

BC FINANCIAL SERVICES AUTHORITY

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended**

**AND IN THE MATTER OF
ANTHONY SCOTT BROWTON
(166636)**

AND

**TONY BROWTON PERSONAL REAL ESTATE CORPORATION
(16636PC)**

AND

**LINSEY GAIL HULLS
(174451)**

DECISION ON APPLICATION

[This Decision has been redacted before publication.]

DATE AND PLACE OF HEARING: Via Written Submissions

COUNSEL FOR BCFSa: Laura Forseille

COUNSEL FOR ANTHONY SCOTT BROWTON
AND TONY BROWTON PERSONAL REAL
ESTATE CORPORATION: Thea Hoogstraten

HEARING OFFICER: Gareth Reeves

Introduction

1. Anthony Scott Browton and Browton PREC (collectively, the “**Browton Respondents**”) applied on June 26, 2026 for orders and directions requiring certain witnesses to attend the hearing of this matter and requiring BCFSa to make certain disclosures. This is my decision with regard to that application.
2. On March 10, 2026, the BC Financial Services Authority (“**BCFSa**”) issued, pursuant to section 40 of the *Real Estate Services Act*, RSBC 2004, c 42 (“**RESA**”), a first amended notice of discipline hearing (the “**NODH**”) to Mr. Browton, Tony Browton Personal Real Estate Corporation (“**Browton PREC**”), and Linsey Gail Hulls. The matter has since resolved as against Ms. Hulls.
3. The hearing of this matter is currently scheduled to proceed on August 18 to 21, 2026.

4. In brief, the NODH alleges that Mr. Browton and Ms. Hulls misrepresented themselves to an individual, TH, as being part of a real estate team from approximately January to March 2020 contrary to sections 33 and 34 (formerly sections 3-4 and 3-5) of the *Real Estate Services Rules* (the “*Rules*”)¹; that Mr. Browton failed to provide a disclosure of remuneration to his client, TH, with regard to the purchase of a property at [Property 1], Sechelt, BC (the “**HR Property**”) and to his client, AH, in regard to the purchase of property at [Property 2], Halfmoon Bay, BC (the “**SCH Property**”) contrary to section 56 (formerly section 5-11) of the Rules; that Mr. Browton disclosed confidential information about AH’s 2019 offer on the SCH Property to TH contrary to section 30(e) (formerly section 3-3(e)) of the Rules; and that Mr. Browton acted as TH’s designated agent for the purchase of the SCH Property having previously provided agency services to AH, the eventual buyer of the SCH Property, contrary to sections 30(a), (f), (i), and (j) (formerly 3-3(a), (f), (i), and (j)), section 33 (formerly section 3-4), and section 65 (formerly 5-18) of the Rules.

Relief Sought

5. The Browton Respondents seek the following pursuant to section 42(2) of RESA:
 - a. An order compelling [Witness 1] to attend the hearing of this matter as a witness;
 - b. “An order requiring BCFSA to disclose “all non-privileged correspondence between BCFSA (or its predecessor regulator) and Linsey Gail Hulls, including but not limited to the Agreed Statement of Facts ...”;
 - c. “An order requiring BCFSA to confirm that it has reviewed all documents created or maintained by former BCFSA investigator [Investigator 1] ... relating to this hearing including but not limited to:”
 - i. “documents created by other BCFSA employees including compliance staff related to the complaint;”
 - ii. “emails;”
 - iii. “text messages;”
 - iv. “handwritten or electronic notes;”
 - v. “calendar entries;”
 - vi. “internal correspondence including [Investigator 1]’s employment file;”
 - vii. “records maintained on any work-issued device used by [Investigator 1];”
 - viii. “document preservation records;”
 - ix. “the creation of the Certificate of Costs;”
 - x. “the decision to disclose the draft investigation report;”
 - xi. “the preservation of investigative materials; and”
 - xii. “including but not limited to records pertaining to any documents concerning BCFSA’s receipt of the complaint and any records created between March 5, 2020 and March 10, 2022 related to the complaint.”
 - d. “An order requiring BCFSA to confirm whether it has made inquiries of [Investigator 1] as to whether she personally retains any records relating to this investigation that have not been disclosed, whether in paper form, electronically, on any personal device, personal account, or otherwise.”

¹ The *Real Estate Service Rules*, MO 417 have been amended and replaced by the *Real Estate Services Rules*, BC Reg, 209/2021. References in this decision to the *Rules* include references to sections as they read in the latter followed by parenthetical reference to concordant sections of the former.

- e. “An order varying the existing timetable requiring the Respondents to file witness lists and any application for orders compelling the attendance of witnesses, permitting the Respondents to file any application seeking an order compelling the attendance of [Investigator 1] within seven (7) days after review of the disclosure sought above.”
 - f. “In the alternative, an order granting the disclosure sought above and orders compelling the attendance of [Investigator 1] ...”
6. BCFSA does not oppose the order to compel [Witness 1] and opposes the balance of the directions and orders sought by the Browton Respondents.

Issues

7. The issues before me are as follows:
 - a. Should I issue an order compelling [Witness 1] to attend the hearing of this matter to give evidence?
 - b. Should I issue an order or direction compelling BCFSA to disclose all non-privileged correspondence with Ms. Hulls including the draft agreed statement of facts circulated between BCFSA and Ms. Hulls (the “**Draft ASF**”)?
 - c. Should I issue an order or direction requiring BCFSA to confirm that it has reviewed and disclosed all relevant documents created or maintained by [Investigator 1] in relation to this matter, or to disclose those documents if they have not already?
 - d. Should I issue an order or direction requiring BCFSA to disclose whether it has made any inquiries of [Investigator 1] regarding her personally retaining any relevant records, and to disclose any such records?
 - e. Should I issue a direction requiring [Investigator 1] to attend the hearing of this matter to give evidence or, in the alternative, extending the timeline for the Browton Respondents to file an application seeking to compel the attendance of [Investigator 1]?

Jurisdiction

8. Section 2.1(3) of RESA authorizes the Superintendent of Real Estate (the “**superintendent**”) to delegate any of its powers in writing. The superintendent has delegated its statutory powers and duties under sections 42 to 53 of RESA to the Senior Hearing Officer and Hearing Officers of BCFSA's Hearings Division. Hearing Officers are therefore tasked with conducting discipline and enforcement hearings under RESA and the proper and fair functioning of those hearings. Acting as regulatory tribunal members, Hearing Officers are therefore required and empowered, within the bounds of the applicable regulatory regime and the requirements of procedural fairness, to control the processes and procedures of the hearings conducted before them.
9. Section 42(2) of RESA grants the superintendent the power to compel witnesses to attend hearings and to compel persons to produce relevant and admissible documents or things by order under section 34(3) of the *Administrative Tribunals Act*, SBC 2005, c 45 (the “**ATA**”). Hearing Officers are delegated the power to issue orders under those sections.

Background

10. The material before me on this application consists of the first notice of discipline hearing issued by the superintendent in this matter, the NODH, the directions issued at the pre-hearing conferences conducted in this matter, the application filed by the Browton Respondents and their supporting documents, and the response materials filed by BCFSA. The Browton Respondents have confirmed that they will not be filing a reply submission in this matter.

11. Although I have reviewed all of the evidence before me on this application, the below is not meant to be a complete recitation of all the material tendered in this matter.
12. On March 5, 2020, the Real Estate Council of British Columbia ("**RECBC**") received a complaint from [Complainant 1] (the "**Complainant**") regarding the Browton Respondents and Ms. Hulls (the "**Complaint**"). The Complaint concerned the conduct of the Browton Respondents and Ms. Hulls in relation to the HR Property and the SCH Property.
13. On June 17, 2020, RECBC Compliance emailed the Complainant to confirm receipt of the Complaint. The email requested various documents and also confirmed a telephone call of the same date.
14. On November 5, 2020, a RECBC Compliance Officer emailed the Complainant to request various documents. In that email, the Compliance Officer referenced a phone call of the same date. The email notes that the matter will be transferred to an intake officer to be reviewed and assessed.
15. On August 1, 2021, RECBC integrated with BCFSa and BCFSa took over regulatory jurisdiction under RESA from RECBC.
16. On January 20, 2022, [Investigator 1] called the Complainant to conduct an interview. [Investigator 1] took notes of that call.
17. Also on January 20, 2022, [Investigator 1] emailed the Browton Respondents to advise them that they were under investigation and that BCFSa had received the Complaint. In that email, [Investigator 1] requests a phone call with Mr. Browton to discuss the transactions related to the HR Property and the SCH Property.
18. In this application, the Browton Respondents advise that the disclosure provided by BCFSa does not include any internal documents for the period between March 5, 2020, when the Complaint was filed, and January 20, 2022, when [Investigator 1] notified the Browton Respondents of the investigation.² The Browton Respondents specifically highlight that there are no records in the disclosure provided to them regarding the decision to investigate the Complaint, scheduling, or assigning an investigator. BCFSa has not denied this assertion.
19. On March 23, 2022, [Investigator 1] had a telephone call with [Witness 1] regarding the investigation in which [Witness 1] confirmed she had been the listing agent for the SCH Property and discussed her dealings with Mr. Browton, Ms. Hulls, and the Complainant in regard to the SCH Property. [Investigator 1] made notes of that call.
20. In April and May, 2022, the Browton Respondents and Ms. Hulls provided their written statements regarding inquiries made by [Investigator 1].
21. On September 16, 2025, the superintendent issued the first notice of discipline hearing in this matter scheduling the matter to proceed to hearing on June 15 to 18, 2026.
22. On February 9, 2026, BCFSa provided disclosure of a "Draft Investigation Report" dated January 1, 2025 (the "**Draft IR**") authored by [Investigator 1]. BCFSa did not provide a non-draft report in its disclosure.
23. [Investigator 1] ceased working for BCFSa between the date of the Draft IR and the issuance of the first notice of discipline hearing in this matter. I am not aware of the date of her departure.

² The Browton Respondents' recitation of the facts states that [Investigator 1]'s email was sent on March 10, 2022. The document itself indicates it was sent in the afternoon of January 20, 2022. I have relied on the content of the document.

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24. On March 10, 2026, BCFSA issued the NODH.
25. On March 12, 2026 and again on April 20, 2026, the Browton Respondents requested contact information for the investigator who had taken over the investigative file from [Investigator 1].
26. On May 4, 2026, Ms. Hull's counsel withdrew from representing Ms. Hulls and advised that she would represent herself moving forward.
27. On May 19, 2026, BCFSA emailed the Browton Respondents to provide a draft agreed statement of facts, a draft document agreement, their book of documents, and summaries of their intended witnesses' evidence. Included in BCFSA's witnesses were the Complainant and [Investigator 2], Manager of Investigations with BCFSA.
28. Between May 22 and June 25, 2026, counsel for the Browton Respondents and BCFSA exchanged emails regarding a variety of pre-hearing procedural matters. These emails include discussions of the allegations BCFSA would pursue at a hearing of the NODH and the Browton Respondents' requests for the following:
- a. Ms. Hulls's consent order proposal,
 - b. the Draft ASF provided by BCFSA to Ms. Hulls and the correspondence regarding that Draft ASF;
 - c. BCFSA's position on orders compelling [Investigator 1], [Witness 1], and Ms. Hulls to attend the hearing of this matter as witnesses;
 - d. contact information for [Investigator 1]; and
 - e. confirmation that the disclosure provided by BCFSA included all records of evidence collected from the Complainant during BCFSA's investigation.
29. Through those discussions, BCFSA's positions regarding the matters discussed in those emails were as follows:
- a. BCFSA indicated that it would not be pursuing two of the allegations contained in the NODH;
 - b. BCFSA agreed to provide Ms. Hulls's consent order proposal and consent order on certain undertakings to be given by the Browton Respondents' counsel;
 - c. BCFSA asserted settlement privilege over the correspondence with Ms. Hulls regarding the Draft ASF and the Draft ASF itself;
 - d. BCFSA opposed an order requiring [Investigator 1] to attend to give evidence at the hearing;
 - e. BCFSA initially opposed an order requiring Ms. Hulls to attend as a witness at the hearing but did not oppose it once Ms. Hulls was no longer a respondent;
 - f. BCFSA did not oppose an order requiring [Witness 1] to attend as a witness at the hearing; and
 - g. BCFSA advised that it had provided the Browton Respondents "the entirety of the investigative file, including evidence collected from the complainant".
30. On June 1, 2026, BCFSA emailed the Browton Respondents to provide a copy of an agreed statement of facts. The body of that email stated as follows:
- "I have attached an updated ASF with the requested change. I have also removed the proposed findings of misconduct. BCFSA typically includes proposed findings of misconduct in the draft ASF for respondents to have the opportunity to admit liability and proceed to a sanction hearing.

For BCFSA to enter the ASF as evidence at the hearing, we will require all of the respondents to agree to its contents, but Mr. Browton is not responsible for ensuring that Ms. Hulls signs the ASF.”

31. BCFSA advises that, following the above June 1, 2026 email, BCFSA's counsel advised the Browton Respondents' counsel that the respondents in this matter could seek to admit an agreed statement of facts without the consent of the other respondents. The Browton Respondents do not dispute that this telephone call occurred.
32. Later that day, BCFSA emailed the Browton Respondents to advise that a BCFSA Senior Investigator, [Investigator 3], would testify regarding BCFSA's investigation.
33. On June 12, 2026, BCFSA advised the Browton Respondents and BCFSA Hearings Division that the allegations in the NODH against Ms. Hulls had been resolved by consent order. Following that consent order being issued, I adjourned the hearing of this matter to the currently scheduled dates: *Browton (Re)*, 2026 BCSRE 173.
34. On June 17, 2026, I conducted a pre-hearing conference and directed BCSFA to provide its correspondence with Ms. Hulls to the Browton Respondents and permitted them to redact discussions of the Draft ASF and the Draft ASF itself, subject to further directions. I also directed the parties with regard to the Browton Respondents' applications to compel BCFSA to produce unredacted copies of its correspondence with Ms. Hulls and the Draft ASF and orders to compel witnesses to attend the hearing. I also set a further pre-hearing conference to be held on July 21, 2026.
35. Later that day, BCFSA provided Ms. Hulls' consent order to the Browton Respondents and an email dated May 19, 2026 from BCFSA to Ms. Hulls attaching the Draft ASF, a draft document agreement, its summary of its witnesses' evidence, and a book of documents. The May 19, 2026 email provided to the Browton Respondents included copies of draft document agreement provided to Ms. Hulls and BCFSA's summaries of its witnesses expected evidence and a link to the book of documents, but did not attach the Draft ASF.

Submissions

Order to Attend: [Witness 1]

36. The Browton Respondents submit that [Witness 1]'s evidence is relevant given she was the agent for the sellers of the SCH Property and interacted with the Complainant. BCFSA does not oppose the order.

Disclosure Order: Draft ASF and Correspondence With Ms. Hulls

37. The Browton Respondents argue that settlement privilege cannot attach to the correspondence between BCFSA and Ms. Hulls concerning the Draft ASF or to the Draft ASF itself. They base this argument on the content of BCFSA's June 1, 2026 email providing them with a draft agreed statement of facts. In particular, the Browton Respondents rely on the portion of that email where BCFSA states "... we will require all of the respondents to agree to its contents, ..."
38. The Browton Respondents also assert that the Draft ASF does not contain proposed admissions of liability. They argue that the finalized and signed agreed statement of facts must be disclosed to all parties to be entered at the hearing.
39. BCFSA argues that the Draft ASF is covered by settlement privilege and therefore it cannot be compelled to produce it without the waiver of that privilege by the parties to it or the establishing of an exception to the privilege. It specifically states that the Draft ASF did contain proposed findings

of misconduct that would have resolved the matter of Ms. Hull's liability as alleged in the NODH. It also notes that BCFSa advised the Browton Respondents' through their counsel on the phone and at the June 17, 2026 pre-hearing conference, that the respondents could submit agreed statements of facts without the agreement of the other respondents.

40. BCFSa relies on *Middelkamp v Fraser Valley Real Estate Board*, 1992 CanLII 4039 (BCCA) ("**Middelkamp**") for the proposition that draft agreed statements of fact can be subject to settlement privilege.
41. BCFSa further submits that settlement privilege belongs to both the party sending and the party receiving the communications and cannot be waived without the consent of both parties citing *Reum Holdings Ltd v 0893178 BC Ltd*, 2015 BCSC 2022 ("**Reum Holdings**"), at para 56. BCFSa submits that settlement privilege can apply without specific statutory authorization, a confidentiality clause, or the use of the words "without prejudice" and that the privilege continues after settlement, relying on *Union Carbide Canada Inc v Barmbardier Inc*, 2014 SCC 35 ("**Union Carbide**").

Disclosure of Investigative Materials and Inquiries of [Investigator 1]

42. The Browton Respondents argue that the orders seeking confirmations regarding documents from BCFSa are necessary for the following reasons:
 - a. certain documents disclosed to them reference phone calls to or with RECBC or BCFSa staff for which no further records have been disclosed to the Browton Respondents including the above mentioned June 17, 2020 and November 5, 2020 emails and an email from [Witness 1] to Ms. Hulls dated February 13, 2020 stating that the Complainant had contacted RECBC, but there are no documents pertaining to information collected during the referenced phone calls and no documents disclosing the transfer of information collected to [Investigator 1];
 - b. the Draft IR contains quotes attributed to the Complainant, despite there being no recorded interview of him; and
 - c. there are no records disclosed to the Browton Respondents regarding the decision to notify them of the investigation in January 2022.
43. The Browton Respondents argue that they "are entitled to explore the reasons for the serious delay in these circumstances" and that they are entitled to records that may assist in defending the allegations against them, including the reasons for the delays that occurred in this case. They cite no authority for these propositions.
44. BCFSa submits that an applicant seeking document disclosure in relation to an allegation of bias or unfairness bears the onus to establish an evidentiary basis for the allegation, relying on *OW v British Columbia (Human Rights Tribunal)*, 2024 BCSC 1797 ("**OW**"), at para 18. It submits that the Browton Respondents have not established that evidentiary basis and have not clearly identified what unfairness they allege occurred in this case, aside from the issue of delay. It submits that the Browton Respondents have not established the relevance of the documents sought to the allegations made in the NODH or to the allegation of procedural delay. It submits that the Browton Respondents' application should fail because their documentary requests are "an impermissible fishing expedition" citing *Kaladjian v Jose*, 2012 BCSC 357, at para 64 ("**Kaladjian**").
45. BCFSa points to the request for information regarding [Investigator 1]'s employee file as an example of a request for which there is no established relevancy to either the issue of procedural fairness or the issues raised by the NODH. BCFSa submits that the request is speculative and should be excluded on the basis that the probative value of any information in [Investigator 1]'s employee file is outweighed by its prejudicial effect and the unnecessary invasion of privacy occasioned by its disclosure. In support of these propositions, BCFSa cites *Willard v Mitchell*, 2010 BCSC 1438, at para 29 and *Kaladjian*.

46. BCFSA submits that investigator's notes, internal communications, and documents containing "analysis, commentary, opinions or deliberative content" are not relevant to the allegations in the NODH and are not subject to disclosure, citing *Kitmitto (Re)*, 2020 ONSC 15. It submits that BCFSA is not obliged to explain or justify its approach to the investigation or provide disclosure of internal investigative decisions or strategies.
47. BCFSA submits that the requested disclosure orders are also "vague and overbroad". It points to the request for [Investigator 1]'s employee file in this regard. It also points to the request for document preservation records. BCFSA submits that the request for document preservation records is either a request for a document retention policy and is irrelevant or is unclear what exactly they are seeking.
48. BCFSA further submits that the requests for documents related to the creation of a certificate of costs and related to the decision to disclose the Draft IR are not probative of the issues raised by the NODH or to the issue of delay. BCFSA further submits that the requests are too vague to be complied with.
49. With regard to the order requiring BCFSA to confirm it has inquired with [Investigator 1] as to whether she has retained any documents or to confirm that it has reviewed any records maintained on any devices issued to [Investigator 1] for work, BCFSA submits that the Browton Respondents have not submitted any evidence to establish [Investigator 1] retained any relevant records.

Order to Attend: [Investigator 1]

50. The Browton Respondents argue that they are entitled to argue that the investigation has rendered the hearing of this matter "irreparably unfair" and that they require [Investigator 1]'s evidence to explain the alleged delay and BCFSA's investigative approach. They submit that [Investigator 1]'s evidence is necessary to "meaningfully test, decisions about witness selection, investigative scope, interpretation of the evidence, or avenues that were not pursued." They argue that BCFSA did not interview potentially relevant witnesses, collect potentially relevant evidence, or explore alternative explanations consistent with innocence. They argue that these issues cannot now be fixed.
51. The Browton Respondents argue that the allegations in the NODH flow from the investigation and the decisions made during it. They argue that this is not a case in which evidence can be submitted through another investigator. They argue that "the investigation raises serious concerns that go to its fairness and neutrality." They argue that there are gaps in the evidence in the record and a "discernable orientation toward the Complainant's narrative" that include a failure to address obvious credibility concerns and to keep a contemporaneous record of the Complainant's evidence around the time of the Complaint.
52. BCFSA submits that any evidence regarding the results of the investigation can be provided by [Investigator 3]. BCFSA argues that the only relevance [Investigator 1]'s evidence could have is to the Browton Respondents' procedural unfairness arguments, which BCFSA submits the Browton Respondents have failed to particularize and that the order sought is a "fishing expedition" aimed at investigating, rather than proving, procedural fairness issues.
53. BCFSA submits that the Browton Respondents have not identified what witnesses were allegedly not interviewed, indicated how the failure to interview those witnesses leads to procedural unfairness, or explained why those witnesses cannot be called at the hearing. Similarly, it submits that the Browton Respondents have not identified what relevant evidence was not collected or what alternative explanations were not investigated or explored. It submits that the Browton Respondents have failed to indicate in what way procedural fairness requires "an investigator to exhaust every possible investigative avenue, or even what investigative avenues BCFSA failed to explore in these circumstances."

54. BCFSA submits that the Browton Respondents have not particularized any allegation of bias or identified the alleged credibility concerns the investigation failed to address that cannot be addressed by directly examining the Complainant.
55. BCFSA further opposes any extension to permit the Browton Respondents more time to seek an order compelling [Investigator 1]'s attendance. It submits that the Browton Respondents have not explained why further disclosure would require additional time to make that application and submit that such an extension would likely further delay the hearing of this matter on its merits.

Reasons and Findings

Applicable Legislation

56. The relevant portions of RESA provide as follows:

Misconduct by licensee

- 35** (1) A licensee commits professional misconduct if the licensee does one or more of the following:
- (a) contravenes this Act, the regulations under this Act or under section 43 [*regulations for residential real property right of rescission*] of the *Property Law Act* or the rules;
 - (b) breaches a restriction or condition of the licence;
 - (c) does anything that constitutes wrongful taking or deceptive dealing;
 - (d) demonstrates incompetence in performing any activity for which a licence is required;
 - (e) fails or refuses to cooperate with an investigation under section 37 [*investigations of licensees*];
 - (f) fails to comply with an order of the superintendent;
 - (f.1) fails to comply with an undertaking that the licensee gave under section 53.1;
 - (g) makes or allows to be made any false or misleading statement in a document that is required or authorized to be produced or submitted under this Act.
- (2) A licensee commits conduct unbecoming a licensee if the licensee engages in conduct that, in the judgment of the superintendent,
- (a) is contrary to the best interests of the public,
 - (b) undermines public confidence in the real estate industry, or
 - (c) brings the real estate industry into disrepute.

Discipline hearings

- 42** (1) If notice of a discipline hearing has been given in accordance with section 40 (3) [*notice*], the superintendent may proceed with the discipline hearing, whether or not the licensee appears in person and whether or not the licensee is represented by legal counsel at the hearing.
- (2) For the purposes of a discipline hearing, sections 34 (3) and (4) [*power to compel witnesses and order disclosure*], 48 [*maintenance of order at hearings*] and 49 [*contempt proceeding for uncooperative witness or other person*] of the *Administrative Tribunals Act* apply to the superintendent.

- (3) The superintendent may conduct a discipline hearing by way of written submissions or oral hearing, or a combination of both.

57. The relevant portions of the ATA provide as follows:

Power to compel witnesses and order disclosure

34 ...

- (3) Subject to section 29, at any time before or during a hearing, but before its decision, the tribunal may make an order requiring a person
- (a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an application, or
 - (b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in an application.
- (4) The tribunal may apply to the court for an order
- (a) directing a person to comply with an order made by the tribunal under subsection (3), or
 - (b) directing any directors and officers of a person to cause the person to comply with an order made by the tribunal under subsection (3).

Discussion

Order to Attend: [Witness 1]

58. [Witness 1] was the realtor representing the sellers for the SCH Property. She likely has knowledge of what occurred regarding that transaction and the correspondence suggests that she may have had some direct or indirect contact with the Complainant. She has indicated she will not attend the hearing unless compelled to do so.
59. I find that [Witness 1]'s likely evidence is relevant to this proceeding. I order that she attend the hearing to give evidence. An order will be issued and the Browton Respondents are required to attend to service of the order.

Disclosure Order: Draft ASF and Correspondence With Ms. Hulls

60. Settlement privilege exists to protect communications exchanged between parties to a dispute created to attempt to resolve that dispute and it allows the parties to negotiate without fear that their statements will be used against them in the dispute. The goal of the privilege is to encourage honest, fair, and frank discussions between the parties that might not occur if every word said could be used to compromise their position in the litigation and thereby to make it easier to reach settlement: *Union Carbide*, at paras 31-33; *Reum Holdings*, at para 55; *Middelkamp*, at para 19. The privilege exists to protect not only admission of the communications, but disclosure of them as well: *Middelkamp*, at para 20. The existence of the settlement privilege depends on the intention of the parties to seek a resolution, not the words of a statute, an agreement, or the use of the words "without prejudice": *Union Carbide*, at para 34; *Reum Holdings*, at para 56. The privilege continues if the parties reach a settlement or if they do not: *Union Carbide*, at para 34; *Reum Holdings*, at para 55. The consent of the parties to the negotiation is required to waive the privilege: *Reum Holdings*, at para 56.
61. BCFSa relies on *Middelkamp* for the proposition that settlement privilege applies to the Draft ASF. That case involved a complaint by Mr. Middelkamp regarding the Fraser Valley Real Estate Board

(the “FVREB”) under the *Competition Act* which resulted in criminal proceedings. Mr. Middelkamp commenced a civil claim and then sought production of certain documents exchanged between the FVREB and the Department of Justice that the FVREB claimed were sent “without prejudice”. The process under the *Competition Act* contemplated the signing of an agreed statement of facts which is then filed in the Federal Court based upon which the Court may then make an order prohibiting contravening conduct, which in turn obviates the need for a criminal trial. The FVREB had signed such an agreed statement of facts. The trial judge ordered disclosure of the documents. The Court of Appeal allowed the appeal on the grounds that the documents were settlement privileged. I accept that agreed statements of facts and the correspondence concerning them can attract the protections of settlement privilege where they are demonstrated to be created for the purpose of reaching the resolution of issues in relation to an actual or contemplated dispute.

62. The Browton Respondents base their argument that the Draft ASF and associated communications are not covered by settlement privilege on the contention that an agreed statement of facts could only be submitted at the hearing or tendered into evidence if all the respondents agreed to it. I acknowledge that this is one way to proceed with the admission of facts in a disciplinary proceeding and that doing so resolves certain issues, in particular with regard to possibly disparate admissions or findings of fact between respondents; however, it is certainly possible for the parties to submit separate agreements with regard to the facts or to include separate admissions as to liability. There are possible issues with that approach, and I have expressed during previous pre-hearing conferences with the parties that there may be procedural issues if one party agrees to facts or to the admissibility of documents that the other disputes and that therefore a joint agreed statement may be preferable, but that does not mean that BCFSa is required to negotiate agreed statements of facts with all parties together as a requirement of law. If BCFSa chooses to negotiate separate agreed statements of facts with separate parties, that is their choice and they take on the burdens, risks, and benefits associated with attempting to do so. The Browton Respondents have pointed me to no authority to the contrary and I am aware of no authority to the contrary.
63. In my view, the nature of agreed statements of facts, and the fact that BCFSa's states, and I accept, that the Draft ASF sought to resolve issues of fact and liability in this matter between BCFSa and Ms. Hulls, establishes that settlement privilege applies to those documents in the same fashion that the Court of Appeal found that the privilege applied to settlement discussion in *Middelkamp*. Although the Browton Respondents state that the Draft ASF did not contain admissions of liability, there is no evidence of that before me, and the fact that the Draft ASF provided to them on the same date did include proposed admissions of liability suggest the Draft ASF contained them as well.
64. The fact that BCFSa also had discussions with the Browton Respondents regarding an agreed statement of facts does not undermine the nature of its separate discussions and correspondence with Ms. Hulls regarding the Draft ASF, even if those documents were similar. Nor does the fact that BCFSa likely would have disclosed the final agreed statement of facts and sought to rely on it at the hearing render the settlement privilege inapplicable, had the discussions with Ms. Hulls ended with a signed agreed statement of facts and the matter as regards Ms. Hulls had not been settled: *Union Carbide*, at para 34; *Reum Holdings*, at para 55.
65. The Browton Respondents submit that BCFSa's June 1, 2026 email to the Browton Respondents confirms that no settlement privilege applied to the Draft ASF or BCFSa's communications with Ms. Hulls regarding it. In my view, that statement is not sufficient to constitute a clear statement that BCFSa took the position that the privilege did not apply for two reasons. First, that statement in context appears to be merely an acknowledgement that entering an agreed statement of facts at the hearing would be problematic if Ms. Hulls did not also agree to the relevant facts. Second, the email explicitly states that the Browton Respondents are not responsible to ensure Ms. Hulls signs the document. In my view, this email indicates that BCFSa was treating the discussions with the Browton Respondents and Ms. Hulls as separate. The fact that BCFSa confirmed this in a

subsequent phone call confirms that this was BCFSAs position, although I note that the details of that call, including its date, are not clearly before me.

66. I find that the correspondence between Ms. Hulls and BCFSAs with regard to the Draft ASF and the Draft ASF itself are subject to settlement privilege. I decline to order or direct that BCFSAs disclose those documents. The Browton Respondents have not identified any other non-privileged correspondence between BCFSAs and Ms. Hulls that has not been produced. I therefore dismiss the application seeking disclosure of correspondence between BCFSAs and Ms. Hulls.

Disclosure of Investigative Materials and Inquiries of [Investigator 1]

67. The Applicants have framed their request for documents and records in terms of an order seeking confirmations from BCFSAs regarding whether it has undertaken certain reviews and disclosures and made certain inquiries. They cite no authority for the proposition that they are entitled to those confirmations or setting out what tests might apply to an order requiring such confirmations.
68. BCFSAs submissions indicate it considers these applications to be for actual disclosure, not merely for confirmations.
69. I have decided to treat the Browton Respondents' application regarding confirmations to be seeking orders or directions that BCFSAs make the noted reviews or inquiries and disclose the results of those reviews or inquiries that are relevant to the issues they point to in their submissions. In brief, those issues are as follows: under-documented phone calls and transfers, delay, bias, and an incomplete investigation. The fact that the thrust of the Browton Respondents' application is to seek actual disclosure is demonstrated by the fact that their submissions use the heading "Document Disclosure" preceding their arguments and their submissions themselves seek actual provision of the documents.
70. As a starting point, BCFSAs is required to make disclosure of all documents and information in its possession that are relevant to the allegations in a notice of discipline hearing without application by the subjects of the notice. As a matter of fairness to respondents they must disclose all relevant information, including inculpatory and exculpatory information and information that might establish defences and err on the side of inclusion. This standard is similar to the standard that applies to the Crown in criminal proceedings as described by Sopinka J in *R v Stinchcombe*, [1991] 3 SCR 326.
71. Once disclosure has been made, the party entitled to disclosure bears the onus of proving further disclosure is required and that the documents sought are relevant and admissible: *Kitmitto (Re)*, at para 23, ATA, s 34(3). Although *Kitmitto (Re)* is decided in a different regulatory context and is not binding on me, I find its statement of the relevant onus persuasive. In my view, a regulator is expected to comport itself in compliance with the law and to discharge its duty to make appropriate disclosure and, absent evidence should be presumed to have done so; however, that does not always occur and, where a party alleges that has not occurred, there must be some proof that it has not before further disclosure will be ordered or directed.
72. In this regard, I also agree with the comments of Justice Hoffman in *OW*, at paras 14 to 15. Although that decision is a decision on the standard of disclosure on judicial review and not in a discipline hearing, the rationale applies here as well. The applicant seeking further disclosure bears the onus of proving that there are relevant documents that have not been disclosed and must also bring some evidence to establish that the regulator has acted irregularly, in the sense that it has not complied with its obligations to conduct itself fairly and without bias, if the documents sought are only relevant to the issue of fairness or bias. This is because the purpose of the hearing is initially to determine whether the allegations in the notice are made out and the respondent bears the onus of expanding that scope to address issues of fairness, bias, and delay, just as a judicial review is

intended to be conducted on the record before the initial adjudicator and to assess the decision made on that record and a petitioner is required to demonstrate a need to expand the inquiry.

73. The above also leads me to accept the opinion expressed in *Kitmitto (Re)*, that internal correspondence and documents containing analysis, commentary, opinion, or discussions are not relevant to the allegations made in a notice, and an applicant must establish, by way of evidence, that there is a basis to require disclosure of that kind of information. By its very nature, the opinion of regulatory staff as to the evidence gathered and discussions regarding investigatory strategy, approach, and decisions do not speak to the issues of whether the alleged misconduct occurred. Such documents may speak to the issues of fairness or bias, but the opinions and discussions of the regulator's internal staff are irrelevant to the facts underlying the notice. Unless the party applying for disclosure can bring some evidence to show that there is an issue as to fairness or bias that will be addressed by the documents, the presumption that the regulator proceeded in the regular fashion should apply, otherwise such disclosure would be required in all cases.
74. The Browton Respondents rely on the following grounds to seek further disclosure from BCFSa:
- a. that there are phone calls mentioned in the record for which no notes are produced and no records have been produced showing how collected records were delivered to the investigator;
 - b. that there are quotes in the Draft IR attributed to the Complainant but no transcribed recording of an interview with him;
 - c. that there are no records regarding the decision to notify the Browton Respondents of the investigation in January 2022;
 - d. that there were serious delays in this matter;
 - e. bias during the investigation; and
 - f. completeness of the investigation.
75. I note that the allegations regarding the completeness of the investigation and the alleged bias overlap to some extent in that it appears that the Browton Respondents allege that the way the investigation was conducted, including the failure to investigate credibility issues and to interview witnesses, indicates bias on the part of the investigator.
76. Before turning to the grounds raised by the Browton Respondents, I note that BCFSa has positively stated, in an email dated June 25, 2026, that it has "provided the entirety of the investigative file, including evidence collected from the complainant." I find it likely that there would be some internal communications between BCFSa staff regarding the investigation and its transfer between staff or departments or discussing the file which have not been disclosed, as indicated by the Browton Respondents in their application materials.
77. In my view, those documents and records are the kind that would fall within the scope of opinion, analysis, commentary, or internal discussions on the *Kitmitto (Re)* standard. Such documents need not be disclosed unless an evidentiary foundation is laid to establish their relevance.
78. I turn now to the grounds raised by the Browton Respondents and will address each in turn, though somewhat out of order.
79. With regard to the issues of bias or completeness of the investigation, the Browton Respondents have failed to supply any evidence that the investigation was conducted in a manner that was insufficient or biased. There is no evidence before me on this application to show that RECBC or BCFSa failed to interview any specific witnesses, failed to ask relevant questions, failed to explore theories consistent with innocence, or failed to follow up on "clear credibility concerns". The Browton Respondents have supplied no particulars with regard to those allegations by identifying

relevant un-interviewed witnesses, demonstrating questioning or approaches that indicate bias, demonstrating unexplored investigatory avenues, or explaining what credibility concerns were not addressed and how they could have been addressed. Even if the Browton Respondents had brought that evidence, they have not demonstrated why the existence of unpursued investigatory avenues or the failure to ask certain questions or interview certain witnesses indicates the existence of bias on the part of BCFSA's investigators that would require further disclosure. I note in this regard that the investigatory file disclosed to date presumably, in line with BCFSA's disclosure obligations, includes all records in BCFSA's possession with regard to the interviews conducted and the investigations undertaken; the Browton Respondents have not tendered any evidence that would suggest such necessary disclosures have been withheld. I see no basis to conclude that the facts of what investigatory steps were taken cannot be established on the disclosure provided to date. In my view, the allegations of bias or insufficiency of the investigation are not established to be more than purely speculative.

80. With regard to the phone calls, the Browton Respondents have not provided sufficient evidence for me to conclude that there are further records available regarding the contents of those phone calls.
81. There is no evidence indicating that the phone call, that [Witness 1] refers to in her February 13, 2020 email to Ms. Hulls, that the Complainant made to RECBC was recorded or what was said during that call. In my view, there is insufficient evidence to conclude that any further record of that call exists.
82. There is also no evidence that there are independent recordings, either in notes or otherwise, of the phone calls referenced by RECBC's Compliance Officer in the emails dated June 17, 2020 and November 5, 2020 before me. On my review, of those emails they appear to be of the kind that are sent to document a previous telephone conversation and there is no reason to conclude from them that anything other than the substance reflected in the emails was discussed or that there is a further record.
83. In my view, the suggestion that there may be further records in reliance on those emails is speculative.
84. Further, the Browton Respondents have not established that the records, if any, related to the transfer of information from RECBC's Compliance Officer to BCFSA's investigator have any relevance to the issues raised in the NODH or provided any particulars with regard to alleged bias or investigative failures to which those records might speak.
85. Regarding the quotes attributed to the Complainant in the Draft IR, I have not been provided with a copy of the Draft IR and am not aware of what the quotes are or how they are attributed to the Complainant. There is no actual evidence before me to establish that the documents sought will speak to that issue, that there is an undisclosed transcript of an interview that was relied on in generating those quotes, or that these quotes speak to or raise an issue of bias, delay, or investigatory insufficiency.
86. Regarding the allegation of delay, there is no evidence before me that the course of the investigation is other than as demonstrated in the investigatory file already disclosed to the Browton Respondents. That is, there is no evidence that steps were taken that were not disclosed. The fact and duration of the delay will be evidence on the material disclosed to date. The Browton Respondents have not established that the documents they seek regarding investigative decisions will be relevant to the issue of the existence of the delay, instead they allege that they are entitled to these documents to "explore the reasons for the serious delay in these circumstances". They do not allege, or provide any particulars regarding why I should conclude, that the reasons for the delays apparent on the record are relevant to the questions of whether the delay exists, whether the delay was inordinate, whether the delay prejudiced the Browton Respondents and in what way, and whether the delay amounts to an abuse of process. On my review, the Browton Respondents

merely speculate that there may be some documents speaking to the reason for the delay and as a result seek far reaching disclosure.

87. The request for an order that BCFSa make inquiries of [Investigator 1] suffers from the same problem as noted above. There is simply no evidence before me on which I could conclude that [Investigator 1] retained any relevant documents. Without that evidence, I cannot make an order that BCFSa make further inquiries and disclosures in that regard.
88. Regarding the lack of disclosure regarding the decision to inform the Browton Respondents they were under investigation in January 2022, such documents or records fall within the scope of opinion, analysis, commentary, or internal discussions that need not be disclosed in line with *Kitmitto (Re)*, unless there is some evidence to establish that there is an issue as to bias or fairness to which those records are relevant. Again, no such evidence has been supplied to me. In regard to the issue of delay, the fact that the Browton Respondents were notified in January 2022 is apparent on the face of the document and it is not clear what relevant documents pertaining to the decision have to do with that issue.
89. I find that the Browton Respondents have not met their onus of establishing that the confirmations or documents they seek are relevant and have not supplied sufficient evidence for me to conclude that there is an issue with regard to the delay, the existence of bias, the completeness of the investigation, or the existence of additional relevant records that would require additional disclosure in this case. I should not be taken by these comments to say that I have concluded that there is no issue in regard to delay, fairness, or bias. My conclusion is limited to the conclusion that the Browton Respondents have failed to bring sufficient evidence to establish that those issues require additional disclosure.
90. As a result, I dismiss the Browton Respondents' application for confirmations and further disclosures.
91. Given these issues have been decided on the point of a failure to establish relevance and on the Browton Respondents' failure to discharge their onus in that regard, I need not address BCFSa's arguments regarding vagueness and overbreadth and I decline to do so here.

Order to Attend: [Investigator 1]

92. I turn now to the issue of the order requiring [Investigator 1]'s attendance at the hearing.
93. In my view, similar considerations apply to the decision to call a witness at a discipline hearing as apply to the decision to order documentary disclosure. Witnesses are required to attend for the purpose of providing relevant and admissible evidence. The Browton Respondents bear the onus of demonstrating that they seek to call a witness for the purpose of speaking to facts relevant to the issues raised by the NODH or supplying evidence that there are issues of fairness, including delay, bias, or insufficiency of the investigation and that the witness will provide relevant and admissible evidence to those issues.
94. The Browton Respondents base their request to call [Investigator 1] on the existence of possible bias during the investigation, the delay, and the alleged failure to conduct a complete investigation. They have raised no other grounds on which [Investigator 1]'s evidence is relevant or admissible in this proceeding.
95. As indicated above, the Browton Respondents have not supplied an evidentiary basis that would allow me to conclude that there is an issue in this matter as to bias or a failure to complete the investigation in a way that impacts the fairness of the hearing. Without that evidence, I cannot conclude that the Browton Respondents seek to call [Investigator 1] as a witness to speak to some relevant fact at issue as a result of the allegations in the NODH or that there are sufficient grounds

to conclude that she should be called to speak to the issues of bias, delay, or investigatory sufficiency that would not already be evident through the witnesses and documents available at the hearing.

96. Similarly to my findings on the document disclosure issue, I find that the Browton Respondents have not met their onus of establishing that they seek to call [Investigator 1] with regard to issues that are relevant to the allegations in the NODH and have not supplied sufficient evidence for me to conclude that there is an issue with regard to the delay, the existence of bias, the completeness of the investigation, or the existence of additional relevant records that would require her to attend to speak to the issues they allege.

Conclusion

97. I find that [Witness 1]'s evidence is likely relevant to the issues to be addressed in this proceeding. I order, pursuant to section 42(2) of RESA and section 34(3) of the ATA that she attend the hearing to give evidence. An order will be issued and the Browton Respondents are to attend to service.
98. I find that the correspondence between BCFSA and Ms. Hulls regarding the Draft ASF and the Draft ASF itself are subject to settlement privilege.
99. I find that the Browton Respondents have not met their onus of establishing that the confirmations or documents they seek are relevant and have not supplied sufficient evidence for me to conclude that there is an issue with regard to the delay, the existence of bias, the completeness of the investigation, or the existence of additional relevant records that would require additional disclosure in this case.
100. I find that the Browton Respondents have not met their onus of establishing they seek to call [Investigator 1] with regard to issues that are relevant to the allegations in the NODH and have not supplied sufficient evidence for me to conclude that there is an issue with regard to the delay, the existence of bias, the completeness of the investigation, or the existence of additional relevant records that would require her to attend to speak to the issues they allege.
101. I agree with the Browton Respondents that they are entitled to explore these issues. That does not mean they are entitled to orders or directions to compel disclosure of documents or records and the attendance of witness for the purpose of investigating merely speculative issues. If that were the standard, disclosure of the materials sought by the Browton Respondents would occur as a matter of course in all regulatory discipline proceedings and it is clear on the authorities cited above that there is no automatic entitlement to such disclosure or entitlement to require witnesses to attend merely to allow inquiries into those speculative issues.
102. I dismiss the Browton Respondents' applications for disclosure and for an order requiring [Investigator 1] to attend at the hearing to give evidence.

DATED at Oliver, BRITISH COLUMBIA, this 9th day of July, 2026.

"Original signed by Gareth Reeves"

Gareth Reeves
Hearing Officer