities that find mortgage fraud typically more prevalent, witness house prices increase at a faster pace than the rest. As housing prices increase, so do the assessments and the property tax that is assessed against it. While it may not seem like a bad deal to witness the neighbourhood rise in value and homeowners accumulating equity, the issues start to surface as homes begin to foreclose. With foreclosure, property values start to decrease at a faster pace, especially if the economy enters a recession. Not only do homeowners begin to lose equity quickly with property values dropping, but property taxes remain high until the next assessment period, and mortgage payments no longer outweigh the benefits of keeping a home that is worth much less than what was paid. "It's not just banks and credit unions that are being victimized. People who buy in neighbourhoods where mortgage fraud is rampant are at risk of paying more than necessary for their houses and, subsequently, more in property tax. And they can suffer

[90] (Evans, Moody's downgrades credit ratings for Canada's Big 6 banks, 2017)
[91] Ibid

further when a wave of foreclosures hits, causing property prices to plummet."[92]

4. Review and Analysis of Recent Case Studies

4.1 Home Capital Group

"As we start to put this issue in the rear-view mirror, the key is to remain vigilant, to keep in mind the lessons we learned and to keep improving the way we do business."[93] These were the words of Gerald Soloway, the Chief Executive Officer at Home Capital Group Inc. (HCGI) after releasing the company's third quarter's earnings report in 2015. HCGI is a public company on the Toronto Stock Exchange which fully owns its principal operating subsidiary Home Trust Company (HTC). HTC offers residential and non-residential mortgage lending, securitizes residential mortgages and promotes other financial products such as credit cards. HTC also owns a subsidiary called Home Bank, which offers deposits to consumers to help fund their existing mortgage commitments. The company is federally regulated with OSFI having regulatory oversight.[94] HTC is also considered an "alternative" lender, also known as a "subprime" or "B" lender which typically services consumers who are self-employed or with unestablished and less than favourable credit histories, unlike "A" lenders such as the Big 6 banks here in Canada. Residential mortgages are offered through the Company's mortgage broker channel, which made up approximately 90% of HCGI's business during fiscal 2016.[95]

It was June 2014 when senior management at HCGI first learned that numerous mortgage

[92] (Sorensen, 2010)
[93] (Posadzki, 2015)
[94] (Home Capital Group Inc., 2023)
[95] (Brown, 2018)

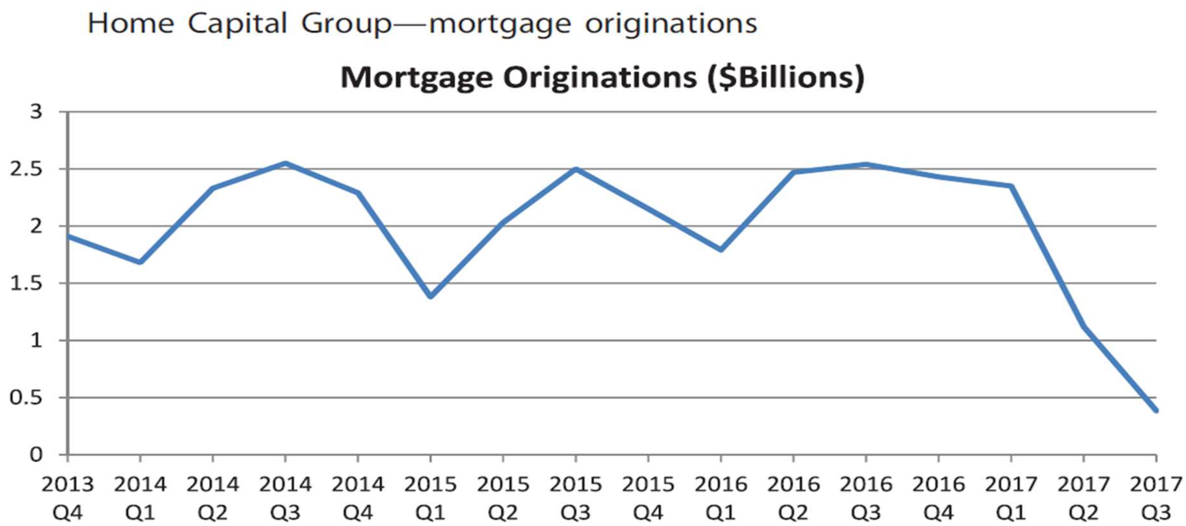
applications submitted through their mortgage broker channel had been misrepresented and accepted by HCGI's subsidiary HTC. A special committee, spearheaded by the company's Board of Directors (BOD), was launched a few weeks later to conduct an investigation which was referred to as Project Trillium. The investigation concluded in February 2015, with findings suggesting that numerous brokers had fraudulently misrepresented documentation supporting their clients' applications for mortgages which went undetected by those underwriting and HTC's internal controls. In that same month, HCGI reported they had terminated four underwriters, disallowed two brokerages and 30 brokers from dealing with the company and put several others (whose files had suspicions of fraud, but could not be proven) on their internal watch list, meaning they would be subject to increased due diligence on future mortgage applications. The company also took steps to remediate their internal control gaps/weaknesses that allowed for these opportunities of fraud.[96]

The first gap that was identified and remediated was the separation of the underwriting function from sales. Separating the two functions helped establish an independent and objective review of mortgage applications. While the sales department focused on establishing client—broker relationships, establishing sales volumes and promoting mortgage products, the underwriting department would assess and verify a borrower's creditworthiness, financial information and risk profile without having the added pressures from sales to meet targets. Verification of income was another gap that was identified. Some underwriters at HCGI were engaged in a process known as 'phantom ticking' whereby income verification procedures were said to have been documented as completed but in fact, were not. Similarly, employment verification procedures, the third gap identified, were not followed or performed at all.

[96] (Brown, 2018)

As a result, HTC experienced a significant and immediate drop in mortgage originations between Q4, 2014 and Q1, 2015 (See **Figure 4.1** below). The disallowed/terminated brokers

Figure 4.1 – Home Capital Group – Mortgage Originations



Source: Home Capital Group-The High Cost of Dishonesty*. (Brown, 2018)

generated C$881.4 million in mortgage originations during 2014, 10% of HTC's 2014 total originations. Almost C$900 million of future mortgage originations were lost by terminating those mortgage brokerages and brokers. The implementation and restructuring of internal controls consumed a significant amount of time, leading to a deceleration in the growth of mortgage origination. Furthermore, the additional or remediated controls lengthened the mortgage application processing time, causing mortgage brokers to seek alternative lending institutions.[97]

To further complicate matters, Senior Management was not forthcoming with the events that took place and rather concealed the fraud knowingly by withholding material information from

[97] (Brown, 2018)

investors and instead cited other reasons such as seasonality or competitive markets as the root cause for the decline in mortgage originations. The lies continued until June 2015 when a whistleblower complaint was received by the Audit Committee from a VP from HCGI which was voluntarily forwarded to the OSC who began their investigation. For the first time on July 10, 2015, HCGI disclosed publicly the termination of several brokers based on an internal investigation that was performed. Almost immediately after the announcement, HCGI's share price fell by almost 19%, and within a couple of months mortgage originations dropped again significantly. "The CEO and CFO both certified the 2014 Annual Filing. No mention was made of the fraudulent information by brokers in the subsequent 2015 first quarter filings on May 6, 2015. The OSC claims that the executives' failure to disclose material information was a breach of subsection 122(1)(b) of the Securities Act, R.S.O. 1990, c.S.5, as amended, and National Instrument 52-109—Certification of Disclosure in Issuers' Annual and Interim Filings (NI 52-109)."[98]

In response to their involvement and awareness of the concealed fraudulent information and the dissemination of false reasons to deceive investors regarding mortgage origination declines, the OSC issued enforcement notices to executives, both past and present. Days later, the HCGI was able to secure a C$2 billion emergency line of credit from Healthcare of Ontario Pension Plan (HOOPP) to replace the sudden withdrawal of deposits from investors. It was at that time the share price of HCGI started to decrease significantly before it hit a low of C$5.99 versus a share price of C$55.24 before the start of the Project Trillium investigation. The aftermath of these fraudulent acts resulted in other competitors experiencing a crunch, with companies like Equitable Bank, HCGI's closest competitor, losing more than 25% of its share price as

[98] (Brown, 2018)

speculators feared a domino effect. Equitable Bank also announced the signing of a letter of commitment for C$2 billion fearing investors would also withdraw their deposits. Fortunately for them, it was never required. In the end, the bleeding stopped after Warren Buffet's Berkshire Hathaway stepped in, with some believing it was done as a favour to a request from Canada's Prime Minister (PM) Justin Trudeau, to offer funding with more favourable terms to replace the funds provided by HOOPP and save the company from further turmoil. Warren Buffet's reputation and successful track record helped restore investor confidence in the company once again, helping raise additional deposits along with the company's share price.[99]

"The Home Capital case study demonstrates the competing pressures that management face from different stakeholders and how their weight can compound during times of crisis. At the forefront is the Project Trillium internal investigation and the need for immediate action. While the company terminated brokers internally, they failed to act externally: they neglected to properly carry out their continuous disclosure obligations. The decision to postpone disclosure and obscure it with boilerplate language is indicative of the board grappling with the need to meet annual financial targets."[100]

The sequence of events, including HCGI's deceptive practices aimed at misleading investors, regulators and other stakeholders, raises concerns about the level of openness and transparency within our Canadian financial institutions. These events prompt questions regarding the extent of which these institutions are forthcoming and transparent in their operations, "….fearing Home Capital's current issues are analogous to a 'canary in the coal mine' and that a potential housing price correction in Canada will be sufficient stimulus to bring problems to light."[101] In light of

[99] (Brown, 2018)
[100] (Ben-Ishai, 2021)
[101] (Brown, 2018)

all this, mortgage arrears were still quite low and the loans themselves were still performing, meaning payments were being made without being skipped or defaulting. At one point Gerald Soloway, HCGI's CEO at the time assured investors the reason why these mortgages were performing well was because they were underwritten with multiple income earners residing in the home who were committed to repaying the loan.[102] This would imply that the majority of these loans were in fact 'fraud for shelter' deals, whereby due to stringent regulations, borrowers who were borderline decent applicants who would normally qualify if the industry conditions remained constant, instead were not eligible due to the stringent lending requirements imposed by regulators. Gerald Soloway also went further to say, "These mortgages are performing very well—in line with or better than our broader mortgage portfolio. I emphasize that there have been no unusual credit issues. More than 90 per cent of the mortgage files that the lender has reviewed so far could be eligible for renewal when their terms come to an end."[103]

HCGI's series of fraudulent events almost led to its collapse, which could have had further implications on other financial institutions and the industry as a whole, similar to what occurred south of the border had it not been for a couple of tactical moves by the company and the intervention of Canada's PM.

So, what ever happened to the mortgage brokers who were accused of fraudulently misrepresenting the applications? First of all, they were disallowed/terminated from doing business with HCGI immediately and indefinitely. No indication was given on whether these brokers could ever come back after some time and do further business with HCGI. Marlon Edwards, a spokesperson from FSCO at the time noted, "most of the brokers and agents that were part of its Home Capital review continue to be licensed. The level of proof is higher for a

[102] (Brown, 2018)
[103] (Posadzki, 2015)

regulator to discipline a broker than for a company to cut ties with mortgage dealers."[104] Two brokers were accused, Zaheer Mohammad for misrepresenting income and employment information in six separate occasions, and Gagandeep Duggal who also provided false and misleading information in his submission of mortgage applications. Both men were fined C$43,853.64 and C$5,000 respectively with Zaheer Mohammad also having his license revoked.[105] The Ontario Finance Minister Charles Sousa at the time noted, "the sanctions show that the province's regulatory system is protecting the public interest."[106] However, the burning question is whether most believe the regulator did enough in this case. Almost C$900 million of fraudulent mortgage originations underwritten by 45 different mortgage brokers and only two brokers were fined for a combined total of just less than C$49,000 with one of the two having their mortgage brokering license revoked. While it was not disclosed how much commission was actually made by the broker on those deals, one would imagine it may have been enough to at least cover the fines imposed based on the discussion points made earlier in this paper. Out of the 45 brokers identified by HCGI, only one had their license revoked. This outcome appeared to be a mere slap on the wrist, creating a perception that engaging in fraudulent behaviour carries minimal consequences. Such leniency can potentially incentivize further participation in deceitful practices, as the rewards outweigh the perceived risks. Even during the investigation, FSCO was not as forthcoming and transparent with all the other lenders to warn them of the many brokers who were under investigation by the regulator. This would have allowed other lenders to enhance their due diligence procedures when dealing with such brokers as they continued to conduct business while they were being investigated. Furthermore, John Gabriel, a

[104] (Dmitrieva, 2017)
[105] (Hodges & Posadzki, 2017)
[106] Ibid

director of compliance at the brokerage where Gagandeep Duggal worked, was noted as not having any knowledge of him being sanctioned by FSCO during the hiring process which occurred during the investigation. He also confirmed that FSCO did not provide the industry with any historical employment information for them to verify.[107] Principal brokers have a duty and responsibility to monitor broker and agent compliance, however, both mortgage brokerages where the accused brokers were employed at, were absolved of any wrongdoing as well. What controls did they have in place to prevent this and why didn't the regulator impose at minimum an investigation of their processes and controls with a report on their findings for remediation? While mortgage origination companies, lenders, and insurers maintain their own internal "watch lists", neither share the list of names with one another. While this could be due to several reasons: a) Allegations or suspicions are unfounded, b) The mortgage brokers unknowingly submitted a mortgage application with fraudulent information provided by the borrower that went undetected (it was that good!), or c) to protect themselves from liability (defamation). The absence of awareness and communication between all parties reverts back to the point that there is a lack of transparency and appetite to share information so all groups can combat fraud together.

Walid Hammami, a mortgage broker from Montreal, applauded HCGI for publicly announcing the suspensions and did not see this as an isolated incident in the industry. He further stated, "It didn't just start yesterday. This thing has probably been going on for a long time. Others won't disclose anything. It's like when a company gets hacked and information gets stolen, or money gets stolen from a company, but they don't disclose it. They don't talk about it, just for reputation."[108] Another broker offered the same opinion and stressed, "Home

[107] (Dmitrieva, 2017)
[108] (Buckstein, 2015)

Trust shouldn't be singled out."[109]

Contrary to Walid Hammami's applause of HCGI's public announcement, it is obvious that the mortgage lending company had their hands tied and had no choice but to voluntarily submit the whistleblower complaint to the OSC, or otherwise face potentially more severe consequences. If the whistleblower complaint had not been addressed, would HCGI have waited to see how the market played out? Residential mortgage arrears were down, and the portfolio of deals identified as fraudulent were performing better than the rest of their book of business. As noted in **Figure 4.1**, mortgage originations eventually rebounded on two separate occasions after HCGI disallowed the 45 mortgage brokers. They just may have kept quiet, with business rebounding and the brokers who were disallowed, quietly moving elsewhere while continuing to do business the same way without anyone ever knowing or questioning what happened. Even for those who were absolved of their allegations, did they learn from this experience, turn a page and become more diligent and ethical when conducting business, or did they see the consequences of getting caught is far less severe than anticipated, leading them to continue engaging in questionable practices. An important point to consider is that as long as the consequences for misconduct remain insignificant compared to the severity of the offense, and regulators, lenders, and insurers fail to promote transparency and share information, we could anticipate that this behaviour will continue with the potential for it to escalate over time.

4.2 Shadow Broker, Jay Kanth Chaudhary

"In a real estate market saturated with stories about money laundering, offshore conniving and even murder-related property depreciation – it's easy for allegations against one unlicensed

[109] (Buckstein, 2015)

mortgage broker to get lost in the fray."[110] That is essentially what happened in the case of Jay Kanth Chaudhary, a shadow-broker who made millions while deceiving lenders into issuing mortgages to unqualified borrowers. Chaudhary, who was once a registered submortgage broker (from April 25, 2007 – October 16, 2008) in B.C., received two complaints in a span of two days from different parties (a peer and lender) noting that he was committing fraudulent activities by falsifying CRA documents such as Notices of Assessments, T4s and T1 General Forms and secretly compensating employees of a bank with cash to process mortgage applications. A number of mortgage files were seized by the Acting Registrar of Mortgage Brokers in B.C. for examination.[111] Some of the findings were as follows:

a) CRA NOAs had the wrong name on the letterhead – Canada Customs and Revenue Agency changed their name to Canada Revenue Agency on December 12, 2005,
b) Bank Statements did not support employment income,
c) No additional information supporting stated income,
d) Place of employment did not exist,
e) Borrower did not live at the address noted on the application,
f) NOAs had noticeable differences in font sizes compared to authentic NOAs,
g) Borrowers were contacted and confirmed they were not aware of the broker who the Registrar claimed was their mortgage broker (Chaudhary),
h) Borrowers were contacted to confirm employment and income details which were incorrect,
i) Corporate records searches did not identify a match,

[110] (Proctor, 'Breathtaking': Fake mortgage broker case reveals widespread problems, 2019)
[111] (In the Matter of the Mortgage Brokers Act R.S.B.C. 1996, c 313 and Jay Kanth Chaudhary Suspension Order, 2008)

j) Employment titles did not match to the application,

k) Employee did not work at the place of business on the application,

l) Incomes reported incorrectly, and

m) Accounting services business on T1 General does not exist.[112]

Two other lenders (First National and MCAP) also reported suspicions of fraud from Chaudhary and met with the staff from the Registrar to discuss. The MCAP representative went on to conduct a full examination of active submitted files by Chaudhary during that time and noted the majority of files were declined with 25 deals submitted of which 21 were subsequently denied. On October 16th, 2008, Chaudhary was suspended for 120 days until a full investigation could be complete and Chaudhary was heard at a hearing for failure to conduct adequate due diligence or 'know your client' procedures as well as misrepresenting information to lenders. Up until October 16th, 2008, the Registrar had not received his submortgage broker registration.[113]

Chaudhary would end up leaving the profession for some time only to come back and continue as an unlicensed mortgage shadow-broker as he was struggling financially to earn a living suitable to fit his lifestyle. It wasn't until July 2017 when Staff at the Registrar received complaints of Chaudhary conducting mortgage brokering services again as an unlicensed agent using registered mortgage brokers to submit misrepresented mortgage applications to lenders. A further complaint from another lender triggered the Registrar to conduct an investigation and obtain an order to enter the residence of one of the registered brokers where the suspected fraudulent mortgage deals originated from. Several items were seized from the property which included several laptops, an iPhone and 75 mortgage files. The examination revealed an email

[112] (In the Matter of the Mortgage Brokers Act R.S.B.C. 1996, c 313 and Jay Kanth Chaudhary Suspension Order, 2008)
[113] Ibid

address and phone numbers linking to Chaudhary disguised under various alias names. Text messages and emails referenced mortgage broker activities including updates on the statuses of applications, falsified documents supporting the application (i.e., income, employment letters, pay stubs). A similar order was requested by the Registrar to enter Chaudhary's premises, which included his principal residence and office. Multiple items were removed and sent for a forensic examination, including multiple phones, electronic devices including laptops, a safe and documents (mostly mortgage applications). While investigating Chaudhary and the items seized from him, the following was discovered:[114]

a) Fees paid directly to him, which amounted to approximately 1% of the mortgage principal,
b) Fees paid by the registered broker submitting the mortgage application to the lender, for roughly $1,250/transaction, payable to Chaudhary using the alias name of "Mike",
c) The accounting firms noted on the borrowers' T1 Generals either did not exist, the borrower never engaged them to complete their taxes (not a client), or the tax forms prepared differed materially from the ones submitted,
d) Employment letters differed from what was provided,
e) NOAs/T1 Generals were not the same as the ones provided by the borrowers,
f) Bank statements were not authentic and did not reflect the borrowers' account and balances accurately,
g) A mortgage file consisted of five different applications each with very different information and amounts for down payments and stated income for the same borrowers,
h) Another file had two different versions of tax information, and

[114] (Carter, In the Matter of the Mortgage Brokers Act R.S.B.C. 1996 C. 313 and Jay Kanth Chaudhary Cease and Desist Order, 2019)

i) Names of borrowers who were referred to registered mortgage brokers by Chaudhary under different alias names.[115]

The Registrar also reviewed files from Shane Christopher Ballard, a registered broker who submitted mortgage applications during 2015 – 2018 on behalf of Chaudhary. Of those mortgage applications, 165 mortgages were funded worth a total of C$107,998,000 with C$282,900 of fees paid to Chaudhary as a referral commission/fee. The Registrar recognized Chaudhary operated under different alias names, numerous email addresses, and several phone numbers which he frequently changed to disguise his business dealings as a shadow-broker with other registered brokers. In addition to the registered mortgage broker who was investigated as part of Chaudhary's investigation, the Registrar identified a large number of other registered brokers and realtors that he facilitated business to and from. The Registrar also identified an excel spreadsheet which highlighted Chaudhary's work as an unregistered mortgage broker since 2009. It identified at least 20 registered mortgage brokers and realtors each as sources to fund business and obtain referrals from.[116] "According to the that document, from 2009 to mid 2018, Chaudhary worked on 875 files, generated C$5,283,347 in client fees and C$642,344 referral fees paid by the registered submortgage brokers who submitted the applications to lenders on his behalf and arranged $511,558,206 in mortgage loans."[117]

Chaudhary's wife, Mana Erfani was a registered mortgage broker (and real estate agent) during the time he operated as an unregistered and unlicensed broker from June 2015 to June 2017. She allowed him access to her computer, email and the Filogix application that recorded and submitted mortgage applications to lenders by giving him all the passwords. While the

[115] (Carter, In the Matter of the Mortgage Brokers Act R.S.B.C. 1996 C. 313 and Jay Kanth Chaudhary Cease and Desist Order, 2019)
[116] Ibid
[117] Ibid

clients all met with Chaudhary, all the mortgage applications were sent through her brokerage and lenders in return would send her the commissions. She was the second person named as part of Chaudhary's investigation of the Registrar of Mortgage Brokers. The first was Shane Christopher Ballard, who helped fund 165 mortgages (C$107,998,000) from 2015 – 2018.[118] They both were aware of what Chaudhary had been doing. By facilitating the mortgage fraud, "In a consent order signed at the end of August, Mana Erfani was ordered to pay investigation costs of C$15,000 and banned for life from applying to become a mortgage or sub-mortgage broker for facilitating the activities of Jay Kanth Chaudhary."[119] Shane Ballard was issued a Notice of Hearing on October 8th, 2019 which up until today has yet to be heard.[120] With exception to Erfani, "the mortgage brokers he (Chaudhary) worked with have all been suspended, but Chaudhary said many of the real estate agents who funneled customers to him are still in business."[121] As for Jay Kanth Chaudhary, it was decided that, "the length of time that would be required to hold a hearing and make orders under section 8 (1.4) of the Act would likely result in further non-compliance with the provision of the Act and therefore prejudicial to the public interest."[122] As a result, he was ordered to, "Cease and desist from carrying on business as a mortgage broker or submortgage broker……effective immediately, unless and until he becomes registered to do so under the provisions of the Act."[123] The order was signed May 23, 2019 and till this day, it is the only effective ruling against Jay Kanth Chaudhary.

[118] (Proctor, Alledged 'shadow' mortgage broker's wife banned from industry in fallout from $500M case, 2020)
[119] Ibid
[120] (Carter, In the Matter of the Mortgage Brokers Act, RSBC 1996, c. 313 as amended and Shane Christopher Ballard - Notice of Hearing, 2019)
[121] (Proctor, Unregistered 'shadow' mortgage broker who made millions in fees says he was just meeting demand, 2021)
[122] (Carter, In the Matter of the Mortgage Brokers Act R.S.B.C. 1996 C. 313 and Jay Kanth Chaudhary Cease and Desist Order, 2019)
[123] Ibid

Considering the extensive number of fraudulent mortgage transactions, the complexity of the network of personnel participating in the fraud, and the substantial profits earned by all parties implicated, not to mention the heightened level of risk imposed on borrowers in the event of market downturns, the enforcement of these crimes appears inconsequential. Chaudhary and his wife made more money than they would otherwise and could live off the profits without ever having to work again, pocketing more than C$6 million together. The case was not brought forward under the criminal code; therefore, no fines or rulings of imprisonment were laid. At most, only a fine of C$15,000 was charged to Chaudhary's wife which would equate to approximately two of the 875 deals that he had funded. While there were many who were suspended for varying amounts of times, the additional business and financial gains earned by everyone, would have more likely than not paid for their time suspended if not more.

Given the intricate nature, extent and widespread reach of this network of fraudulent schemes, not to mention the straightforward execution of the crimes themselves, this serves as a compelling instance demonstrating the lack of proper due diligence on the part of lenders, and the missed opportunity for regulators to set an unprecedented example of punishment for a case that garnered much attention. This particular case underwent a deliberate investigation as an essential aspect of the Cullen Commission of Inquiry, specifically addressing money laundering in B.C., "not just because Chaudhary is accused of using fake financial documents to dupe lenders into giving out half a billion dollars worth of loans. But because an entire network of licensed professionals are being investigated for helping. And because hundreds of customers were allegedly willing to turn a blind eye if it helped them get a mortgage."[124] But just as Ron Usher, professor of property law at Simon Fraser University and General Counsel for B.C.'s

[124] (Proctor, 'Breathtaking': Fake mortgage broker case reveals widespread problems, 2019)

Society of Notaries Public put it after speculating the investigation won't go beyond the regulator, "…it falls like many of these kinds of cases into the too hard pile, the low priority pile."[125] So what does that mean, 'a too hard and low priority pile'? Does this mean too many resources would be required to unravel the complete mystery of this crime when really no one has been harmed by it, or at least 'not yet'. And what is so complicated about this case? Jay Kanth Chaudhary admitted himself that he misrepresented documents and the borrowers themselves were either aware of what he would do before or after they spoke to him about his services, including the purpose of why he needed to falsify supporting documentation, "to qualify the clients to get the mortgage."[126] Is half a billion dollars of fraudulent mortgages not significant enough to enforce a harsher punishment. And while Chaudhary denies bribing lenders[127], he did admit to charging fees to clients/borrowers for altering documents.[128] Almost C$6 million was charged and collected from clients and the mortgage brokers who submitted applications that were funded. If this wasn't material enough, then what would the next mortgage broker who comes along and learns of Chaudhary's case think and do? He was compensated well, did not serve any jail sentence, nor has he paid any fines up until now, and has his reputation/or brand been damaged. He was given a cease and desist order, but in the grand scheme of things, was that a worthwhile price to pay in return for financial freedom and a moral satisfaction that he helped many obtain a home, albeit illegally? There is still demand for what he did, as borrowers are still desperate for housing and the view is everyone wins, no one is harmed and there is really no solution to stop this. When asked to clarify what he meant when he said, everybody wins and if it was synonymous with, did everybody get paid, Chaudhary

[125] (Proctor, 'Breathtaking': Fake mortgage broker case reveals widespread problems, 2019)
[126] (Chaudhary, 2021)
[127] Ibid
[128] Ibid

responded, “Well, that's one way to look at it, yes. Everybody wins it means that whatever that small void in the system -- in the mortgage industry, there's a void. I mean, there's a need. It's such strict guidelines for people to qualify for a mortgage. And so, there's always going to be demand for individuals like us to come and fill that void. Now, I personally when I was doing it, I found it to be morally -- I was doing this for moral reasons. Yes, I did make a fee, but I was doing it for a moral reason because I would say okay, if this client who is able to make a payment, can make a rent payment of $3,000 a month, now can't get a house -- a mortgage, cannot get a mortgage payment for 2,000. And if he goes and really wants to purchase a house, then now he has to go through private lending where there's no checks and balances on private lenders. They just give you -- you put 20 percent down, they charge you 3-4% percent mortgage fee, you pay 8 percent interest rate. So now the client's in a very vulnerable stage. So -- and I have saved so many clients from doing that very same thing. So that when I -- and that's the reason why I think the clients -- when most of the clients that saw this, that they were in a very bad -- way better shape of -- once they came to me and they were all happy. So yes, the clients were happy, the banks no default, they were making their interest. The clients were hardly -- I don't think any of one of my clients of defaulted. I don't remember. I didn't hear any. So, realtors make their commission. Mortgage brokerages make their commission. I make my commission. All the parties involved, the notaries, whole industry.”[129]

Chaudhary also noted during the inquiry when asked, that the brokerage where the applications were being funneled through failed to provide oversight on the deals and supporting documentation submitted during his time as a registered broker. While he was aware they would check files, as he would not have otherwise been paid, no one at the brokerage to his knowledge

[129] (Chaudhary, 2021)

had ever confirmed any of the details in the application and its supporting documents with him or anyone suitable to discuss the documents being questioned. While there were suspicious inconsistencies and/or information that did not corroborate with other material/facts that were evident (as stated early), this just demonstrated that the reviews/checks that were supposedly performed were inadequate and overlooked.[130] Chaudhary also noted that had the brokerage ever asked to see the original documentation or reached out to a borrower independently to confirm the validity and accuracy of the information provided, they would have identified those inconsistencies and caught the falsified applications. But that never happened. As well, Chaudhary noted that if the brokerage performed spot checks or detailed reviews, they would have identified inconsistencies.[131]

At the end of the inquiry, Chaudhary was asked the following questions: 1) If he thought the penalties against registered brokers were sufficient to deter from fronting for unregistered brokers, and 2) what measures did he think could be put in place to detect this type of activity? In response to the first question, he answered stating that he believed the penalties were stiff, sufficient and that there are concerns brokers have about the consequences of being caught. Him being questioned in the public inquiry was evidence of this.[132] However, what he didn't say was, why that hadn't stopped him from returning as a shadow broker to conduct mortgage brokering services after his suspension. If the consequences were severe, would he have returned? Is it possible he pretended to feel remorse as a means to avoid facing further penalties beyond what he had already received? Most brokers were suspended indefinitely without having to pay significant fines, or being sentenced to jail time etc. In no time, they could easily be

[130] (Chaudhary, 2021)
[131] Ibid
[132] Ibid

reinstated by the Registrar.

To answer his second question, Chaudhary responded noting that it would be difficult to detect and stop these activities especially if there continues to be willing participants from both sides (registered and unregistered brokers, with an obviously determined demand from borrowers). He did suggest collaboration between the CRA, and lenders would definitely go a long way to deterring those from engaging in such activities. They would be able to verify income and employment records with higher degrees of accuracy. However, till this date, the CRA has not allowed lenders, insurers etc. to confirm loan application content to their records. Chaudhary also suggested stronger oversight at the brokerage, like in depth reviews for new submortgage brokers, and confirmation checks on all other files such as calling the borrower to validate identity and other data provided. Lastly, he suggested that realtors who don't report unregistered mortgage brokers knowingly, should lose their licenses as well.[133]

While these are valid suggestions that would most likely deter and prevent brokers such as Chaudhary to engage in mortgage fraud. However, it has been several years since he voluntarily suggested these deterrents but yet none of them have been implemented thus far by regulators. It begs the questions, why has it not been considered as of yet and who better than the actual perpetrators would know, what it would take to prevent these frauds from occurring?

5. Preventative & Detective Measures to Minimize Mortgage Broker Fraud from Occurring

From borrowers to brokerages, lenders and regulators, all parties in the mortgage lending

[133] (Chaudhary, 2021)

process must play an active role to prevent and detect fraud. Other players such as appraisers, lawyers, mortgage administrators etc., are also expected to participate in the fight against mortgage fraud, given their importance to the process. However, key preventative and detective measures, either currently in place or suggested, will be discussed in more detail for the first four parties noted below.

5.1 Preventative & Detective Measures That Can Assist Lenders

Most lenders have implemented or adopted technological tools that will assist with mortgage fraud prevention and detection throughout its lifecycle. While a majority of the fraud prevention tools deployed at lending institutions are dedicated at the prefunding stage (i.e., adjudication and all other steps prior to funds being issued to the borrower's lawyer trust account) of the mortgage lifecycle, fewer detection tools are utilized throughout the remaining phases. The tools utilized to combat fraud are also predominantly transactional based. On their own, transactions are identified on a real-time basis detecting those with higher risk characteristics which nevertheless requires a great deal of manual intervention to filter out any false positives. This ends up tying up more resources and slowing down the process, which discourages financial institutions in a highly competitive market. Having a system with a holistic view of the enterprise that can correlate a customer's common tendencies and transactions across the various channels and products of the institution while integrating and validating it against other financial data owned by other third parties (e.g., Equifax credit bureau and identity data) would provide more impactful information. Such information when correlated can provide better predictive, specific and relevant data that can be used in the decisioning process. It would also allow for better monitoring of the transaction throughout its lifecycle i.e., customers continue to be monitored through negative media for criminal/fraudulent behaviour that could suggest other products or transactions may have been fraudulently executed. With a holistic solution, volumes of analytics can be performed in little time, weeding out more false positives while utilizing less resources while gaining efficiencies. As per the TowerGroup, a Needham, MA company "There has been an "unfortunate trend" toward dividing, departmentalizing and otherwise separating fraud management from the core businesses of financial services. Detection, alert and case management practices are too often viewed as separate and discrete activities. All of this is unfortunately, good news for fraudsters who are increasingly able to exploit gaps and weaknesses in fraud protection and management strategies."[134] Mortgage brokers will find it increasingly harder to submit and have fraudulent deals approved due to the many different ways a multi-purpose/use tool will be able to corroborate data or identify red flags with a lot fewer false positives. This would allow lenders to focus their efforts on those other instances where risk is greater. Combining all available customer data across all channels and products will help paint a more accurate picture of deals presented to them in an effort to enhance the way lenders adjudicate by offering quicker, but safer and sound decision making.

Lenders have become increasingly more reliant on AVMs. The down side of an AVM, is that they cannot inform an underwriter of its current condition inside the property, including other factors such as recent renovations, environmental factors (i.e., hazardous building materials used in the construction of the home) etc. AVMs are a preferred approach for lenders when it comes to valuing properties due to its quick turn around time and inexpensive cost. However, much is to be debated when it comes to how effective they actually are when it comes to determine quality. Questions surrounding the credibility of the data collected and the algorithms/logic used to identify any red flags are not always clear. As well, most lending solutions will leave it to the

[134] (Tech offensive needed to combat mortgage fraud., 2008)

mortgage broker to pull an AVM on the property and have it submitted to the lender with the rest of the information. This could open up the door to manipulation and misrepresentation, especially if the mortgage broker knows very well, the lender isn't validating the AVM appraisal against anything else. The cost of having an appraiser physically view the property and meet the owners (i.e., thereby reducing instances of identity theft and title fraud) can be expensive and cut into the lender's bottom line. However, having both a physical appraisal and AVM would allow an underwriter to conduct additional due diligence by corroborating information and questioning any anomalies. By meeting the actual resident of the property, not only is the appraiser able to understand and gather more information about a property, but they are able to validate the presence and identification of the contact.[135] "For example, a recent Power of Sale in the Danforth area had a buyer. An appraiser from INHOUSE Appraisals, contracted by the buyer's bank to do a valuation, met an individual at the property to get entry for an inspection. It was not the person who was scheduled to be at the property. The inspection was completed, and the appraisal report submitted. It is becoming common practice to include the contact name and the name of the individual actually met at the property. When the bank got this information, it highlighted a discrepancy with the names they had in the file. They stopped the deal and averted a planned mortgage fraud. "An automated valuation cannot provide this level of detail,"[136] It is apparent that lenders are slowly moving away from the traditional ways of appraising a property due to its high cost and slower turn around time. However, the money saved by not performing a physical appraisal could end up costing institutions more by not having another relevant and independent report to corroborate against. For lenders, borrowers are other parties subject to mortgage fraud, it is clear that AVMs is a good source to help kick start and initiate the

[135] (Mortgage fraud can be stopped, 2006)
[136] Ibid

adjudication process, but coupled with a physical inspection would provide all parties to the transaction the most protection/security that the property is being valued appropriately. Other controls (not exclusive) that should be considered to prevent (P) and detect (D) fraud by a lender could include:

1. Rotating Brokers & Underwriters (P) – Lenders should ensure that broker and underwriter relationships are rotated on a frequent basis or mortgage applications are assigned randomly to underwriters in order to reduce collusion between parties.
2. Pre-Fund Quality Reviews (P) – Prior to funding mortgage deals, lenders should determine specific transactional data elements in an approved mortgage application, that if met, the file is sent for review for quality by an independent team. The quality review will determine if underwriting guidelines/requirements are being met and risks identified have the appropriate conditions documented to be mitigated. Findings/deficiencies identified should prevent mortgage deals from being funded until all conditions have been satisfied. Transactional data elements that identify approved mortgage applications for review should change frequently based on key risk factors to keep underwriters and mortgage brokers honest and always guessing which deals will be selected.
3. Post-Fund Quality Reviews (D) – Similar to Pre-Fund Quality Reviews, but instead they are performed after funding and usually used as a method to assess the quality of work for an underwriter. Post-Fund Quality Reviews are best conducted when they are random but cover a certain percentage of underwriter files and high volume brokers on a frequent and recurring basis. These reviews are independent from underwriting and assess the quality of deals provided by mortgage brokers, including the risk mitigation strategies recommended by underwriters to adjudicate the loan.

4. Broker Onboarding Review (P) – Prior to conducting business with a mortgage broker external to a lender, background checks and reviews should be performed prior to approving and onboarding a broker. Several checks that can be done on a new mortgage broker could include, a) obtaining reference checks from other lenders the mortgage broker partners with, including references to the quality of their mortgage deals, b) conducting a license check with the provincial regulator, and c) performing negative media checks and internet searches on the broker to assess their character. Once onboarded, new mortgage brokers should be put on probation and mandated that all approved mortgage applications be reviewed for quality until the lender is comfortable with the mortgage broker's ability to bring in good business deals.
5. AML Reporting (P) – All lenders including non-FRFIs should adopt AML Reporting standards and report to FINTRAC where required. Refer to 5.3 for additional discussion on AML.
6. Fraud Investigation Team (D) – Lenders should have a separate team who conducts detailed mortgage file investigations with suspected misrepresentation to assess if deals are fraudulent. Investigations can be as detailed as reviewing mortgage deals specific to mortgage brokers, underwriters or anyone unusual specific characteristic that poses as a significant risk and is common in various mortgage deals.
7. Independent Verification – Lenders should seek to verify mortgage application information with independent third party sources wherever possible (i.e., corporate registries, employment websites, appraisers, credit bureaus) and have it sent directly to them to limit any possible intervention from a mortgage broker. If possible, use multiple data sources to verify critical information such as borrower income and identity, and property value.

5.2 Preventative & Detective Measures That Can Assist Brokerages

The appropriate mix of preventative and detective controls implemented at a mortgage brokerage, serves as an integral component for upholding regulatory standards, identifying risks and safeguarding the credibility and reliability of the mortgage lending process. While the controls suggested are best practices that would go a long way to combat mortgage fraud, it is understood it may not always be feasible given the nature, size and complexity of the brokerage, not to mention the budget and additional time and resources that would need to be allotted to execute these controls. The following is an adequate mix of internal controls that should be considered to prevent (P) and detect (D) fraud by a mortgage brokerage:

a) Broker License & Negative Media Checks (P) – Prior to hiring any mortgage/submortgage broker, or agent, confirmation of license registration should be validated with the regulator to make sure they are licensed and have met all continuing education requirements. As well, negative media checks should be conducted, using available applications that can perform those checks or completing them manually by searching the internet. This would assist in screening out unqualified, unethical or irresponsible brokers who could easily damage the brand or reputation of a brokerage.

b) Continuous Monitoring: Confirmation of Borrowers identity, income and employment information (D) – By frequently sampling a handful of mortgage files and alternating the selection amongst brokers/agents within the brokerage, would provide adequate coverage of the brokering activities within. If it is employment information that is to be confirmed, always search for the contact number using another third party source to check the validity of the number provided and call it to verify the information given on the employment letter is in fact accurate, while documenting who you spoke to and their role within the organization. If self-employed, check the business against the Corporate Registry and see how long the company has been in business, if it even exists. Businesses with recent incorporation dates should be scrutinized in more depth. Without support from the CRA, confirming income can be a bit more challenging. The brokerage could place a call to the borrower to confirm income verbally or ask for more than the min. required three months bank statements and examine them in line with the previous three for payroll deposits. The former may be difficult since employers are more reluctant to give out personal information without obtaining the borrower's consent. Lastly, the brokerage should try to confirm the borrower's identity by taking all original credit bureaus, driver's license/passport information, paystubs (or copies if not available) etc. and cross referencing them, including the mortgage application. That followed up by a phone call, may identify who they actually are and if they worked with any other brokers (i.e., shadow brokers). Confirming information between independent 3rd party sources can help uncover inconsistencies, anomalies or unusual patterns that could lead to additional investigative procedures in determining the truth.

c) Complete a Fraud Risk Assessment (P) – A fraud risk assessment will assist the brokerage in understanding their risk universe. It will help identify areas of vulnerability where inadequate internal controls exist or are lacking to mitigate the risks. An IFA can assist in conducting a fraud risk assessment and offer recommendations on internal controls to help reduce the level of risk.

d) Data Collection and Analytics (D) – A brokerage should collect, analyze and report on the data that brokers gather when completing a mortgage application. The data can be used to identify inconsistencies, red flags, unusual patterns and trends that can be correlated back to market data. This information can help identify areas where additional procedures may need to be performed to understand if fraud exists within the brokerage's book/portfolio of business. Data analysis can assist the brokerage to identify unusual patterns, inconsistencies and trends which can be further used to focus on specific areas to investigate further or enhance broker education and training.

e) Source of Down Payment & AML Reporting Requirements – Brokerages should establish procedures to validate source of down payment and determine acceptable ways to confirm it. Brokerages are currently not AML reporting entities, but should strive to follow general AML reporting requirements, given a number of mortgage frauds are tied to money laundering schemes. The additional due diligence and gathering of data will help to establish critical data for further/future analysis.

f) Surprise/Spot Audits – Brokerages should conduct surprise/spot audits on a rotational basis that will cover all of their brokers and agents over a certain period of time. This will provide brokerages an opportunity to determine the quality of their brokers' and agents' work while also providing them with an opportunity to assess if they are compliant with the mortgage broker Act, the guidelines/standards set by the brokerage, and if they are addressing any fraud risks. The audits should be combined with confirmation and third party source corroboration procedures as noted above to be effective.

g) Watchlist Monitoring & Communication – Principal brokers from each of the brokerages should establish a process that tracks suspected and fraudulent borrowers and brokers. The list should be checked daily against the brokerages' database of clients and brokers. The list should be updated with those who have been disciplined by regulators too. Furthermore, Principal Brokers should establish a forum with other brokerages or lenders where they can openly discuss and share watch lists with one another.

h) Appraisers – Brokerages should not be able to dictate which appraisal company and appraiser to use for their mortgage applications. Lenders should assign appraisers randomly in order to get an independent valuation of the property being mortgaged. Appraisals should be sent directly to the lender with a copy to the mortgage broker in an effort to avoid an opportunity of misrepresentation on the part of the broker on the appraisal.

i) Incentivize Whistleblowing – Principal brokers should implement a process to allow employees to anonymously or publicly communicate any fraudulent activity committed by any of their broker or agent peers. Offering incentives for cases with merit and not penalizing those who do come forward should be transparent in the communication of the process. It is essential to have frequent and transparent communication of the process, while cultivating a zero tolerance fraud policy within the team under the guidance and leadership of the principal brokers so that they are aware and understand the importance of it.

5.3 Preventative & Detective Measures That Can Assist Regulators

Similar to brokerages, regulators should have an appropriate mix of preventative and detective controls in order to fulfill their mandate in supervising the industry, while influencing the overall economy. This is essential as they are quick to identify emerging risks and issues while safeguarding and protecting lenders and borrowers alike. The following is an essential list of key controls that should be considered to help prevent (P) and detect (D) fraud within the mortgage industry:

a) AML Reporting Requirements (D) – Mortgage brokerages are not considered reporting entities for AML purposes. Provincial regulators should encourage AML reporting requirements until such time mortgage brokerages and brokers are considered reporting entities by FINTRAC. Two areas where AML reporting could assist in detecting mortgage fraud, a) validation of beneficial ownership for corporate/numbered companies, including comprehensive KYC procedures, and b) confirmation of source of downpayment and ongoing mortgage payments thereafter. Introducing these requirements would create additional complexities to an already manual process. If the fraudsters are not careful in falsifying documents to a mortgage application, they put themselves at greater risk of getting caught through various verification procedures a lender could employ.

b) Mortgage Data Including Suspected Misrepresentation (D) – Provincial and federal regulators should mandate that mortgage brokerages gather and report on critical mortgage data elements that can be used to better understand what is happening in the mortgage industry. While a majority of mortgage lending data is already collected given the requirements imposed by federally regulated financial institutions, the non-financial institution lenders who fund mortgage broker deals do not. Insisting that brokerages report critical mortgage data elements to their provincial regulators would provide for better information for them to enforce compliance. Included in that data should be data elements relating to suspected misrepresentation. Provincial regulators should collect such information from brokerages and use it to identify trends, inconsistencies or unusual patterns which could ultimately lead to a deeper investigation of brokerages and/or brokers with transactional data that is outside the norm/unusual.[137]

c) External Audits/Investigations/Spot Checks (D) – Regulators should continue to perform external audits, investigations or spot audits on institutions to the mortgage lending process such as brokerages and lenders. However, regulators should take a more proactive approach when performing such work. Normally, audits or investigations are a result of a tip,

[137] (Maloney, Somerville, & Unger, 2019)

whistleblower or some type of information with heightened risk (including new emerging risks in the industry). Although these checks are specific and usually identify an underlying problem that could potentially result in non-compliance, there is a possibility that other lenders or brokerages are negligent, enabling fraudulent behaviour to continue to go unnoticed. Therefore, it is critical that spot checks and surprise audits be conducted to make sure the industry is kept honest at all times. With the collection of mortgage data from non-financial lenders and brokerages, regulators can use the information to target specific businesses based on the level of risk noted in the data analytics.

d) Communication Alerts – Regulators need to do a better job of communicating instances of non-compliance and those suspected of being non-compliant so that lenders and brokerages can be alert at all times and take action before issues worsen and more victims are impacted. While almost all regulators have a disciplinary or enforcement actions and warnings communication channel (i.e., FSRA – https://teao.fsrao.ca/), it is up to the lender or brokerage to ensure they have a process to consistently check that channel. Alerts should be real-time and sent to all organizations registered with the regulator as soon as they become aware of the alert or have completed and are satisfied with any preliminary inquiries into the legitimacy of the alert. Most lenders will maintain a 'watch-list' of brokers, borrowers, appraisers or any other intermediaries within the mortgage lending process that are suspected, but not yet proven, to have misrepresented or omitted key information that is relied upon when underwriting a mortgage loan. Regulators should also maintain a list or regulate those who are overseen by them to report their 'watch-lists' so that they can perform additional due diligence and determine if any unusual trends or patterns are identified by perpetrators across the different institutions being regulated. "Communication is key. Alerts need to be given throughout the organization when a new scheme is found. Newsletters need to be created to report fraud-related stories and activities to the mortgage staff."[138] As adequately said by Linda Roddenberry, Group Vice President, Loan Risk and Recovery at Sun Trust Mortgage, these statements should be taken a step further, where stories, alerts and enforcements notices are shared across all regulated institutions and brokerages so that all are made aware of what is happening within the industry and can therefore be better prepared and proactive when executing preventative measures to stop the fraudulent activity from happening (again).

e) Canada Revenue Agency (CRA) – With the assistance of the CRA, lenders would be able to verify with greater accuracy one of the more critical data elements in adjudicating a mortgage loan, a borrower's income. Verifying income will assist lenders in determining affordability and the ability for a borrower to repay the loan. By independently verifying income through a third-party, it takes away another avenue in which mortgage brokers and borrowers can misrepresent/falsify in order to obtain mortgage proceeds. However, the CRA has not made themselves available for such services citing privacy and major concern. If lenders and regulators can convince the CRA to do this in a way that addresses their concerns and risks, this would definitely be a game changer to reduce mortgage fraud.

f) Mandate Rotational Broker/Underwriter Relationships – Regulators should also impose that lenders have a process whereby underwriters are rotated on a periodic basis or are assigned randomly to a mortgage broker on deal-by-deal basis. This would decrease the likelihood for collusion as mortgage brokers would have a lesser opportunity to establish relationships that could eventually materialize in them working together to fund fraudulent applications. It also adds an element of surprise (randomly assigning underwriters to brokers on a deal-by-deal

[138] (Comtois, 2008)

basis) thereby acting as a deterrent for mortgage brokers to send fraudulent applications through since they would be unaware of who is underwriting the deal. It also allows for a new fresh set of eyes on transactions submitted by the same mortgage broker.

g) Stricter Penalties and/or Fines – Promoting change and implementing stricter penalties and fines through each of the provincial mortgage broker acts can serve as a deterrent for those seeking to commit mortgage fraud. Doing so would demonstrate that industry is no longer willing to tolerate such behaviour and are committed to promoting ethical practices only. Alternatively, provincial regulators could enforce penalties and/or fines under the provincial mortgage broker act and subsequently refer the fraudsters to authorities of the law and have them charged against the criminal code, where enforcement is considered even stricter.

5.4 Preventative & Detective Measures That Can Assist Borrowers

When engaging a mortgage broker to assist in obtaining a mortgage for a property, it is important that the potential buyers ask the appropriate questions and exercise due diligence. As a consumer, obtaining a mortgage is likely the most significant loan obligation one will enter into during their lifetime. Therefore, given the financial significance, long term obligations and collateral/guarantees attached to the loan, it is recommended that borrowers be as thorough and diligent as possible, so that they understand their obligations as a customer. The following list, while not inclusive, considers key preventative and detective measures, that will assist borrowers protect themselves and safeguard the assets they are borrowing on:

a) Licensed Mortgage Broker(s) – Once a borrower has identified a mortgage broker to work with, the borrower should ensure they are dealing with a licensed and registered broker with the regulator within the province they operate in. Most provincial/territorial regulators will have a designated site where this check can be done without the broker. If no site exists, potential borrowers should ask the broker to prove to them they are licensed and have kept up with all the continuing education. If not, the borrower should walk away and find someone else who is qualified and registered.

b) Document Signing – Borrowers should never sign anything blindly. All documents should be read thoroughly including any fine print. Any confusing or ambiguous terminology and statements should be questioned for clarity before signing. If unsure, seek independent advice (i.e., lawyer) prior to signing.

c) Legal Advice – Always seek legal advice for purchases and obligations of this magnitude. Borrowers should ensure the legal advice is independent from anything or anyone else in order to avoid possibilities of collusion. Legal advice can assist borrowers with explaining the reasons for things mortgage related and why it is important to obtain and perform some of the necessary checks such as obtaining title insurance, checking for property liens and how that can impact the purchase, and ensuring there is no other financial interest in the property someone is about to borrower against and claim as their own, when it may very well not be. Having a legal team review all documents and contracts before signing-off can save a lot of headaches, especially if others such as a rogue mortgage broker is looking to fraudulently mislead the borrower into thinking they are helping out when they are not.

d) Broker Compensation – Mortgage brokers are paid directly by the lender on deals that are funded. There is no direct cost to a borrower to use a mortgage broker. Brokers are paid a finder fee (up front compensation for having the borrower accept the lender's mortgage terms and conditions), trailer fees (fees paid over the term of the mortgage to incentivize brokers in keeping the borrowers with a lender – usually results in a smaller finder fee upfront with recurring income throughout the mortgage term), renewal fees (similar to a trailer fee but paid at the time the borrower renews with the lender), and other remuneration such as volume bonuses (compensation to the broker for choosing to do a specific amount of business with a lender). Even if a mortgage broker offers a great mortgage rate, a borrower is not obligated to accept and continue to conduct business with the mortgage broker. It is also worthwhile to ask and have the mortgage broker present to the borrower all the lenders they reached out to with their responses and commitments. The purpose would be to avoid having a mortgage broker steer the borrower into a product that is more profitable for them (i.e., higher commission rates or volume bonus targets are easily reached) rather than the borrower. However, some instances do require the borrower to pay a fee. For example, if dealing with an alternative lender (also known as 'B' or subprime mortgage lenders), they may very well charge a lender application fee or may choose to not compensate mortgage brokers for their services, in which case the borrower would need to pay. A borrower has a right to understand how a mortgage broker is compensated. Therefore, it is important to ask upfront how they are being remunerated for the services they perform on your behalf.[139]

e) Acceptance of Fees and Guarantees – Borrowers should never accept any money/ compensation or make any guarantees to a mortgage loan unless it is for a mortgage on a property for their own use.

f) Do Not Misrepresent – Borrowers or someone acting on their behalf (including mortgage brokers), should not knowingly misrepresent a mortgage application. Borrowers may think they are financially capable of handling a mortgage amount beyond what institutions can legally approve them for, even if rates were to increase slightly. However, the truth of

[139] (Grant, 2022)

the matter is no one can predict what the economy will do and how interest rates will fluctuate. In the worst of times, interest rates can increase significantly causing unqualified borrowers who misrepresented to default and lose everything which would include the home, equity and their creditworthiness. Plus, borrowers could be charged criminally for misrepresenting information to a lender.

5.5 How Can IFAs Assist With Preventing or Detecting Mortgage Broker Fraud?

"Since the subprime crisis, mortgage fraud became a subject of several inquiries in the U.S. The same has not been true north of the border, where not much has been known about the extent of mortgage fraud, or the degree to which misstatement on mortgage applications affects mortgage default rates."[140] In light of the rampant mortgage fraud that remains largely elusive and speculative in our country, the timing couldn't be more appropriate for Investigative Forensic Accountants (IFAs) to step in. Their contributions in terms of conducting thorough research, imparting education and training, and uncovering the intricate details through their investigative work can help shed light on this pervasive issue. By leveraging their expertise, they can play a crucial role in bringing awareness to the problem and addressing some of the ambiguities that lie beneath the surface.

Training and education is an area where IFAs can assist lenders, insurers, brokerages, regulators, and educators in the industry to establish course and seminar/workshop materials of strategies of real life examples used in their investigations, including tips, best practices and red flags to be on the lookout for. As well, IFAs can assist in educating practitioners in the industry the different types of analytical tools that can be used as preventive measures to assist and alert

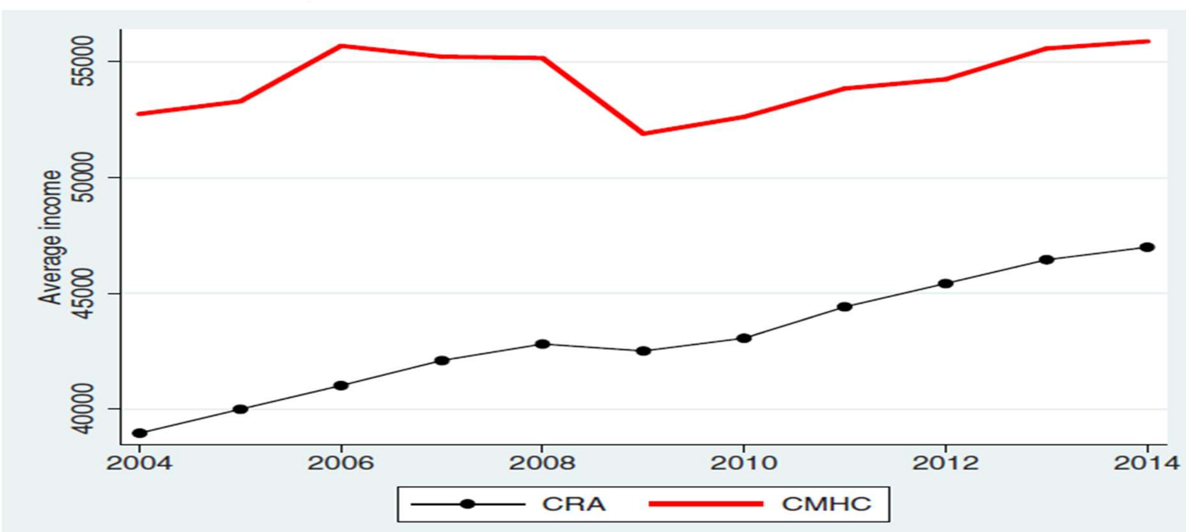
[140] (Ahaider & Moranis, 2018)

those on the front lines of any inconsistencies, unusual patterns and irregularities to watchout for. As part of education and training, IFAs possess the requisite qualifications to be ambassadors/ advocates for spreading a culture of ethical conduct in the industry.

IFAs are also qualified to conduct Fraud Risk Assessments that can be tailored specifically to the mortgage industry and the different business operations that function within, e.g., insurers, lenders, brokerages etc. IFAs have the training, education and skills to be able to identify areas within a business' processes that are vulnerable to both internal and external fraud. They possess the expertise to engage in various fraud risk assessment activities such as identifying potential risks, examining the organization's exposure to related fraud risk events, assessing the internal controls or lack thereof, to finally identifying mitigation strategies to reduce the level of fraud risk. While IFAs cannot eliminate all fraud risks, having them assist in performing an assessment will help in reducing the probability and severity of them occurring.

IFAs have honed their abilities to analyze, research and correlate data, all of which are essential aspects of their data analytics skills to investigate financial records, mortgage applications and other supporting information. The utilization of data analytics is of immense importance when identifying discrepancies, recognizing red flags/alerts, and/or establishing relationships between data elements. It plays a pivotal role in unraveling mysteries, advancing investigations and providing a narrative to an incomplete story. For example, a CMHC study revealed that there is a direct correlation in housing price increases to first-time home buyers (FTHB) who exaggerate their incomes on loan applications. An analysis of the possible income misstatement (PIM) by FTHB was compared to the incomes reported on mortgage applications versus those reported to Canada Revenue Agency (CRA) as taken from Statistics Canada's Longitudinal Administrative Databank (LAD) from 2004 to 2014. PIM was defined as the difference between the growth in income reported to CMHC and the growth in taxable income filed with the CRA at the Forward Sortation Area (FSA) level, which is essentially the areas that represent the first three letters of the Canadian postal code. Once the data was grouped, sorted and filtered accordingly, the analysis suggested that a positive PIM signaled incomes being artificially inflated in an attempt to secure mortgage loans by FTHB (see **Figure 5.5.1**).[141] [142] At the conclusion of their research, the following was concluded, "First, FTHB are more likely to misstate income in real estate markets with affordability challenges. Second, they found a correlation between higher default rates and incidence of income misstatement."[143] The study and analysis proves to be a valuable analytic whereby lenders, insurers and regulators alike can implement within their fraud risk management program to help identify mortgage applications submitted or funded within their portfolio with similar characteristics for additional due diligence and scrutiny. IFAs have the expertise to be able to associate critical data elements from different

Figure 5.5.1 – Possible Income Misstatement Between CRA and CMHC by First Time Home Buyers



[141] (Ahaider & Moranis, 2018)
[142] (Basiri & Mahmoudi, 2021)
[143] (Ahaider & Moranis, 2018)

Source: American Real Estate and Urban Economics 2021; 49: pg. 922 [144]

sources and correlate them to find irregularities, unusual patterns and inconsistencies that may need to be investigated further.

One of the primary ways an IFA can provide their assistance is by performing investigative forensic examinations of mortgage brokerages, brokers and/or lenders perpetrating fraud for their own benefit or while colluding with other professionals as part of the mortgage origination process. Utilizing their professional skepticism, IFAs can engage in a thorough examination of mortgage loan files, their accompanying documentation, and all other relevant secondary documents (including third party documents). Their objective would be to verify and validate the information provided, while remaining vigilant to fraud indicators such as a misrepresenting income or employment records, inflating property values, posing as another individual (identity theft) and/or omitting pertinent information such as liability obligations. In addition to their core competencies, IFAs have hands-on experience in conducting other due diligence procedures. These procedures include conducting background checks, thoroughly searching for negative media hits, verifying licensing credentials and performing in-depth financial analysis. By engaging in these procedures, IFAs would be able to identify rogue and unqualified mortgage brokers, agents and lenders, along with instances of misrepresentation i.e., unreported income, concealed assets.

An IFA's expertise and knowledge would also be valuable to regulators for two reasons:

1) They could assist regulators in assuring mortgage brokers, brokerages, lenders, and insurers are complying with the relevant guidelines, laws and industry standards/rules (including PIPEDA, provincial mortgage brokering acts, OSFI B-20, AML etc.), and

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[144] (Basiri & Mahmoudi, 2021)

2) Assist regulators in a consulting role to recommend/suggest, comment, and provide feedback on guidelines, laws and industry standards/rules that would reduce the level of fraud risk.

Internal audit teams can also be complemented with an IFA who can provide their views, strategies and procedures from a fraud perspective. This would include identifying fraud and emerging risks to the audit programs. The expertise of IFAs holds significant value in the creation of monitoring controls or procedures designed to identify fraudulent acts. These controls can be integrated into audit programs where one could assess their operating effectiveness during the audits.

While there may be additional ways or strategies on how to utilize an IFA to combat mortgage broker fraud, the above are just some examples of the ways they can be used to help prevent and detect it. Considering the substantial financial implications and the far-reaching consequences that mortgage fraud can have on both families and businesses, it can be regarded as a prudent investment for an IFA to conduct, at the very least, a fraud risk assessment at any one of the entities involved in the mortgage lending process. The proactive measure not only enhances protection but also instills consumer confidence.

6. Are Lenders and Regulators Doing Enough to Prevent Mortgage Broker Fraud from Occurring? If Not, What More Can be Done?

When it comes to mortgage fraud here in Canada, it can not be denied that this is a problem that exists today and has been for some time. However, the looming question that is being asked is whether or not lenders and regulators are doing enough to prevent mortgage fraud originated through mortgage brokers from occurring? There have been mixed thoughts as to whether or not lenders and regulators are doing enough. Some argue that “we have pretty strict rules as it relates to mortgage fraud and fraud prevention,”[145] while others say they have had the opposite effect, “pushing otherwise creditworthy borrowers who would have qualified for a conventional mortgage in the past into riskier areas of the market, including to industry professionals willing to commit fraud to get a deal done at all costs.”[146] Others suggest it is more than that, stating that “the biggest obstacle may simply be the fact that, in a booming real estate market such as Canada’s, it’s easy to pretend the problem doesn’t exist since there’s far more money to be made selling mortgages than guarding against their abuse.”[147]

The simplest way to determine if lenders and regulators have been effective in reducing mortgage fraud to a low level is to quantify it, determine the extent of the scheme and then measure how much it is actually costing lenders. While over the years, Equifax has been noted on record stating that mortgage fraud in Canada has consistently increased. But “nobody has any idea precisely how big a problem it is in Canada because, unlike in the United States, no one keeps national statistics on it.”[148] Therefore, if the data does not exist or is tracked partially and unsystematically, to what extent can it be determined how big the problem really is and whether enough is being done to prevent it from occurring or worsening.

It is apparent that both lenders and regulators have failed to address and understand the issue at hand, given the persistent nature of these issues. Without relevant and adequate mortgage lending information which would include data on mortgage fraud and suspected misrepresentation, both lenders and regulators are unable to address the problem effectively. Therefore, it should come as no surprise that the first recommendation addressed to regulators is

[145] (Buckstein, 2015)
[146] (McMahon, Fraud for Shelter, 2015)
[147] (Sorensen, 2010)
[148] Ibid

to mandate the collection of critical data elements or information relating to the mortgage lending process. The collection of such data will help determine the nature, extent and complexity of the issues including and understanding of its root causes. It would also be the first indicator that would measure whether or not lenders and regulators are actually doing enough to prevent and minimize mortgage fraud. Notwithstanding, the following are recommendations of best practices or proposed standards and guidelines that will help lenders and regulators prevent and reduce mortgage fraud, specifically those facilitated by mortgage brokers.

<u>Recommendations</u>

1. **Mandate Additional Mortgage Lending Data Be Reported** – "As for numbers, the industry group representing the country's banks says it doesn't keep any statistics on mortgage fraud on behalf of its members,"[149] said a spokesperson for the Canadian Bankers Association, claiming the numbers are, "difficult to compile…."[150] Regardless of how difficult it may be to obtain the information, in order to fully understand the issues around mortgage fraud, you need to collect the data and analyze it. Taking it a step further, it is not only mortgage fraud transactional data that should be collected, but just as important, information around "suspected misrepresentation" and all other critical data elements around mortgage applications, funded or not, that should be gathered centrally. The data once analyzed can help identify trends, inconsistencies and patterns in the mortgage industry including lender, brokerage and individual mortgage broker behaviour. For example, mortgage application data such as the number of self employed applicants as percentage of all applicants when compared to national statistics of those self employed, can warrant concerns or an area where additional due diligence is required if the percentage of applicants is a lot higher than the

[149] (Sorensen, 2010)
[150] Ibid

historical benchmark. Falsifying employment and income for a self-employed individual is a tedious task if done properly, but it is more attractive to mortgage brokers who look to misrepresent a mortgage application as a lot less information and sources are available to lenders to corroborate and confirm the data provided compared to non-self employed individuals. All historical data collected can be combined with predictive modeling techniques that could analyze patterns and data relationships which would be useful in predicting future potential issues. Regulators can then be more proactive in establishing preventative measures in the industry. While the majority of mortgages in Canada are funded by FRFIs and subject to the data requirements set by OSFI, non-financial institutions and brokers are not.[151] Furthermore, as previously noted, certain transactional data regarding mortgage fraud or suspected misrepresentation are not collected by FRFIs. If mandated, the information "would give law enforcement and regulators access to better information about mortgages from non-financial institution lenders….It would also give regulators the ability to use regulatory action to enforce compliance, including both taking administrative action and pursuing provincial offences related to these requirements."[152]

2. **Mandate Brokerages to Provide More Oversight & Report It** – Regulators should introduce new guidelines and standards that would mandate how individual brokerages need to provide more oversight keeping in mind the size, nature, and complexity of their business. For example, regulators can mandate that brokerages put plans in place to review/audit mortgage brokers and their files (in detail for quality) on a rotational basis over a period that makes sense to the size of their business. They can also explore the possibility of mandating that brokerages complete an internal controls or fraud risk self-assessment and have it

[151] (Maloney, Somerville, & Unger, 2019)
[152] Ibid

reviewed, updated and tested (for quality) based on a predetermined frequency suitable to the industry. Deficiencies identified would be reported and all information retained for a reasonable period to allow regulators to review and assess governance and oversight at the brokerages. Lenders could also use this information as part of their ongoing monitoring of brokers and brokerages to collaborate with the Principal Broker in cases where issues arise. This information would also be quite valuable to lenders when onboarding brokerages and brokers as a method to assess the quality of their work, the safeguards they put in place when providing their services and determining how they minimize and manage risk while assuring it aligns and/or meets with their risk appetite.

3. **Involve Canada Revenue Agency (CRA) as a Collaborative Source** – "Unfortunately, Canada's mortgage origination process itself makes it easy for fraudsters to cheat the system, right from the get-go. Aside from credit and appraisal, the underwriting process is heavily reliant on borrower-provided documents and information, making it an optimal entry point for fraudsters. As I see it, therein lies the issue—why put the onus on the borrower to provide information when it can be obtained directly from the source? Amending this process would not only reduce the likelihood—and opportunity—for fraud, but also improve the origination experience for brokers and borrowers alike."[153] A significant portion of the mortgage underwriting process here in Canada is reliant on the borrower providing documents, rather than lenders obtaining it independently through third party sources (credit and appraisals are about the only two independent sources of information that is obtained directly from the source). And even credit and appraisals can be manipulated with a little sophistication if it is ordered through a broker and subsequently sent to a lender. Having the CRA involved in the

[153] (Conconi, 2019)

mortgage lending process would either see them confirm a borrowers' income or initiate a process to provide direct access to their Notice of Assessment, with consent. This would assist in alleviating some of the hardships a lender experiences when trying to understand what a borrowers' true income is, a critical data element that lenders rely on when adjudicating a loan.

4. **Amend the Proceeds of Crime, Money Laundering and Terrorist Financing Act (PCMLTFA) to Include Mortgage Brokerages and Brokers as Reporting Entities** – As previously noted, mortgage brokerages and brokers are not considered reporting entities for AML purposes. While the mortgages that are funded through Canada's FRFIs are subject to AML reporting requirements, properties funded using external financing, such as those from private lenders are not subject to it. For example, processes such as the validation of beneficial ownership on corporate/numbered companies and comprehensive KYC procedures on borrowers are not required if using a private lender to fund a mortgage. Fraudsters using private lending could exploit this gap by creating corporate companies as a way to hide themselves and their illicit money to fund and maintain properties.[154] As well, the source of wealth or origination of down payments on a property are not always vetted by mortgage brokers and underwriters. "Less due diligence is sometimes undertaken even by banks and other financial institutions regarding the source of funds to service the mortgage because that is not required for mortgage underwriting purposes. One way to fill this gap would be to establish requirements on more mortgage lenders to conduct due diligence regarding: a) KYC, either under PCMLTFA or as an additional requirement for those not subject the Act; and b) source of funds to service the mortgage."[155] Doing so would create additional work on the part

[154] (Ross, 2019)
[155] (Maloney, Somerville, & Unger, 2019)

of the mortgage broker to fabricate documents which in turn would create more opportunities for them to slip and get caught if not aligned properly with other information. Furthermore, additional data would be collected providing regulators with more information to support their oversight initiatives and to enforce compliance. While some may be taking a proactive stance in this area, an expert panel on money laundering in BC real estate reported, "real estate agents, brokers and developers are required to do some AML due diligence on their customers, but FINTRAC statistics show that they rarely report suspicious activity."[156] Refer to **Figure 6.1** – STRs by year 2014-2017, which illustrates the

Figure 6.1 – STRs by year, 2014 - 2017

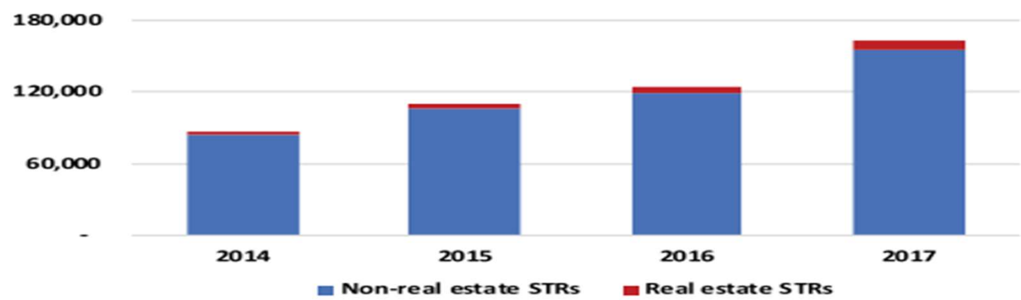
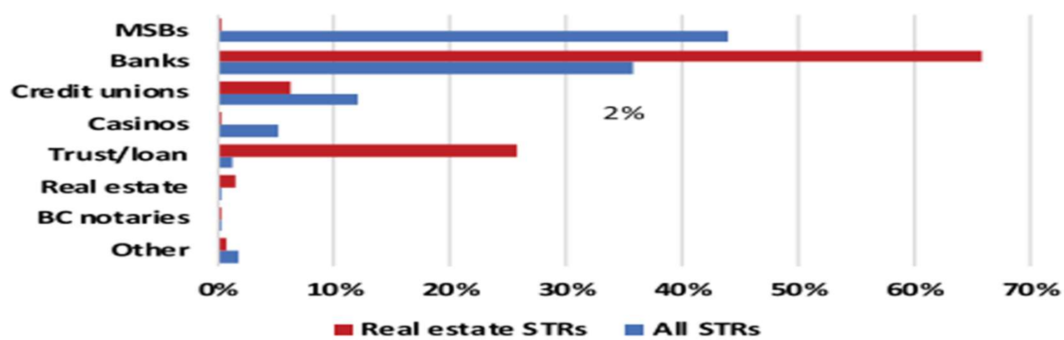


Figure 6.2 – STRs by reporting entity, 2014 - 2017



Source: Calculated from data provided by FINTRAC, March 2019, published with permission in Combatting Money Laundering in BC Real Estate[157]
https://cullencommission.ca/files/Combatting_Money_Laundering_Report.pdf

[156] (Ross, 2019)
[157] (Maloney, Somerville, & Unger, 2019)

number of STRs growing 25% year over year to just over 160,000 in 2017 with only 4% of those STRs coming from real estate businesses. **Figure 6.2** – STRs by reporting entity 2014-2017 illustrates FRFIs (banks, credit unions and trust and loan companies) account for 98% of real estate STRs, largely because the other businesses rarely deal in real estate transactions (MSBs, casinos, other) or they are not reporting entities for AML purposes (Real estate and BC notaries).

5. **Enforce Consistent & More Stringent Fines & Penalties –** We have heard of the many fraudulent mortgage transactions that are taking place here in Canada, some of which involved one mortgage broker complete hundreds of deals, worth millions of dollars and earning them the same (i.e., Jay Kanth Chaudhary). While some may have been banned from the industry, they were not charged under the criminal code and nor did they receive hefty regulatory fines. They simply walk away having made millions with only a slap on the wrist. We have also heard of those who are fined a small administrative penalty similar to Sohail Choudhry who was charged C$10,000 for receiving remuneration from a person other than the brokerage he was acting on behalf of.[158] While it was not disclosed how many deals he was charged for, however the remuneration earned on one or two deals were likely more than enough to cover those fines, supporting the benefits of fraud outweigh the consequences. Regulators need to take a tougher stance to eliminate mortgage fraud completely. Whether it means changing the Mortgage Brokers Act to impose higher monetary fines, implementing a zero-tolerance policy where if a mortgage broker is caught committing fraud, they are banned from the industry definitively or for longer periods of time, or consistently charging each of them against the criminal code. As Real Estate Agent, Asif Khan, owner of Remax Prime

[158] (Monid, 2019)

Properties noted in his podcast, On The Market, "I think the penalties should be stiffer. I think people should be banned from the industry. And I think the investigation has to dig deeper to find out at what level this fraud went to, was it just the realtor, was it the mortgage broker, as well were there underwriters involved, are there lawyers?"[159]

6. **Sharing and Communicating Fraud Data and Alerts** – Regulators need to do a better job of communicating instances of non-compliance and those suspected of being non-compliant so that lenders and brokerages can be alert at all times and take action before issues worsen and more victims are impacted. While almost all regulators have a disciplinary or enforcement actions and warnings communication channel (i.e., FSRA – https://teao.fsrao.ca/), it is up to the lender or brokerage to ensure they have a process to consistently check that channel. Alerts should be real-time and sent to all organizations registered with the regulator as soon as they become aware of the alert or have completed and are satisfied with any preliminary inquiries into the legitimacy of the alert. Most lenders will maintain a 'watch-list' of brokers, borrowers, appraisers or any other intermediaries within the mortgage lending process that are suspected, but not yet proven, to have misrepresented or omitted key information that is relied upon when underwriting a mortgage loan. Regulators should also maintain a list or regulate those who are overseen by them to report their 'watch-lists' so that they can perform additional due diligence and determine if any unusual trends or patterns are identified by perpetrators across the different institutions being regulated. "Communication is key. Alerts need to be given throughout the organization when a new scheme is found. Newsletters need to be created to report fraud-related stories and activities to the mortgage staff."[160] As adequately said by Linda Roddenberry, group vice president,

[159] (Kahn, 2022)
[160] (Comtois, 2008)

loan risk and recovery at Sun Trust Mortgage, these statements should be taken a step further, where stories, alerts and enforcements notices are shared across all regulated institutions and brokerages so that all is aware of what is happening within the industry and can therefore be better prepared and proactive when executing preventative measures to stop the fraudulent activity from happening (again).

7. Conclusion

Throughout the past 10 – 15 years, Canadians have seen a housing market that has exceeded expectations with housing prices hitting record highs, interest rates reaching record lows and a highly competitive mortgage industry that has seen mortgage fraud emerge as a significant issue despite numerous efforts by regulators to control it with more stringent qualification standards. Many have argued that the changes imposed by regulators have tightened the qualification guidelines to protect Canadians from a looming housing market crash similar to the 2008 Financial Crisis, as Canadians continue to take on more debt than ever before. But even as mortgage qualification guidelines tighten, it appears to not have had much of an impact in preventing mortgage fraud as it continues to rise according to Equifax Canada, where it last estimated a 31.9% jump in Q4 2002 from the prior year.[161] Rather than introduce efficiencies to a process that is still considered very manual and dependent on borrowers providing heaps of paperwork for underwriters to sift through, the regulators added additional qualification requirements which have no bearing on the prevention of fraudulent activity from occurring. In fact, fraudsters have identified this as an area of vulnerability that can be exploited just by using common sense and basic technology. By becoming a lot less reliant on borrower provided

[161] (Equifax Canada, 2023)

information and obtaining it directly from the source (an independent third party), not only would the likelihood and opportunity for fraud decrease but the origination experience would increase for all parties to the mortgage lending process.[162]

Some lenders believe mortgage fraud is a cost of doing business and even if fraud is suspected or discovered, it may not be worth the additional time and effort to address it adequately. This is especially true if they are dealing with 'fraud for shelter' cases in a hot housing market, where it is unknown who perpetrated the fraud (mortgage broker or borrower), borrowers are not defaulting on loans and have full intentions of paying it down. In the U.S., shortly after the 2008 Financial Crisis, it was quantified that mortgage fraud cost the lending industry just over US$1 billion (0.03%), which is considered insignificant compared to the US$3 trillion of mortgages the country was responsible for on a yearly basis. So rather than spending a significant amount on resources to prevent and guard against mortgage fraud, lenders made a conscious decision to concentrate most of their efforts looking for and attracting future revenues. Fraudsters who came to realize this, exploited the opportunity especially if they determined some lenders were much less risk averse than others. Governance and Compliance resources are stretched thin, as lenders have competing budgets, of which compliance is not always the priority. Similarly, historical cases have demonstrated that when perpetrators of these fraud schemes are penalized, the amount charged is usually equal to the amount earned from the crime, further encouraging the behaviour due its trivial consequences.[163]

But in order to prevent mortgage fraud from occurring, regulators need to first understand whether there is a growing threat of mortgage fraud. Without an organized and standardized process whereby all mortgage lending information, including those from brokerages

[162] (Conconi, 2019)
[163] (Carswell, 2009)

(transactional data especially), are collected and analyzed, there is no real way for anyone to understand how big of a problem there is and where to look for it. Therefore, more information and data needs to be collected, analyzed and reported by all parties regulated under the mortgage lending process. Information needs to be communicated and exchanged to ensure there is a comprehensive understanding of the nature of this problem so that regulators and lenders prioritize their efforts to minimize further escalation of mortgage fraud. Regulators also need to get tougher and treat these frauds as a more serious offence. Harsher penalties and fines need to be enforced and communication of judgements need to be transparent and frequent so the rest of the industry is aware these fraud schemes will no longer be taken lightly without having to face serious consequences.

"As it stands, industry regulators do not have sufficient resources to combat mortgage fraud effectively—further proven by recent events like the unregistered B.C. mortgage broker who brokered over $511 million of mortgages using falsified documents."[164] While this may be true, both lenders and regulators should fight back and make compelling cases why other supervisory bodies, such as the CRA or FINTRAC, would be valued partners to not only streamline and make the adjudication process more efficient and effective, but to also safeguard and protect consumers, lenders and other parties to the mortgage lending process in the battle against mortgage fraud.

If the industry is truly committed to want and fight mortgage fraud, solutions exist (as discussed). All that is required is for entities within the mortgage lending process and others, currently on the outside, to willingly come together, communicate and share information while exhibiting transparency so integrity and credibility can be restored once again in the industry.

[164] (Conconi, 2019)

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Appendix A: A Comparison Bank Statements (Actual vs. Phony)

2.

Royal Bank of Canada
P.O. Box 4047 Terminal A
Toronto ON M5W 1L5

3.

Your RBC personal banking account statement

4.

From March 2, 2023 to April 3, 2023

RBPDA10020_3645476_098 E D 002 00002 00368

[redacted]

Your account number: [redacted]

How to reach us: 1-800 ROYAL® 1-1 (1-800-769-2511) www.rbcroyalbank.com/deposits

Real/Actual Statement

1.

6.

Summary of your account for this period

5.

RBC Day to Day Banking™ 3. [redacted]

Royal Bank of Canada
200 BAY ST-MAIN FLR, TORONTO, ON M5J 2J5

Your opening balance on March 2, 2023	[redacted]
Total deposits into your account	[redacted]
Total withdrawals from your account	[redacted]
Your closing balance on April 3, 2023	= [redacted]

6.

Details of your account activity

Date	Description	Withdrawals ($)	Deposits ($)	Balance ($)
	Opening Balance			[redacted]
3 Mar	[redacted]		[redacted]	
	[redacted]		[redacted]	
	[redacted]		[redacted]	[redacted]
7 Mar	[redacted]	[redacted]		
	[redacted]	[redacted]		[redacted]
8 Mar	[redacted]	[redacted]		
	[redacted]	[redacted]		[redacted]
14 Mar	[redacted]	[redacted]		[redacted]
23 Mar	[redacted]	[redacted]		
	[redacted]	[redacted]		

RBPDA10020_3645476_098 - 0483631 HRI - 00 - 1 - 480 - 3 - - 823

1.

1. Reference and Barcode does not exist on the fake statement.
2. Thickness of border is different from fake statement.
3. Fake statement do not contain registered trademarks or has a "?" instead.
4. Subtle differences exist with wording and font type & size.
5. Not all statements contain an "alert/marketing" box.
6. Double line on real copy vs. thicker and single line on fake statement.

1 of 2

Royal Bank of Canada
P.O. Box 4047 Terminal A
Toronto, ON M5W 1L5

Your personal chequing account statement

From March 12, 2004 to April 12, 2004

RBCPDA0001-123456/89-01-000001-1-0001 19715

SUSAN SAMPLE
1234 ANY STREET, SUITE 5678
ADDRESS LINE #2
CITY, PROVINCE A1B 2C3

Phony Statement

Your account number:	02782-5094431
How to reach us:	1-800 ROYAL® 1-1 (1-800-769-2511) www.rbcroyalbank.com/deposits

Summary of your account for this period

Signature Plus 02782-5094431

Royal Bank of Canada
5879 ROULE JEAN-BAPTISTE, MONTREAL, PQ H3C 3B8

Your opening balance on March 12, 2004	$4,247.14
Total deposits into your account	+ 145.15
Total withdrawals from your account	- 727.50
Your closing balance on April 12, 2004	**= $3,664.79**

RBC is now paperless!

Dear Susan, we're pleased to introduce you to digital imaging. Now you can retrieve images of cheques in seconds and view them online. It's as easy as a click of a mouse.

Try our new digital imaging service today. If you're not already an RBC Royal Bank Online Banking client, visit www.rbcroyalbank.com/online or simply call 1-800-ROYAL® 5-5 (1-800-769-2555).

Details of your account activity

Date	Description	Withdrawals ($)	Deposits ($)	Balance ($)
	Opening balance			4,247.14
15 Mar	Transfer		85.00	
	Interest paid		.15	
	ATM withdrawal	100.00		
	Interac purchase -1361 - Nasr Foods Inc.	47.82		4,184.47
17 Mar	Overdraft interest	0.93		4,183.54
18 Mar	Cheque #30	40.00		
	Cheque #31	148.11		3,995.43
19 Mar	ATM withdrawal	60.00		3,935.43
22 Mar	ATM withdrawal	20.00		
	Interac purchase - 1361 - The Bay	125.13		
	Interac purchase - 1361 - Highland Farms	6.94		3,783.36

1 of 2

Appendix B: Mortgage Loan Lifecycle and the Players Involved

Process	Players
Origination	- Property Seller - Listing real estate agent - Buyer/homeowner (borrower) - Buyer's real estate agent - Lender - Loan officer - Loan processor - Appraiser - Underwriter - Mortgage insurance company
Closing	- Title Agent
Sale to secondary market	- Secondary -market investor - Mortgage recordation
Servicing	- Servicing Company or Lender - Payments on performning loans - Loss mitigation on nonperforming loans
Resolution	- Servicing Company and Lender - Prepayment - Maturity - Foreclosure (additional players will then become involved i.e., realtor, property manager, lawyers)

[165]

Note: *A typical mortgage loan will see its lifecycle pass through any of the four to five stages listed above, with some loans not requiring having any interaction with various players noted (i.e., a lender may choose to keep a loan underwritten on their books and not sell it off to an arm's length third-party; or loans may be serviced in-house rather than transferred to third party to administer/service the loan throughout its remaining lifecycle).*

[165] (Association of Certified Fraud Examiners (ACFE), 2019)

Appendix C: Historical Mortgage, Immigrant Households & Percentage in Core Housing Need in Brampton

Fig. C.1

Brampton (CY) — Historical Immigrant Households

SAVE SHARE EXPORT

2006 to 2016 | Tenure - Total

TABLE CHART MAP

	NON-IMMIGRANT	NON-PERMANENT RESIDENT	IMMIGRANT	RECENT IMMIGRANT	TOTAL
2006	47,215	740	77,975	8,730	125,930
2011	49,285	955	99,030	8,180	149,270
2016	49,040	1,820	117,155	7,885	168,010

Notes:

- Where band housing is present, total dwelling counts are larger than the sum of owned and rented dwellings.
- An immigrant household is a household with a primary household maintainer who is an immigrant. An immigrant is a person who is or has ever been a landed immigrant/permanent resident, that is, someone who has been granted the right to live permanently in Canada by immigration authorities.
- A non-permanent resident is a person from another country who has a work or study permit, or who is a refugee claimant, and any non-Canadian-born family member living in Canada with him or her.
- Recent immigrants are immigrants who landed in Canada between Jan 1, 2011 and May 10, 2016 (2016 data).
- Recent immigrants are immigrants who landed in Canada between Jan 1, 2006 and May 10, 2011 (2011 data).
- Recent immigrants are immigrants who landed in Canada between Jan 1, 2001 and May 16, 2006 (2006 data).
- The primary household maintainer is the person or one of the people in the household responsible for major household payments such as the rent or mortgage. In households with more than one maintainer, the primary maintainer is the first person listed as a maintainer.

Source: CMHC, adapted from Statistics Canada (Census of Canada and National Household Survey)

Fig. C.2

Brampton (CY) — Historical Immigrant Households (%)

SAVE SHARE EXPORT

2006 to 2016 | Tenure - Total

TABLE CHART MAP

	NON-IMMIGRANT	NON-PERMANENT RESIDENT	IMMIGRANT	RECENT IMMIGRANT	TOTAL
2006	37.5	0.6	61.9	6.9	100.0
2011	33.0	0.6	66.3	5.5	100.0
2016	29.2	1.1	69.7	4.7	100.0

Notes:

- Where band housing is present, total dwelling counts are larger than the sum of owned and rented dwellings.
- An immigrant household is a household with a primary household maintainer who is an immigrant. An immigrant is a person who is or has ever been a landed immigrant/permanent resident, that is, someone who has been granted the right to live permanently in Canada by immigration authorities.
- A non-permanent resident is a person from another country who has a work or study permit, or who is a refugee claimant, and any non-Canadian-born family member living in Canada with him or her.
- Recent immigrants are immigrants who landed in Canada between Jan 1, 2011 and May 10, 2016 (2016 data).
- Recent immigrants are immigrants who landed in Canada between Jan 1, 2006 and May 10, 2011 (2011 data).
- Recent immigrants are immigrants who landed in Canada between Jan 1, 2001 and May 16, 2006 (2006 data).
- The primary household maintainer is the person or one of the people in the household responsible for major household payments such as the rent or mortgage. In households with more than one maintainer, the primary maintainer is the first person listed as a maintainer.

Source: CMHC, adapted from Statistics Canada (Census of Canada and National Household Survey)

Fig. C.3

Brampton (CY) — Historical Mortgages (%)

SAVE SHARE EXPORT

2006 to 2016

TABLE CHART MAP

	WITH A MORTGAGE	WITHOUT A MORTGAGE	TOTAL PRIVATE HOUSEHOLDS WITH MORTGAGE STATUS KNOWN
2006	77.8	22.3	100.0
2011	77.5	22.5	100.0
2016	79.1	20.9	100.0

Notes:

- Mortgage data exclude farm operators.

Source: [CMHC, adapted from Statistics Canada (Census of Canada and National Household Survey)]

Fig. C.4

Brampton (CY) — Historical Immigrant Households (% of Households in Core Housing Need)

SAVE SHARE EXPORT

2006 to 2016 Tenure - Total

TABLE CHART MAP

	NON-IMMIGRANT	NON-PERMANENT RESIDENT	IMMIGRANT	RECENT IMMIGRANT	TOTAL
2006	11.2	40.3	18.5	34.4	15.9
2011	11.6	25.9	16.9	28.7	15.2
2016	13.4	22.7	18.1	30.2	16.7

Notes:

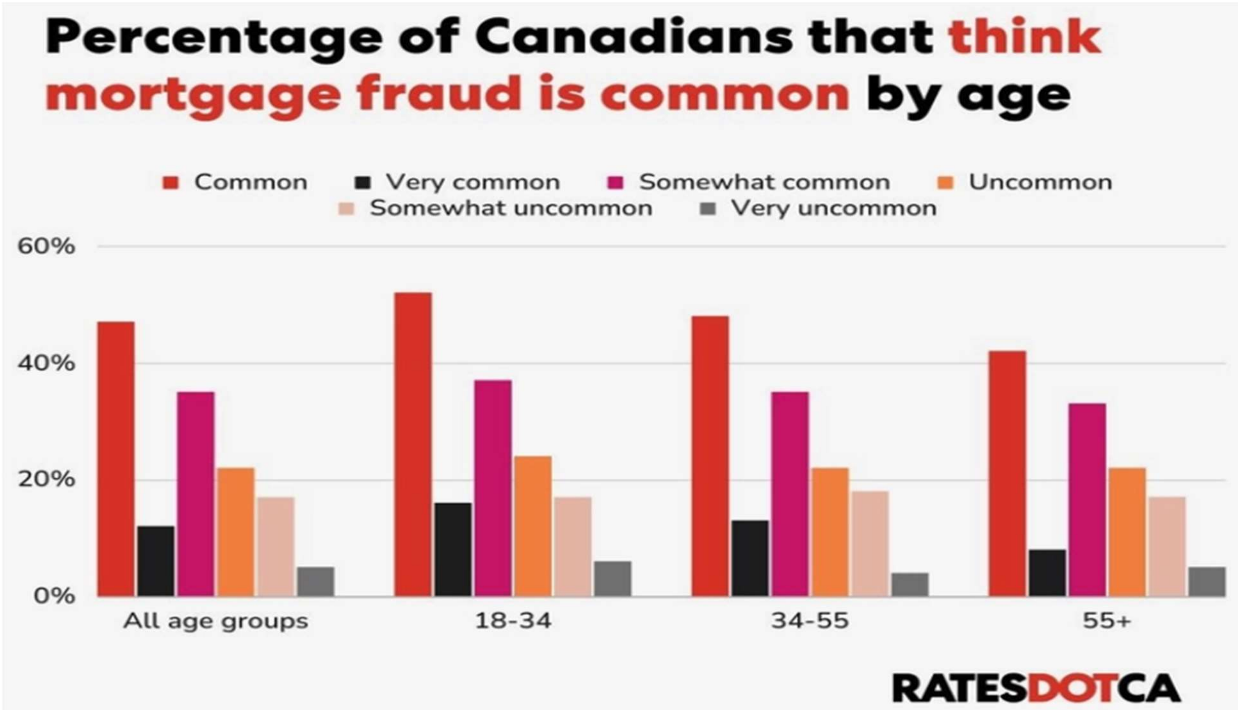
- % of Households in Core Housing Need = Households in Core Housing Need / Households Tested for Core Housing Need
- Data include all non-farm, non-band, non-reserve private households reporting positive incomes and shelter cost-to-income ratios less than 100 per cent.
- A household is in core housing need if its housing does not meet one or more standards for housing adequacy (repair), suitability (crowding), or affordability and if it would have to spend 30 per cent or more of its before-tax income to pay the median rent (including utilities) of appropriately sized alternative local market housing. Adequate housing does not require any major repairs, according to residents. Suitable housing has enough bedrooms for the size and make-up of resident households. Affordable housing costs less than 30 per cent of before-tax household income.
- An immigrant household is a household with a primary household maintainer who is an immigrant. An immigrant is a person who is or has ever been a landed immigrant/permanent resident, that is, someone who has been granted the right to live permanently in Canada by immigration authorities.
- A non-permanent resident is a person from another country who has a work or study permit, or who is a refugee claimant, and any non-Canadian-born family member living in Canada with him or her.
- Recent immigrants are immigrants who landed in Canada between Jan 1, 2011 and May 10, 2016 (2016 data).
- Recent immigrants are immigrants who landed in Canada between Jan 1, 2006 and May 10, 2011 (2011 data).
- Recent immigrants are immigrants who landed in Canada between Jan 1, 2001 and May 16, 2006 (2006 data).
- The primary household maintainer is the person or one of the people in the household responsible for major household payments such as the rent or mortgage. In households with more than one maintainer, the primary maintainer is the first person listed as a maintainer.
- ** no households

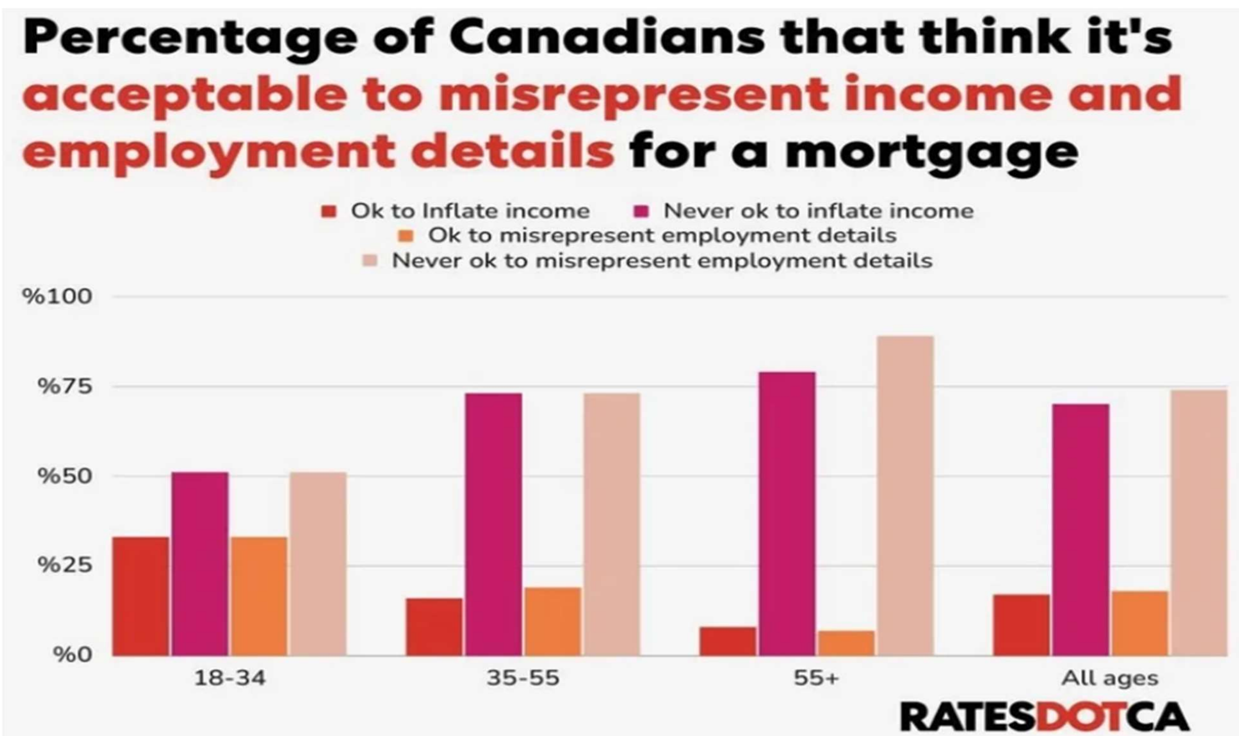
Source: CMHC, adapted from Statistics Canada (Census of Canada and National Household Survey)
https://www03.cmhc-schl.gc.ca/hmip-pimh/en#TableMapChart/3521010/4/Brampton

Appendix D: Provincial Regulators & Acts Regulating Mortgage Brokerages, Brokers, & Agents Across Canada

Province/ Territory	Provincial Regulator	Legislation/Act	Part of MBRCC
British Columbia	BC Financial Services Authority (BCFSA)	Mortgage Brokers Act [RSBC 1996] Chapter 313, Mortgage Brokers Act Regulations [B.C. Reg. 260/2019]	Yes
Alberta	Real Estate Council of Alberta (RECA)	Real Estate Act, Mortgage Brokerages Standards Regulation RSA 2000 Chapter R-5	Yes
Saskatchewan	Financial and Consumer Affairs Authority of Saskatchewan (FCAA)	Mortgage Brokerages Act, RSS 1978, c M-21	Yes
Manitoba	Manitoba Securities Commission (MSC)	The Mortgage Brokers Act, CCSM c M210	Yes
Ontario	Financial Services Regulatory Authority of Ontario (FSRA)	Mortgage Brokerages, Lenders, and Administrators Act, 2006 S.O. 2006, c. 29	Yes
Quebec	Autorité des marchés financiers (AMF)	Real Estate Brokerage Act (chapter C-73.2)	Yes
New Brunswick	Financial and Consumer Services Commission (FCNB)	Mortgage Brokers Act RSNB 2014, c 41	Yes
Prince Edward Island	Prince Edward Island Financial and Consumer Services Commission (FCSC)	Real Estate Trading Act R.S.P.E.I. 1988, Cap. R-2	No
Nova Scotia	Nova Scotia Securities Commission (NSSC)	Mortgage Regulation Act, Chapter 11 of the Acts of 2012	Yes
Newfoundland & Labrador	Service NL	Mortgage Brokers Act (O.C. 96-294)	Yes
Nunavut	Department of Community and Government Services	Consumer Protection (R.S.N.W.T. 1988,c.C-17) & Real Estate Agents' Licensing (R.S.N.W.T. 1988,c.48(Supp.))	No
Northwest Territories	Department of Finance	Consumer Protection (R.S.N.W.T. 1988,c.C-17) & Real Estate Agents' Licensing Act RSNWT 1988,c.48(Supp.)	No
Yukon	Government of Yukon, Consumer Services	Consumer Protection Act, RSY 2002, c 40	No

Appendix E: Survey by RATEDOTCA





Source: RATEDOTCA, February 27, 2023, Shaistha Khan; https://rates.ca/resources/47-canadians-believe-mortgage-fraud-common-occurrence-survey (both tables)

Glossary

Adjudication – In the sense of a mortgage, it involves verifying and analyzing a borrower's financial position (income, assets and liabilities), their creditworthiness, and the valuation of the property being purchased by the lending institution to determine if mortgage proceeds are approved for issuance.

Appraisal – A valuation of property, such as real estate, that is estimated by a licensed and qualified appraiser.

Alternative Lender (also known as 'B' or 'subprime' lenders) – These lenders typically services consumers who are self-employed or with unestablished and less than favourable credit histories due to their less stringent guidelines and criteria for qualification. However, their fee structure is typically higher to compensate for the additional risk.

Anti Money Laundering (AML) – Standards, laws and regulations, and procedures aimed to prevent and uncover the act of disguising illicit funds as legitimate income.

Administrative Monetary Penalty (AMP) – Financial penalties imposed by regulators for being in contravention of any of the regulatory laws and standards.

Automated Valuation Models – Automated electronic appraisals that gather information regarding a property and its neighbourhood from online public sources and other third-party data, including external photographs.

B-20 – Residential Mortgage Underwriting Practices and Procedures Guideline – OSFI issued guideline under their 'Sound Business and Financial Practices' category, which sets their expectation for practical and diligent residential mortgage underwriting practices.

Basel Capital Requirements – The bank's core capital, equity and reserves that are disclosed to serve as a cushion in case the bank were to suffer financial losses due to economic or operational strains/stresses so that it can continue without disruption.

B Lending Institutions – See Alternative Lender definition above.

Basis Points (BPS) – A unit of measure that is typically associated with interest rates. One BPS is equal to 1/100th of a percent. Therefore, a 25 bps hike on an interest rate previously set at 1% is equal to 1.25%.

Criminal Intelligence Service Canada (CISC) – Canada's crime intelligence agency, is responsible for informing partners such as government officials about criminal activities in the country and assists law enforcement leaders regarding matters relating to organized crime.

Fraud for Shelter – Occurs when a borrower/lender/agent/broker provides
false or misleading employment, income, or other documentation to qualify the borrower for a

mortgage to purchase a property. In these cases, ownership of the property is the ultimate objective.

Fraud for Profit – In this scenario there is no intention to own the property being mortgaged. 'Fraud for profit' occurs when a person(s) falsifies information to obtain a mortgage and profits from the transaction.

Financial Consumer Agency of Canada (FCAC) - A federally regulated supervisory body whose mandate is to protect the rights of financial consumers by supervising the market conduct of federally regulated entities, educating financial consumers about their rights and responsibilities, and strengthening financial literacy among Canadians.

First-Time Home Buyer (FTHB) – Individuals who are in the market to purchase a property for the first time.

Federally Regulated Financial Institutions (FRFIs) – Financial Institutions such as banks, trust, loan, life insurance, property & casualty insurance companies, and fraternal benefit societies, that are regulated federally in Canada with regulatory oversight from OSFI.

Forward Sortation Area (FSA) – A method that identifies and classifies a geographical area based on the first three characters of the Canadian postal code.

Financial Services Regulatory Authority (FSRA) (formerly FSCO) – An independent regulatory agency in the province of Ontario overseeing specific industries within financial services such as, insurance (P&C, Life, Health, & Auto), credit unions and caisses populaires, pension plans, financial planners and advisors, health services providers (related to auto insurance), loan and trust companies, and mortgage brokerages/brokers. Was formerly known as the Financial Services Commission of Ontario.

Global Financial Crisis of 2007-2008 – A worldwide economic crisis that occurred during 2007-2008 as a result of predatory lending practices on homebuyers, excessive risk taking by global financial institutions, and a U.S. housing market that crashed as a result.

Home Price Index (HPI) – A data point that is reported frequently measuring changes over time in a builders' selling price of new residential homes.

Know Your Client (KYC) – A process that financial institutions and some businesses use to verify their client's identity when opening and maintaining an account.

Loan-To-Income (LTI) – A ration that measures the monthly debt payments divided by your gross monthly income.

Mortgage Broker Regulators' Council of Canada (MBRCC) – MBRCC is made up of regulators representing all the different provincial bodies setting the regulatory framework and administering mortgage broker legislation for their jurisdictions.

Mortgage-Backed-Securities - A financial product/instrument that includes pooled mortgages that are divided into tranches with similar criteria (i.e., credit profile, term and interest rates) that are backed by the cash flows from the mortgages.

Mortgage Fraud – The deliberate misrepresentation of information to obtain mortgage financing that would not have been granted if the truth had been known.

Mortgage Origination – A process whereby a lender works with a borrower or mortgage broker to complete a mortgage transaction, resulting in a loan from the lending institution.

Notice of Assessment (NOA) – A Canadian taxpayers' summary form of their tax return.

Office of the Superintendent of Financial Institutions (OSFI) – Regulator who oversees federally regulated financial institutions (FRFIs) in Canada.

Office of the Privacy Commissioner of Canada (OPC) – Regulator who oversees compliance with the Privacy Act (applicable to government) and the Personal Information Protection and Electronic Documents Act (federal private sector) covering personal information handling practices at those organizations.

Personal Information Protection and Electronic Documents Act (PIPEDA) – A federal privacy law for private-sector organizations outlining how those companies must handle personal information in the course of conducting business.

Proceeds of Crime (Money Laundering) Terrorist Financing Act (PCMLTFA) – An act in Canada that provides laws and regulations to combat and investigate money laundering, terrorist financing activities and suspicious financial activities.

P&Ps – Policies and Procedures.

Retail Loan Officer (also known as a 'lending agent') – Works for the funding lender, whether it is a commercial bank or a non-depository lending institution that uses secondary market funds, correspondent relationships, or warehouse lines of credit.

Straw buyer – A individual who provides their identity and credit worthiness to obtain a mortgage on behalf of an unqualified borrower.

Shadow Broker(ing) – Involves an unlicensed person acting to use the services of licensed brokers and sub-brokers as a front for their own activities.

Submortgage Broker – A submortgage broker is also known as a mortgage broker and one who works on behalf of a brokerage.

Underwriter – Adjudicates a mortgage loan on behalf of a lender by reviewing the risk factors of a borrower's credit worthiness, financial position, and employment, along with the appraisal taken on the property.

Watch List – A list maintained by lenders and regulators alike that tracks mortgage brokerages, brokers, appraiser, lawyers, borrowers etc. that have been suspected of mispresenting mortgage applications. The list serves as a reminder to apply extra due diligence to future mortgage applications with those individuals noted on it.

Wholesale Loan Originator (also known as a 'mortgage broker') – A mortgage broker or correspondent who partially originates and processes a loan for a funding lender.

Voice Over Internet Protocol – Technology that allows voice calls to be placed over an internet connection as opposed to a regular phone line.