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Standing Committee on Public Accounts

2022 Annual Report,
Auditor General:

Ministry of Public and Business
Service Delivery

Real Estate Council of Ontario

1st Session
43rd Parliament

Monday 20 November 2023

Comité permanent des comptes publics

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Lundi 20 novembre 2023

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Clerk: Tanzima Khan

Président : Tom Rakocevic
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

COMITÉ PERMANENT DES COMPTES PUBLICS

Monday 20 November 2023

Lundi 20 novembre 2023

The committee met at 1347 in room 151, following a closed session.

2022 ANNUAL REPORT,
AUDITOR GENERAL
MINISTRY OF PUBLIC AND BUSINESS
SERVICE DELIVERY
REAL ESTATE COUNCIL OF ONTARIO

Consideration of value-for-money audit: Real Estate Council of Ontario.

The Chair (Mr. Tom Rakocevic): I'd like to call this meeting of the Standing Committee on Public Accounts to order. We are here to begin consideration of the value-for-money audit, Real Estate Council of Ontario, from the 2022 annual report of the Office of the Auditor General.

Joining us today are officials from the Ministry of Public and Business Service Delivery and the Real Estate Council of Ontario.

You will have 20 minutes collectively for an opening presentation to the committee. We will then move into the question-and-answer portion of the meeting, where we will rotate back and forth between the government and official opposition caucuses in 20-minute intervals, with some time for questioning allocated for the independent member.

Before you begin, the Clerk will administer the oath of witness or affirmation.

The Clerk of the Committee (Ms. Tanzima Khan): Good afternoon, everyone. I will read out the affirmation into the record and then I will call each of your names individually. Once I call out your name, your mikes will be unmuted and you can respond to the affirmation.

Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

I will begin with Michèle Sanborn, the assistant deputy minister.

Ms. Michèle Sanborn: I do.

The Clerk of the Committee (Ms. Tanzima Khan): Thank you. Next, I have Renu Kulendran, the deputy minister.

Ms. Renu Kulendran: I do.

The Clerk of the Committee (Ms. Tanzima Khan): Thank you. Next, we have Katie Steinfeld, the chair of the Real Estate Council of Ontario.

Ms. Katie Steinfeld: I do.

The Clerk of the Committee (Ms. Tanzima Khan): Thank you. And then we've got Michael Beard, the CEO of the Real Estate Council of Ontario.

Mr. Michael Beard: I do.

The Clerk of the Committee (Ms. Tanzima Khan): Thank you.

The Chair (Mr. Tom Rakocevic): Just for note, in the event that you rely on someone that's seated behind you to answer or speak to any of the questions, they will be asked to swear an oath or affirm as well.

I would invite each of you to introduce yourselves for Hansard each time you begin speaking. You may begin when ready.

Ms. Renu Kulendran: My name is Renu Kulendran, and I'm the deputy minister responsible for the Ministry of Public and Business Service Delivery. I would like to start with my statement.

The Chair (Mr. Tom Rakocevic): Please proceed.

Ms. Renu Kulendran: I'm pleased to address the Standing Committee on Public Accounts today and to provide an update on my ministry's progress in implementing the recommendations from the Auditor General's value-for-money audit of the Real Estate Council of Ontario.

I'd like to take a moment to introduce officials who are joining me today: Michèle Sanborn, who has already been introduced, who is the assistant deputy minister of the policy, planning and oversight division; Kelly Houston-Routley, the director of the consumer policy and liaison branch; and Jessie Weel, the manager of the delegated administrative authority policy and oversight unit.

I would like to also introduce representatives from the Real Estate Council of Ontario, which is the ministry's administrative authority responsible for regulating Ontario's registered real estate brokerages, brokers and salespersons and/or registrants. Today, I'm joined by Katie Steinfeld, the chair of RECO's board of directors; John O'Sullivan, the vice-chair; Michael Beard, the CEO; and Joseph Richer, the registrar.

We appreciate the invitation to address the Standing Committee on Public Accounts today and to provide an update on the ministry's progress in implementing the recommendations from the Auditor General's value-for-money audit of RECO. We would first like to thank the Auditor General and their team for putting together this report. We recognize that the role of the Auditor General is vital in ensuring democratic transparency and accountability. We

take the recommendations in the report very seriously and are committed to examining the areas where we can improve.

The ministry and RECO have both carefully reviewed the recommendations. The ministry acknowledges the feedback on RECO's performance as well as the Auditor General's recommendations to strengthen both RECO's operations and the ministry's oversight of RECO.

RECO administers and enforces the Real Estate and Business Brokers Act, 2002, also known as REBBA, under the oversight of the Ministry of Public and Business Service Delivery. The ministry is responsible for proposing legislative and regulatory changes to REBBA and monitors RECO's overall performance and reporting obligations. RECO has been designated as the administrative authority responsible for administering and enforcing REBBA and its regulations, which protect the public in many ways.

As part of its mandate, RECO is responsible for dealing with complaints about registrants' conduct and taking compliance or enforcement action as appropriate. This includes enforcing registration requirements, disciplining registrants who fail to comply with the code of ethics and ensuring registrants comply with insurance requirements.

The ministry recognizes how important it is for RECO to fulfill its responsibilities under REBBA in a matter that protects the public, and we remain committed to examining how best to enhance our oversight processes.

Many of the recommendations to the ministry would necessitate legislative or regulatory amendments. This requires careful consideration of many factors, including how best to ensure the implementation of effective consumer protection measures without placing undue burden on businesses, buyers, sellers, lessees or lessors. Being mindful of the many participants in the real estate sector is especially important.

We are also mindful of the importance of robust consultation when implementing changes to how people interact with registrants when buying, selling or leasing real estate. It is the role of the government and the Legislature to propose and approve policy and legislative changes. The ministry is committed to undertaking a thorough analysis of the Auditor General's recommendations as it considers bringing forward legislative and regulatory proposals for government decision-making and public consultation in the future.

The recommendations of the Auditor General should be seen in the context of the important work done by the ministry over the last several years to update the REBBA and its regulations. Once in force, changes made to REBBA through the Trust in Real Estate Services Act, 2020, also known as TRESA, along with related regulations, will update the rules that govern real estate brokerages, brokers and salespersons while strengthening consumer protection.

I'm pleased to share that the ministry has made significant strides in addressing the Auditor General's recommendation to ensure that brokerages best protect the interests of real estate buyers and sellers. As a reminder, the Auditor General recommended that the ministry should review recent changes in other Canadian jurisdictions that prohibit

salespersons and brokers from representing both a buyer and a seller in a single transaction and to consider whether it would be appropriate to prohibit this practice in Ontario.

I am pleased to report that, effective December 1, 2023, the second phase of legislative and regulatory changes under the Trust in Real Estate Services Act will come into force. This includes new regulations to allow brokerages the choice to enter into either a brokerage representation agreement or a designated representation agreement with each client at the outset of the client relationship, with appropriate provisions in place such as measures to protect the confidentiality of client information.

Under a brokerage representation agreement, while clients may, in practice, work with a specific real estate broker or salesperson at a brokerage, their legal and contractual relationship is, in reality, with the entire brokerage. If the brokerage has multiple clients in a single transaction—for example, the seller and prospective buyer of the same property—the brokerage, including all its brokers and salespersons, must treat the interests of those clients objectively and impartially. They cannot favour the interests of one client over another's.

Under a designated representation agreement, the brokerage designates one or more brokers or salespersons of the brokerage the designated representative to represent the client. That means that the individual broker or salesperson could actively promote their own client's best interests even if more than one brokerage client, represented by another broker or salesperson, is involved in the same transaction. This flexible approach is expected to increase choice and opportunities for brokerages and improve consumer protection by reducing the potential for conflict of interest when a brokerage represents more than one client in a single trade. This approach allows brokerages to decide how best to serve their clients and conduct their business while maintaining appropriate safeguards for their clients.

I'm also pleased to share that regulatory changes coming into force on, again, December 1, 2023, will address recommendation 20, which called for the ministry and RECO to develop an information package for real estate buyers and sellers. In accordance with these changes, RECO's registrar has developed an information guide for the public and registrants' use. The guide is required to include information on numerous matters, including the options for interacting with a registrant as either a client or a self-represented party; the rights, obligations and duties of different parties in a trade in real estate; guidance in respects of remuneration arrangements in relation to a trade in real estate; and processes for filing a complaint about the conduct of a broker or salesperson. The information guide has been published on RECO's website in accordance with the requirements. Registrants will be required to provide it and explain its contents to a person before providing services or assistance in relation to a trade in real estate.

I'm also pleased to share that minister's orders are expected to be issued to make changes to RECO's board. The orders will facilitate a more efficient and effective governance model that enables a stronger focus on RECO's

important consumer protection mandate, and include decreasing the size of the board from 12 to nine members, providing that no more than 30% of the board members will be from the real estate sector, establishing rules relating to the nomination and election process for board members in line with modern governance practices, establishing new competency criteria for board members to strengthen the representation of consumer perspectives and establishing an industry advisory council. These changes to RECO's board composition and processes help address recommendation 23, which was to reassess and adjust the proportion of industry representatives on RECO's board and ensure that a skills-based board based on best practices is in place to effectively oversee the real estate industry and to protect consumers.

Additionally, the ministry has completed one of the action items under recommendation 24 by enforcing the requirement that RECO publicly report on the activities and advice generated by its consumer advisory process in its 2022 annual report.

Finally, the ministry is committed to continuing to work with RECO to further improve the ministry's oversight processes, to strengthen professionalism and public protection in the real estate services sector.

I look forward to reporting back to the Auditor General with more information as we continue to work in collaboration with RECO to address the Auditor General's recommendations.

Once again, committee members, thank you for the opportunity to address you today. I'm happy to answer any questions you may have. I'll now turn the floor over to Katie Steinfeld, the chair of the Real Estate Council of Ontario.

Ms. Katie Steinfeld: Thank you, Deputy.

Good afternoon, Chair. I'd like to start with my opening remarks. My name is Katie Steinfeld, and I'm here today as the chair of the Real Estate Council of Ontario's board of directors. I'm also joined by RECO's CEO, Michael Beard, and RECO's registrar, who is just sitting right behind us as part of our panel, along with RECO's vice-chair, John O'Sullivan, who is also sitting right behind us.

1400

I would like to thank the Chair, Vice-Chair and members of the Standing Committee on Public Accounts for the work you do in reviewing the Auditor General's recommendations and reporting your findings to your colleagues in the Legislature. I would like to thank the Auditor General and their team for the work they did in compiling the recommendations for RECO. The recommendations in the report have made an important contribution, and this has helped RECO improve. I would also like to thank the ministry for their hard work, in collaboration with RECO, in responding to and actioning the recommendations made in the Auditor General's report.

At RECO, we are keenly aware that the purchase or sale of a home may well be the largest and most significant financial decision most Ontarians will ever make. That's why it's so important that the real estate services sector has an effective oversight system in place to govern these important transactions.

As the provincial regulator, we protect the public interest, enhance consumer confidence in the real estate profession and maintain professional standards. We take our responsibility for compliance and protection seriously. We are proud of the work we do to protect consumers and the public interest. The real estate agents, brokers and brokerages that are regulated by RECO are sometimes referred to as registrants. There are more than 105,000 of them in Ontario. I'm proud to say they have a high level of compliance with the rules governing their conduct.

RECO promotes compliance in a variety of ways. For example, we enforce the standards required for registration for brokerages and agents. RECO's registrar establishes educational requirements for agents to both get and keep their registration. We conduct inspections of brokerages and support compliance through education. We investigate complaints about brokerages and agents and those who may be trading illegally. We arrange for and administer insurance on behalf of registrants, with a particular focus on the protection of consumer deposits. Each of these measures is important to support compliance with the rules.

RECO is committed to a culture of continual improvement. The Auditor General's recommendations largely align with our own strategic initiatives to modernize operations in several areas, such as our inspection processes. Additionally, the report identified some important ideas for RECO to consider as we look for ways to enhance our policies, procedures and operations.

Upon receiving the report, we worked with the ministry to develop a detailed action plan that addresses each of the recommendations. I am pleased to say that as of today, we are targeting to have 75% of our specific action items completed within the next six weeks. We have also committed to providing quarterly reports on our progress. We aim to complete implementation of all action items directed to us by January 2026.

In addition to the recommendations that are specific to RECO, four recommendations were directed to the ministry, and we will continue to work closely with the ministry to support them as needed.

In less than two weeks, changes under phase 2 of the implementation of the Trust in Real Estate Services Act, 2020, will come into force. RECO is proud to have provided important input and a consumer protection perspective to the government as they updated the laws that we administer. This will strengthen RECO's ability to deliver enhanced compliance, enforcement and consumer protection.

Over the past several months, RECO has been sharing information and resources with our registrants so they can understand the new requirements they must meet. This is an important part of what we do. A key element of the trusted changed is the development of the RECO Information Guide, which has been designed to support consumers as they decide how to engage with an agent.

Lastly, I want committee members to know that last year, Ontarians participated in more than 250,000 real estate transactions. This does not include commercial transactions. The vast majority of these transactions proceeded smoothly. As a regulator, this underlines the importance of our high

professional standards and ongoing continuing education requirements.

Real estate professionals have a high level of compliance with the rules that are in place in Ontario to protect consumers. In those rare circumstances where a registrant breaks the law or puts their own interests ahead of their own clients, RECO can and will take action to enforce the rules and protect Ontario consumers. We will continue our work to achieve even stronger compliance.

Now I'd like to pass it over to our CEO, Michael Beard, to provide you with a detailed update on RECO's progress in implementing the recommendations contained in the report.

Mr. Michael Beard: Thank you, Katie.

My name is Michael Beard. I am the CEO of the Real Estate Council of Ontario. I'd like to thank the standing committee for the invitation to join you here today. I'd also like to thank the Office of the Auditor General for its recommendations.

The report contains 21 recommendations, with 58 action items directed either wholly or in part to RECO, with the goal of strengthening our ability to effectively deliver on our mandate.

These recommendations came at an opportune time, as we were moving forward with important initiatives in our five-year strategic plan. Our goal is to deliver modern regulation in a dynamic marketplace. This is underscored by our commitment to being a progressive regulator and employing leading practices in consumer protection, transparency and accountability.

I'd like to highlight some of the key components of RECO's action plan for implementing the recommendations contained in the report. The Auditor General recommended that RECO implement a risk-based framework for inspections of real estate brokerages. Prior to receiving the report, RECO was already working to create a risk-based inspection process, so this aligned nicely with our direction and further improved on how we can conduct inspections. Having reviewed the base practices, the Auditor General's team raised some very thoughtful questions and challenges for us to consider as we move forward.

I'm pleased to say that we have implemented changes to our risk-based inspection framework, which is largely in place today. RECO inspectors assign a risk rating to each brokerage, which determines how frequently it will be inspected. High-risk brokerages will be inspected more often than those assessed with a low risk. This framework will enable RECO to allocate its resources to focus on those brokerages which may require a higher degree of oversight, allowing us to make the greatest impact with increasing compliance.

In anticipation of the enhanced risk-based inspections, our inspection manuals and documents have been updated and are supported by ongoing training and education. That's just one example of how we're enhancing our operations, with the benefit of the valuable input from the Auditor General.

The report also identified some areas where our procedures needed to be better formalized and documented. For

example, we have strengthened our processes for scheduling pre-hearings for discipline proceedings, and now we're able to track and achieve our commitment to the service levels that we've placed in this area more effectively.

Another recommendation of the Auditor General was in relation to reducing the risk of money laundering in real estate transactions. RECO is working with the Financial Transactions and Reports Analysis Centre of Canada, otherwise known as FINTRAC, to share information. Additionally, we have updated our inspection manuals to review reporting obligations of registrants more specifically in this area. We recognize that RECO has a role to play in tackling this important issue, which requires the efforts of all registrants as well as our partners in law enforcement.

These are just some of the many actions RECO is taking in response to the Auditor General's recommendations, which RECO has committed to address fully by January 2026. As Katie indicated, we are on track to implement 75% of our action items in the next six weeks. I'm proud of the progress that we have made and our entire team's commitment to continual improvement while fulfilling our responsibilities as an effective regulator.

The Chair (Mr. Tom Rakocevic): Thirty seconds remaining.

Mr. Michael Beard: Thank you, Mr. Chair.

Phase 2 changes under TRESA come into force shortly, and there have been some significant benefits to consumers and opportunities for the profession to raise the bar for professionalism in that regard.

I will conclude my remarks by thanking the members once again for welcoming us to this hearing, and I look forward to answering any questions that you may have.

The Chair (Mr. Tom Rakocevic): Thank you very much for your presentations.

We'll begin with the government side today.

Interjections.

The Chair (Mr. Tom Rakocevic): Okay. MPP Skelly.

Ms. Donna Skelly: I have a number of questions, but I'll go quick as I think everybody wants to ask questions.

I believe this would be to the ministry: You mentioned "trade in real estate." What do you mean by "trade in real estate"?

Ms. Renu Kulendran: Trust in real estate?

Ms. Donna Skelly: Trade. Did you not say "trade in real estate"? I'm assuming—is that referring to all transactions?

Ms. Renu Kulendran: Yes.

Ms. Donna Skelly: Okay. It's not an actual trade in real estate.

Ms. Renu Kulendran: No.

Ms. Donna Skelly: Okay. The conflict of interest in representing more than one client in a sale: That concerns me. I've bought and sold a lot of homes, and everybody has a friend who's an agent. How can we guarantee that they're representing my interests?

1410

Ms. Renu Kulendran: I thank the member for the question. It's an important question, and it's something that we've recently done something about.

Previously we had a situation called multiple representation, and that's where a brokerage could represent more than one client in the same trade, even two prospective buyers, as well as the buyer and the seller. In that multiple-representation situation, the brokerage, which includes all the brokerages and salespersons employed by the brokerage, would be prohibited from representing more than one client in the transaction unless certain disclosures are made to each client and prospective client, and each consents in writing. That's the current situation.

Under the designated representation situation change, which will take effect December 1, brokerages and clients will have the option of entering into either a brokerage representation agreement or a designated representation agreement, and in both cases the representation agreement will be between the brokerage and the client. What this does is it allows the brokerage to designate specific brokers to represent the client and be primarily responsible for that client's interests. It would mean that they would actively have to promote the best interests of that client.

Ms. Donna Skelly: So you're saying that the seller—let's just say it's a transaction involving sale of a property. I'm not worried so much about the brokerages as I am about one agent representing both the seller and the buyer. Is that permitted in Canadian law today, and how do you protect both parties?

Ms. Renu Kulendran: Under the designated representation situation—

Ms. Donna Skelly: The broker would appoint another person to represent—

Ms. Renu Kulendran: Exactly.

Ms. Donna Skelly: But wouldn't have to. But they can't do it now; correct? You cannot represent both the seller and the buyer? Or can you, if one of the parties agrees?

Ms. Renu Kulendran: I'm going to defer to my colleague Michèle Sanborn.

Ms. Michèle Sanborn: Yes, that's multiple representation, so that currently does exist. The purpose of TRESA phase 2 is to make a distinction between that, which will continue to exist, and designated representation. In designated representation the agent has the responsibility for representing that client.

Ms. Donna Skelly: Both clients?

Ms. Michèle Sanborn: Both clients? No. In designated representation, that agent is designated to represent that client.

In multiple representation, an agent can represent more than one person. However, there are parameters around that in terms of disclosures to the client, and under phase 2 of TRESA, those protections under a multiple representation situation will be strengthened.

So we will introduce the designated representation; that's a good consumer protection approach. Multiple representation will continue to exist for consumer choice and for smaller communities with a limited number of agents, for example. But even in the multiple representation situation, we will strengthen those protections through those better disclosures, making sure that—

Ms. Donna Skelly: What does that mean, “through better disclosures”? I mean, I'm sure the agent has to say,

“This is my client.” How do you guarantee—I couldn't imagine as an agent having two clients and trying to represent both of them, getting the most amount of money for one and paying the least amount of money for the other. How can you possibly square that?

Ms. Renu Kulendran: Some of the new additional disclosure requirements will require that any disclosure made under the legislation and this regulation will be prominent, so there will be a clear indication of where the disclosure—

Ms. Donna Skelly: It's disclosure, but how do you guarantee—how can you possibly represent two people? Should that perhaps not be permitted, and you have to get another person to represent you? I don't know how you can represent both the seller and a buyer and get the best deal for both people.

Ms. Michèle Sanborn: Maybe I'll jump in. It's an issue we consulted on. We consulted on multiple representation and designated representation. What we did hear from that consultation was that it's a bit different across the province in terms of consumer choice, in terms of the way those local markets work. So what we tried to do and what we think we've achieved with TRESA is to have the two coexist in the legislation: designated representation, multiple representation. But as I said, strengthening those consumer protections, to your point, around how can you ensure that—I mean, agents will be bound by that. They're bound by that. As a human being, it's impossible to represent both.

Ms. Donna Skelly: Anyway, we're not going to get anywhere on that. I just think that there's something that we have to really consider, because this is probably the biggest purchase or sale of anyone's life, and if you're being represented by one person, you can't possibly be getting best representation when they're representing both parties.

Ms. Renu Kulendran: Maybe if I can add: There are a number of changes that are coming into force that are meant to strengthen the position of consumers in the real estate space. We are aware that one other jurisdiction, British Columbia, has recently banned the practice. We're responding to what we have heard from the sector, and we believe the cumulative impact of these changes put us on a much better foot in terms of protecting the consumer. That being said, these changes in British Columbia are relatively recent. We're watching to see how BC is taking that approach—

Ms. Donna Skelly: Okay, I don't want to take up any more time on that because I know everybody wants to jump in.

Quick question: Writing a contract to make sure that it's bulletproof in terms of disbursement of funds—we've seen that 21% of the millions in consumer deposits was returned, which meant a lot of money is sitting in the bank. How can ensure that RECO, or whoever, can write a contract and guarantee that when someone puts a deposit down and there is a conflict, we know where that money is going and it's not sitting in dispute? Is there not a contract anywhere that that can be considered so that we can replicate it to ensure that those monies are disbursed?

I think RECO could probably talk to that. I don't know if you want to speak to that.

Mr. Michael Beard: I can talk to that. Do I introduce myself again?

The Chair (Mr. Tom Rakocevic): No, no, you've all introduced yourselves.

Mr. Michael Beard: We're all good? Okay.

What are called in the report the unclaimed monies that are in a trust fund—it's not the right description for it. I like the word that you used, disputed funds, because they are, the majority of them. This is where a buyer has put in an offer to purchase a property from a seller and, to indicate some good faith, they've included a deposit with the offer; most of the time everything goes fine, but every now and again—and it's pretty rare—the deal fails. The deal fails because somebody hasn't done their part of it. Either the buyer has not done their part or the seller, or maybe both.

So what happens is that the deposit money is provided to the brokerage, and they look after that money in trust—and it's insured, by the way, by the insurance program, so it's sort of a double benefit to consumers as well. The brokerage holds on to them until they get an instruction from the buyer and the seller, who have entered into their own contract. Just the buyer and the seller are party to that contract, and then they would come to a resolution, ideally, about how to deal with the deposit, depending on who did what or what happened in the contract, with every case unique. If that doesn't work, they have the option to go to a legal process through the courts, and then the brokerage will respond to—

Ms. Donna Skelly: I don't mean to be rude, but we're all wanting to ask questions and we're running out of time. We understand that. Is there a way of changing the contract so that it's bulletproof, so that we have a clear understanding that if there is a dispute, A gets the money because B put down the deposit and didn't follow through on the sale? I mean, there should be a way to make it very clear where that money goes.

Mr. Michael Beard: One would hope that would be the case, but every single case is unique and it's a contractual agreement between the buyer and the seller and that's the standard form. We don't craft that agreement. That's a contractual agreement that emerges between them.

Ms. Donna Skelly: So there's no way of modifying that agreement to make it bulletproof, so that we don't end up in the courts and millions aren't sitting being held?

Mr. Michael Beard: One of the recommendations was to look at how this might be resolved. It's one of the things that we are looking at. Is there a simple way just to add something to the contract? I think if it was that simple, that would probably be in the contracts today, because there is no hold on anybody coming to an arrangement like that within the contracts today. We don't prescribe the contract.

1420

Ms. Donna Skelly: Okay. One last question: How is the money disbursed in a commission? What is the average? About 4% or 5% right now in the sale of a property? Four per cent or 5%?

Interjection.

Ms. Donna Skelly: Still 5%?

Mr. Michael Beard: We don't regulate the commission rates. We see varying rates because consumers have discussions with their real estate agents.

Ms. Donna Skelly: But what average—

Mr. Michael Beard: It's in the area of 4% to 5%. I could, perhaps—

Ms. Donna Skelly: And how is that disbursed, on an average? It's 50% to the seller's agent, 50% to the buyer's agent and a portion of that goes to the broker, right?

Mr. Michael Beard: At a very high level, that's approximately correct, but it comes, again, down to the exact agreement that each consumer has made with the real estate agent and their brokerage. And then the arrangement of how much goes to the brokerage and how much goes to the real estate agent is between the brokerage and the real estate agent. We don't regulate that.

Ms. Donna Skelly: And that has stayed consistent in terms of remuneration over the past three decades, despite the fact that the price of a home has escalated tenfold. So we've seen what agents are getting in terms of a commission has gone through the roof versus what they were getting 30 years ago on the sale of a home, is that correct? That hasn't changed at all; we're still paying 5%? The price of a home has gone from \$100,000 to \$1 million, but—

Mr. Michael Beard: Yes, I understand, so there is more commission being paid.

Ms. Donna Skelly: Has there been any sort of consideration to perhaps rethink that?

Mr. Michael Beard: So again, we urge consumers to have discussions with their real estate agents when they sign up, because as a buyer and a seller, you're signing an agreement—

Ms. Donna Skelly: How do you urge them?

Mr. Michael Beard: Well, we communicate out. We make it very clear that there are no fixed commission structures—

Ms. Donna Skelly: But how?

Mr. Michael Beard: Through various releases, but I've got a bit of an ace here as well.

Ms. Donna Skelly: I can't imagine—I don't know a consumer that even knows what RECO is and how they would know that they can even negotiate this.

I just find that it's an awful lot. For example, what is the commission paid on a sale of a home in the States or in other jurisdictions? Is it 5% based on these properties? Is it consistent?

Mr. Michael Beard: It varies all over the world.

Ms. Donna Skelly: Okay. I've dominated enough time.

The Chair (Mr. Tom Rakocevic): Okay. You have six minutes and 45 seconds, MPP Smith.

Ms. Laura Smith: First, I want to begin by thanking all of you for being here today. I think I'm going to address most of my questions to RECO. So just specifically honing in on what MPP Skelly—and maybe taking it a step further. This can be addressed by either Michael Beard or Katie Steinfeld.

I'm interested in compliance. You talked about doing things to improve the tracking or record to respond to compliance—the risk, whether they be high or low, and putting those resources in the right place. I'm just wondering if you could explain a higher-risk and a lower-risk brokerage for me in those circumstances.

Mr. Michael Beard: Certainly. Thank you for the question.

There are several risk factors—and this is pioneering work for us as we go forward. We'll learn more and more as we go, but it would stand to reason that—one risk factor might be how many transactions does a brokerage actually do? So a brokerage doing more transactions might attract a higher risk score than one doing fewer transactions, as an example.

Another example could be the history of inspections. If somebody is inherently non-compliant and we're finding non-compliances that need attention, that would also impact a risk score.

Ms. Laura Smith: And what happens when they're non-compliant consistently?

Mr. Michael Beard: Within the inspection process, because that's what we're talking about here now, if something big is found, we will act on it right away. In fact, not too long ago, through an inspection, our inspectors found something that resulted in the brokerage's licence being suspended and its bank accounts frozen. You get different types of non-compliances. The really bad ones attract a response like that. A lot of the non-compliances are administrative as well. So we sort of dose the outcome according to what the actual issue is.

Ms. Laura Smith: And this was obviously something that was brought up by the Auditor General, to hone in on the bad actors. Can you talk about—and I know this is going to be a phased delivery. I think you talked about phase 2, and I'm interested in compliance specifically within phase 2. Is there anything you can provide in that area?

Mr. Michael Beard: So, phase 2—we're talking of the TRESA regulations?

Ms. Laura Smith: Yes.

Mr. Michael Beard: We firmly believe that the TRESA regulations bring some considerable benefits to consumer protection, which makes our job more effective as a regulator when it comes to compliance. Just some of the front-end work that's been done is going to make a significant difference, but when it comes to compliance, we have a complaints process that, if somebody has an issue that—if they feel somebody hasn't complied with the regulations in the right way, they contact us. We will process that complaint. We've got a pretty rigorous process—

Ms. Laura Smith: Sorry, what is that process? I'm just very curious.

Mr. Michael Beard: If you have the Auditor General's report, I think it's appendix 4 of the report itself, but it shows how things move along. At a high level, I can maybe put it like this: We get about 100,000 contacts a year by phone. We get about 100,000 contacts by email. We get about 4,000 contacts where somebody is contacting us in relation to what they feel is a complaint. We

triage that, because not everything belongs in our jurisdiction. Sometimes complaints can be frivolous or vexatious; we filter those out, and we end up with about 2,000 complaints that we then move forward with. That results in some sort of a resolution from the registrar's department. If there's something really, really bad, that goes to the discipline committee, and there's about 100 cases that go to the discipline committee every year. So that's the sort of flow of the complaints process and the outcomes.

Ms. Laura Smith: And what's the difference between an investigation—you talked about—and inspections? Is there some defining or pivotal turn when that one becomes the other?

Mr. Michael Beard: Well, I think, more accurately, they're probably fairly separate from one another. If we get a complaint, we will act on that complaint specifically, which is then very much an investigation, whereas inspections are just inspections that are scheduled from time to time with brokers, much like you might do an inspection on your car to see if it's ready to face the winter and so on. So those aren't driven by a specific complaint in general, but investigations absolutely are.

Ms. Renu Kulendran: I just wanted to add, to the member, because you asked about the phase 2 TRESA, I think cumulatively there are a number of other things that are there to protect consumers, and that also includes a code of ethics regulation, enhanced powers for the regulator—

The Chair (Mr. Tom Rakocevic): One minute remaining.

Ms. Renu Kulendran: —with respect to its discipline process. So I think, as a package and cumulatively, those changes all provide the regulator with additional levers by which to ensure that there is greater transparency for buyers and sellers, but also that there are administrative tools that the regulator can use to act on those that are acting unlawfully within the context of their roles as brokers.

Ms. Laura Smith: Thank you. I'm sorry; I should have reverted over. We're not accustomed to having the pleasure of both sides, and we appreciate that.

Time?

The Chair (Mr. Tom Rakocevic): You have 18 seconds.

Ms. Laura Smith: I was actually going to ask the ministry about compliance, as well. Of course, I lose my voice just as I'm saying that.

The Chair (Mr. Tom Rakocevic): We're out of time. We can continue at the next part.

Ms. Laura Smith: Thank you.

The Chair (Mr. Tom Rakocevic): Okay.

Before we move to the official opposition, we're anticipating a vote in the very near future, just to advise the official opposition members that there will be a pause at that time, and we'll be returning after.

Okay. We will begin with MPP Bell.

Ms. Jessica Bell: Thank you to all of you for coming in. This is a very interesting topic today. I've got some specific questions. One is to follow up, similar to what MPP Smith was talking about, about enforcement.

I noticed that in the report, there are about 11,000 complaints that have come in to RECO over the last five years—11,700. And then when we look at those complaints, we see that maybe about 100 of them get to the point of a discipline committee, and out of them—correct me if I’m wrong—for maybe 25 or so, there’s an actual fine incurred. Would that be an accurate summary?

Mr. Michael Beard: I can pick that up.

Ms. Jessica Bell: This is a question for RECO.

Mr. Michael Beard: Yes. Thank you for the question. Good, good, good all the way until the end. Actually, most of the actions that the registrar takes to the discipline committee do result in some sort of an action—and remember, it’s not just fines that come into play; it’s getting your name marked with a bit of a black mark on our site. If somebody comes and looks up your name, that’s there as well.

But it’s interesting, maybe: The statistic that you were looking at relates to the fact that most of that percentage of the hearings are actually settled through a sort of admission-of-guilt process, instead of going all the way to a full hearing.

Ms. Jessica Bell: All right. Thank you. The reason why I bring this up is that when I look at these numbers—a lot of complaints coming in and a very small percentage going to a discipline committee, though I acknowledge that some will probably get resolved before—the overall impression I get is that there’s not enough enforcement happening to ensure that—if you’re a consumer and you reach out to a real estate agent or a broker, there could be some brokers or real estate agents who are doing bad things and then not being held to account, especially when I see that the average fine is about \$8,000, which is pretty small given the amount of money that is occurring in these transactions.

So my question is this: What’s RECO looking at doing to increase enforcement, essentially?

Mr. Michael Beard: Thank you for the question, member. When it comes to the amount of fines, we do hear people say, “Wow, the fines are really low” or “It’s a cost of doing business” etc. Interestingly enough, we don’t see a lot of people coming back for more once they’ve gone through that process. If it truly was a cost of doing business, I’d think people would just process it as such, and they do not. I think also the impact beyond the fine of the black mark that you get on your name when somebody searches your name on our website is a big deterrent as well.

So that’s from the fine side of it. In terms of compliance in general, I think Katie mentioned that the number of transactions in Ontario is—

Interruption.

The Chair (Mr. Tom Rakocevic): Hold your thought. We’re going to have to break for about a 10-minute recess, okay? Thank you, and apologies for the disruption.

The committee recessed from 1433 to 1451.

The Chair (Mr. Tom Rakocevic): Okay, we shall resume with the official opposition. MPP Bell, please continue.

Ms. Jessica Bell: You needed time to conclude your answer around RECO getting stronger on enforcement.

Mr. Michael Beard: Yes, thank you for the question. We were talking about compliance and enforcement. I just want to start that response by saying that the rate of compliance is, in fact, very high in the real estate industry. We have about 250,000 transactions a year. We end up with approximately 2,000 complaints that are relevant to us. That’s a very, very small percentage. So, overall, the rate of compliance in the industry is high. I just wanted to make that point.

In terms of enforcement, we have a number of tools to enforce, and also what is coming with the new legislation on December 1 is some new tools that we have to enforce, as well. And, in fact, if I may, I’d like to call on the registrar, Joseph Richer.

Ms. Jessica Bell: I’m having a bit of a challenge with time, so what I’m going to do is move on to my other questions, just because I have four questions I want to ask, okay?

Mr. Michael Beard: Okay.

Ms. Jessica Bell: All right. But I can follow up.

The second question I have is around money laundering. We’ve been following the issue of money laundering within the real estate sector for some time. We have been calling for a beneficial real estate registry so that it’s clear who the true human owner is in transactions. And the reason why we’ve been calling for that is because we keep seeing report after report indicating that there is a whole lot of illegal money, essentially fraud, happening within the real estate sector in Ontario, and some reports are putting it at a figure of \$30 billion over the last 10 years, which is a lot.

And then I see in the Auditor General’s report that there really isn’t a lot happening when it comes to brokers and real estate agents reporting transactions over \$10,000 to FINTRAC. If a real estate agent maybe knows that this is a suspicious transaction, why would they, right? So it’s important for RECO to step in and make sure that the law is being followed.

What steps is RECO doing to ensure that real estate agents and brokers are reporting those large financial transactions of cash of \$10,000 or more?

Mr. Michael Beard: That question, too, is—

Ms. Renu Kulendran: If I could just jump in for a minute, I just want to talk about some of the changes that are taking effect that are specifically targeted at what you’re talking about. Under the regulatory changes taking effect December 1—and this is following a comprehensive consultation—there is going to be a new code of ethics regulation under REBBA, and some of the changes include a separate provision specifically to address fraud. It not only prohibits a registrar from engaging in, or being party to, fraud, but also assisting a person in terms of trying to contravene the Real Estate and Business Brokers Act. There are some other requirements, as well, respecting integrity, honesty, good faith, misrepresentation, unethical practice and disgraceful, dishonourable or unprofessional conduct. That’s in addition to some conflict-of-interest pieces as well.

So there are those tools, and registrants must comply with requirements under federal legislation, which include

the anti-money laundering regulations that the federal government has put in place. RECO is working with FINTRAC as part of the implementation plan that they submitted to us, which they submit to us quarterly around these recommendations.

I'll turn it over to Michael to talk about the work they're doing in that regard specifically.

Ms. Jessica Bell: Great, I appreciate it. What I'm really specifically interested in is around the enforcement piece, because when I look at how many transactions are being reported, I see 18 are being reported in 2021-22, when we keep hearing reports of billions of dollars flowing through the real estate sector. So when we're talking about enforcement, there's a code of ethics, but I think we need something more, quite frankly, and I'm curious to know what you're exploring there to really make sure it's not happening.

Mr. Michael Beard: That's a really good question for the registrar. I apologize; maybe you can just quickly swap out. I don't want to waste valuable time. I understand that, but—

Mr. Joseph Richer: Do I need to be sworn in, Mr. Chair?

The Chair (Mr. Tom Rakocevic): Yes.

The Clerk of the Committee (Ms. Tanzima Khan): Before you begin, do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Joseph Richer: I do.

The Clerk of the Committee (Ms. Tanzima Khan): Thank you.

Mr. Joseph Richer: Thank you very much for the question. Fraud and mortgage fraud and money laundering are big-picture issues that involve many, many sectors, not just a real estate agent. That involves lenders; it involves the lawyers who are involved in the transaction, who actually manage the money. The real estate agents themselves typically don't get the money at all. They will get the deposit, they will manage the deposit, but they don't actually get beyond that.

However, we are in the middle of formalizing an agreement, an MOU, a memorandum of understanding, with FINTRAC to support one another in terms of the administration of our respective legislation. We have the authority to engage with other law enforcement agencies, which we do on a regular basis. In this case, we're going to formalize it to have clear guidelines on how we can help one another, and we're really looking forward to finalizing that report in the near future.

We also worked very closely with FINTRAC to develop a continuing education course for our registrants so that they can understand those FINTRAC requirements, and that was new. No other regulator in Canada had done that, and we were very pleased to work with FINTRAC on that.

Ms. Jessica Bell: I'll be following that closely because we know when there is a fraudulent transaction, there are many people who are regulated in Ontario who know that that transaction is happening, from accountants, to lawyers, to brokerage agencies and so on.

My next question is about a case that I have heard about in the news and that we did a little bit of digging into, and that's the case of people who go away on vacation or they rent out their property and then they find out when they return that their home is being illegally sold. There's very little recourse, it seems, that they can do in those cases. There have been reports around what can be done to stop the case of homes being sold fraudulently without the seller knowing—so, someone is essentially masquerading as the seller—and one of the recommendations is to bring in multi-factor ID. So a real estate agent, lawyers, accountants and so on will make sure to double-check multiple different forms of ID to make sure that the seller is actually the seller and that they own the home they want to sell.

Is RECO or the ministry looking into requiring multi-factor ID checks to ensure homes aren't illegally sold? Maybe this is a question for the ministry first.

Ms. Renu Kulendran: Sure. Thank you for the questions. We're aware of the same media reports that you are. I would start by saying that the overarching legislation that governs the sector and its regs requires all brokers and brokerages to use best efforts to prevent error, misrepresentation and fraud. I talked a little bit about what that code of ethics, with its updated requirements, will mean in terms of the requirements for a registrant, and the fact that they're also governed by other legislation.

1500

The ministry also, as part of our business, has the land registration services branch, which operates under Service-Ontario. It processes land title documents. Only authorized users are able to register those documents in our system as the final step in the process. We are looking at and working with RECO as part of our broader implementation around all these changes to see how we can, through the various tools, tighten access to or narrow the circumstances under which the fraudulent behaviour can occur, and some of the safeguards, including what we do around the land registry, are part of that.

At this point in time, we are not looking at multi-factor authentication, but it is certainly something that we will take under consideration as another tool we can look into to help support efforts to narrow circumstances around this. But again, as the registrar has indicated, this type of fraud involves a number of players, not just real estate agents, so the work that we're doing more broadly with FINTRAC is really about taking more of a holistic approach with parties that potentially can be involved. The work that Joseph has described, including with police services and others, will potentially bring about other recommendations that we can look at cumulatively to see how we can address this issue.

Ms. Jessica Bell: Are you looking at addressing this issue yourselves internally?

Mr. Joseph Richer: Yes. Thank you again for the question. We have brought this to the attention of agents. We do this through our education program, through our continuing education program. We also do it through our newsletters and bulletins to agents to make sure they understand. I agree with you: The leading practice is multi-

ID, and that is encouraged. We encourage them to follow the FINTRAC guidelines and the requirements, so that already is in place.

It's important, though, to understand that some, if not most, of the transactions that you're referring to that hit the media did not involve a real estate agent. When they did, we vigorously investigated it to make certain that the conduct of the agent was not improper. But keep in mind that fraudsters are very competent at what they do, and they create very good, authentic-looking documents to demonstrate or to show the identity of the individual as being the wrong person.

The Chair (Mr. Tom Rakocevic): Four minutes left.

Ms. Jessica Bell: My final question is around the recommendation of RECO's board. From what we have read and from what the Auditor General has told us, the majority of individuals on RECO's board are real estate industry professionals, when it seems there would be a lot of value in having a mix of people with expertise—not just from the real estate sector, but also on the consumer side—on RECO's board to ensure everyone's interests are fairly reflected. What work are RECO and the ministry doing to ensure that RECO's board has a mix of different representation?

Ms. Renu Kulendran: I can start with that. Thank you to the member for the question. As I mentioned in my opening remarks, there are a number of things that we're doing in terms of working with other administrative authorities, based on the Auditor General's recommendations and general good-governance practices, to look at strengthening governance and consumer perspectives. The minister issued a letter to RECO's chair on September 5 noting the intention to use the minister's powers and tools under the Safety and Consumer Statutes Administration Act. Those include decreasing the size of the board from 12 to nine; providing that no more than a third of board members would be drawn from the real estate sector; establishing new competency provisions for board members to strengthen representation, particularly of consumer perspectives; establishing rules related to nomination in an election process for board members in line with modern governance practice; and also to establish an industry advisory council.

We have also worked with RECO to get regular updates on its consumer advisory process as part of the implementation plan related to the audit recommendations. We are working very closely with the board chair and RECO on implementation.

I'll turn it over to Michael to maybe perhaps talk some more about how we're doing that.

Ms. Jessica Bell: Just because I don't have a lot of time, it would be good to know what the timeline is to implement these changes, to go down from 12 to nine and to have more consumer representatives.

Ms. Renu Kulendran: The minister intends to formalize the orders by the end of the year.

Ms. Jessica Bell: Okay, thank you.

The Chair (Mr. Tom Rakocevic): You have a minute remaining.

M^{me} France Gélinas: No, it's okay.

The Chair (Mr. Tom Rakocevic): Okay, we will now return to the government side—oh, sorry, my apologies: three minutes to the independent member.

M^{me} Lucille Collard: How many minutes?

The Chair (Mr. Tom Rakocevic): Three minutes.

M^{me} Lucille Collard: Okay, I guess I'll try to make that count.

Thank you for your presentations today. We are all learning quite a bit about RECO and the role of the ministry. I didn't realize that RECO had existed for so long and I guess we were all surprised by the fact that this is the first audit that you've gone through.

I have a simple question, just to get a feeling: Since it's your first audit, I would just like to know how you welcomed the experience. Did you learn something useful? Did you find the exercise useful so that the organization can actually improve itself for the consumer protections?

Mr. Michael Beard: I can respond to that. It's a very interesting and a humbling experience, and a very useful experience, to have somebody who's independent and who can see things through different lenses come and provide you with thoughts and ideas and suggestions on how to do things better. Like all the staff at RECO, we've come to work every day believing that we are making a difference because we see that we are and we're doing all the right things. This experience is a bit of an eye-opener when it comes to, "Well, here are some other things that you can think about and do," and in that regard, this was a very, very valuable experience.

We embraced the report. We are committed to addressing all of the recommendations and action items. That's a big project to undertake, and we are doing it with great commitment and enthusiasm, let me say as well. It's a very meaningful exercise, but it can be a very humbling exercise, if I could put it that way.

M^{me} Lucille Collard: I'm glad that you've seen that as a positive experience.

Just another question on some of the discussions we've had among ourselves a little bit: Is there any intention by the ministry—and I think the direction might come from you—about the commission rate that real estate agents get? I think the percentage of the benefit that they make in sales remains the same, despite the fact that the price of real estate has increased dramatically. I guess, because of those reasons, a lot of people will turn to alternatives and maybe not get a real estate agent and then take the risk that they may not be protected. So is there any consideration about the adequacy of the commission rate as it is at the moment?

The Chair (Mr. Tom Rakocevic): Twenty seconds left.

Ms. Renu Kulendran: I thank the member for the question. It is a good question, and it wasn't something that we had considered within the scope of the last several rounds of amendments. You will be aware that we have been focusing quite a bit on transformation in this sector with respect to the introduction of—now we're implementing phase 2 of the Trust in Real Estate Services Act amendments, and we are anticipating moving forward on

phase 3 of regulations. But it is something that we will take under advisement, and I appreciate your comments in that regard.

1510

The Chair (Mr. Tom Rakocevic): Thank you. We're at time.

We'll proceed to the government side, beginning with MPP Kanapathi. Please proceed.

Mr. Logan Kanapathi: Thank you for coming out, and thank you for your presentation.

My question is for RECO. The Auditor General found that RECO doesn't currently have authority to collect real estate transaction information from brokerages—the number of sales involving multiple representation or number of residential or commercial sales. This makes it challenging for RECO to provide evidence, inform policy and give advice to the ministry. What is the ministry doing about this?

Ms. Renu Kulendran: I thank the member for the question. I also thank the Auditor General for the recommendations.

The ministry does support the registrar's ability to collect information that is relevant in the course of the work that they do. That also ensures that there's confidentiality in terms of certain types of information. We are working with RECO around an implementation plan related to the Auditor General's recommendations, which it reports on quarterly.

With respect to information collection, I'm going to turn it over to RECO to talk a little bit more about the type of information that's currently collected and additional plans in terms of the scope of information collection in the future.

Mr. Michael Beard: Information is always very useful in businesses. One of the great things that's happening with the new regulations are some changes in that regard. It gives the registrar some additional powers with respect to getting information that's relevant and important. I'd like to hand over to the registrar to share with you what that looks like moving forward, which is another win in the new regulations.

Mr. Joseph Richer: Thank you very much for the question. We've talked about a number of things here, including a more risk-based approach to our inspection program. But as Mr. Beard said, it's about data and gathering information to inform the risks that come. So we were very pleased with the ability and the introduction of the authority to request specific transactional information from brokerages.

We will be developing over the next year or so—identifying the types of data we want brokerages to report and introducing an annual reporting by brokerages, which will include a number of other elements that are captured in the reports. We're very pleased with that authority, and we will be looking forward to exercising it and to optimizing it to inform the decisions that we make, both from a regulatory perspective and our ability, as you suggested, to inform our advice to government.

Ms. Renu Kulendran: If I can add, with respect to the additional information that the registrar will be able to

collect to inform education awareness and compliance activities, we'll continue to monitor the impact of that and assess whether additional forms of information are required in order for the registrar to fulfill his obligations.

Mr. Logan Kanapathi: Thank you. My next question—through you, Chair. This is in regard to the criminal background check. It is a serious, serious issue. I found out through the auditor's presentation that there's a big flaw in the system, so it was bothering me. How often will RECO require the registrant to obtain an updated criminal background check from the broker of record?

Mr. Joseph Richer: Thank you very much for the question. We appreciate the observations of the Auditor General and her team.

It's important to understand that we have a robust application process that requires every applicant, when they first become registered, to submit to a criminal background check, so that happens with every single registrant when they apply. On an ongoing basis—biannually, because their registration is good for two years—they are obligated to make disclosures around any activity or changes in their financial situation, perhaps any bankruptcy issues, insolvency issues, consumer proposals and the like. So those all have to be reported in their renewal application.

We will be looking, as the Auditor General had suggested, at ways of identifying, even on a spot-check basis, to see—I think the Auditor General's question was around, "How do you know that they're not failing to disclose something to you?" As Mr. Beard said, we have a very high level of compliance, and we used to have a program, though we could not produce the evidence because it was older. And so, quite rightly, the Auditor General did not consider that. But we did—and we have staff who were around at the time, where we used to spot-check before the changes around criminal background checks, where we used to be able to do them ourselves. We no longer have that ability with the changes to the access of criminal record checks.

At that time, we basically weren't finding anybody who was misrepresenting anything, so we weren't seeing anything at the time. But we appreciate the recommendation. We will be looking to see how we spot-check through this new process, because you can imagine that that means that any one of you who happened to be a real estate agent, on a random basis, would be asked, "Please go get a criminal background check," which will cost you anywhere from \$50 to \$100, depending on which police service you use. That's a cost to those individuals that we will have to consider.

Mr. Logan Kanapathi: Thank you. I'll share my time with my colleague MPP Laura Smith.

The Chair (Mr. Tom Rakocevic): MPP Smith, you have 13 minutes and 20 seconds.

Ms. Laura Smith: Through you, Chair: I'm going to try to continue on from my last conversation. I'm always interested about compliance, and I'm happy to see that measures are being implemented. I believe the members from RECO advised about the high level of compliance and taking action. I'm interested in that action.

Speaking of data-gathering, just circling back: You talked about that, and that's something that actually both

RECO and the ministry discussed. I'm interested in—is there any information about the fines that are being leveraged, or more specifically, the average fines that are happening right now? Either one can answer that at this point.

Mr. Michael Beard: Just for clarification: Are you talking about the effectiveness of the fines?

Ms. Laura Smith: I'm sorry—the numbers, the bad actors, the percentages. I know, as we all talked about, 99% of the world is a positive, good actor, and you get that 1% of bad actors. But I'm just interested in the average fine that is currently happening on an individual who contravenes.

Mr. Michael Beard: I'll ask the registrar to share with you the information on how that evolves, and some of the recommendations that have been made by the Auditor General are also influencing the way that we're looking at this.

With that, I'll hand it over to the registrar.

Mr. Joseph Richer: I think it's important to understand the context of fines. The discipline process is a very humbling process. I have yet to meet a single registrant that was ever boastful about having gone through it or in any way not, you know, eyes down, looking at their shoes, when I've sat across the table—and I've sat across the table from countless individuals who, when they are awaiting a hearing for months, when they're scheduled out months in advance—they're waiting. They receive an allegation statement; they're waiting for that. The matter is on our website, where anyone can see that they've been referred to discipline.

1520

Ms. Laura Smith: So it's very much public.

Mr. Joseph Richer: It's a very public process. So the outcome and the impact on the individual's behaviour goes well beyond just the fine.

Ms. Laura Smith: Fair enough. That's good information to have, to make sure that it's transparent to the individuals.

Mr. Joseph Richer: And it remains on their personal page on our website.

Ms. Laura Smith: Until it's remedied, I'm assuming.

Mr. Joseph Richer: No, for a minimum of five years, actually, after the incident.

Ms. Laura Smith: Oh, really? So even regardless of the outcome, they're—

Mr. Joseph Richer: Sorry. If they are found not guilty, then it would be taken down, yes.

Ms. Laura Smith: Okay. All right. That's interesting.

Ms. Renu Kulendran: Can I just—

Ms. Laura Smith: Actually, I was going to go back to you on that.

Ms. Renu Kulendran: Some of the changes that are taking effect December 1 include the scope and powers of RECO's discipline committee as well. So, fines aside, there are a whole number of tools that come into play if a registrant has contravened any provision of the Real Estate and Business Brokers Act or its regulations. The committee can also suspend, revoke or apply conditions to a registrant in addition to the fines. There's more of a comprehensive

suite of tools that will be available to the registrar as of December 1.

Ms. Laura Smith: Okay. And then there's another phase that's happening beyond that, correct?

Ms. Renu Kulendran: There's actually a phase 3 of regulations, and there are a number of proposals that will be considered in that context, including a proposal for administrative monetary penalties, additional certification for registrants and additional changes, potentially, to RECO's processes and requirements. Part of what we're also doing as we implement the changes is understand their impact, the cumulative impact on the sector, and whether there are additional things that we need to look at: what's working well, what we may need to tweak.

Ms. Laura Smith: So it's a living, breathing organism.

Ms. Renu Kulendran: Yes.

Ms. Laura Smith: I can share the time.

The Chair (Mr. Tom Rakocevic): Who's speaking next? MPP Crawford, you have eight minutes.

Mr. Stephen Crawford: I just wanted to focus a bit more again on the suspicious transactions and the AML, so I guess it's probably more related to RECO, but looking back at the number of cash transactions, starting with that, and then I'd like to go to something else. There were 18 reported in 2021-22; in the previous four years, there were zero every single year. Can you explain? That's a bit of an unusual anomaly for that particular year. Are there any thoughts on why that would be?

Mr. Joseph Richer: We don't administer the legislation that FINTRAC is responsible for. Those are reporting requirements to FINTRAC. So we were pleased with the introduction of the continuing education course that we developed in collaboration with FINTRAC.

I'm not going to speculate on why there were more or why there weren't in previous years, but I would like to think that the excellent course that we developed, in all honesty, helped registrants understand truly what their obligations are, because they are very difficult to understand, and the different circumstances under which the reporting has to take place. It was important that we work with FINTRAC to develop that guidance for registrants, and registrants very much welcomed the course. We had very positive reviews on the course.

Mr. Stephen Crawford: All right. So all real estate agents take a course?

Mr. Joseph Richer: There is a course—they are required to do training under the FINTRAC requirements. This course meets that requirement. So we developed a course because otherwise they would have to go find an independent body, be it maybe a lawyer who has experience in that area to develop training for them or to develop training themselves. So we are very pleased that FINTRAC acknowledged that our course was sufficient to meet their obligations for training.

Mr. Stephen Crawford: And that's mandatory?

Mr. Joseph Richer: Well, it's not mandatory by us, but some training is mandatory by FINTRAC on a biennial basis. They complete ours, and I would say the overwhelming majority of our registrants complete our course,

because it's there, it's available and it's on our platform and readily available for them to complete.

Mr. Stephen Crawford: Following up on that, cash transactions—I can't imagine, personally, who would buy a house with a suitcase of cash, but most money laundering is clearly not cash. We know that there are billions of dollars in Canada in real estate transactions that are money laundering. What more do you feel that your organization can do to further the cause to be able to catch some of this activity?

Mr. Joseph Richer: We will continue to work with FINTRAC to find ways to collaborate, to support one another from an enforcement perspective. We don't have the authority, obviously, to administer each other's legislation, so we are only supporting one another in terms of how we can. We're looking forward to finalizing the memorandum of understanding with FINTRAC in the coming weeks so that we can leverage and work together better to share that information and to address any mischief on the part of those involved in money laundering.

Mr. Stephen Crawford: Do you have data which shows any particular trends in terms of whether this has accelerated over the last few years, this activity? At least, what you've caught or—

Mr. Joseph Richer: We don't, because we don't administer that legislation per se. If there was a registrant that was involved in money laundering in some way, shape or form, and there had been charges laid by the RCMP or another police service, then we would engage with that, and we would deal with the registrant based on that conduct. But we, ourselves, have not identified specific money laundering or prosecuted a registrant under money laundering because it's not within scope for us. It would be mischief under our code of ethics, but the charge, for example, wouldn't be money laundering. It would be creating false documents or the like, but we have not been involved at that level—fraud, yes, but not money laundering per se.

Mr. Stephen Crawford: I know the Auditor General, also—I'm not sure if they recommended that you put in a cooling-off period or looked into exploring the idea of a cooling-off period. Did you have any thoughts on that?

Ms. Renu Kulendran: I'll take that question. We did consult over the summer on a number of proposed consumer protection amendments. I'm going to turn it over to my colleague Michèle Sanborn to talk a little bit about some of the things we've considered.

Ms. Michèle Sanborn: Yes, as the deputy said, we did consult over the summer on a cooling-off period for new freehold homes within the context of our new homes file. We're currently looking at the results of that consultation. There seems to be quite a bit of support for a cooling-off period. We know other jurisdictions in terms of resale homes have a cooling-off period. BC has a three-day cooling-off period, and that is something we're monitoring and looking at.

Mr. Joseph Richer: I would just like to add, a significant portion—I don't have a percentage—of transactions that are negotiated between a buyer and seller do have a

five-day period where a buyer can satisfy certain conditions; for example, financing—that's a very common clause, although it depends on the market. Obviously, if the market is driven—the very hot market we had a few years ago made it very difficult for a buyer to include that type of clause. But a significant number of transactions include that type of—to allow the buyer to make, though it's not a straight up cooling-off period for no reason to cancel, be it for a home inspection or financing. That is quite common in real estate transactions as negotiated between the buyer and seller.

Mr. Stephen Crawford: Okay. Thank you. I have no further questions.

The Chair (Mr. Tom Rakocevic): There's a minute and 40 remaining. Any questions from the government's side? MPP Byers.

Mr. Rick Byers: Thank you for the presentation this afternoon—much appreciated, and your encouraging, frankly, reaction to the AG's report and working towards implementing those recommendations.

Quick question for you: On the board and other changes to your operations, were you looking at those elements before the AG report? I only say that, maybe, going forward, what will be your process—because there won't be an AG report every year. Can you give us some comfort that you'll have processes, whether it's on governance or others, to evolve the operations in a changing market?

1530

Mr. Michael Beard: Thank you for the question. There were a number of initiatives already under way that, when the AG staff joined us, we shared those and continued to move forward and in fact, they were endorsed. One of those specifically was looking at the governance structure of RECO. In fact, the board had already been looking at recommendations that had come through to suggest that moving to more of a balanced structure was a better thing to do. So that was all on the go and under way.

Another item that was very much under way was the risk-based inspection structure. We already had some plans in place; they were already in our plan for that year and our budget for that year to proceed. The—

The Vice-Chair (Ms. Donna Skelly): I apologize to Mr. Beard. Your time is up.

It's now time to move to the opposition. MPP Gélinas.

M^{me} France Gélinas: I must say that I cannot believe I have been an MPP for 16 years and you are a consumer protection agency. I have had numerous people come to my office because they weren't happy, and I did not know you existed. I have all of the resources that an MPP has that nobody else has, and I did not know you existed. How could it be that a consumer protection agency is not known to the public? The Auditor General tells us 87% of the people do not know you exist. Did you know this, and are you satisfied that you can do a good job of protecting the public if they don't know you exist?

Mr. Michael Beard: Thank you for the question. You're touching on a topic that goes through many regulators' minds: How do you get hold of the right person at the right time that falls into the area that you regulate? We've been

looking at that for years and years. We can't go to the place that you're trying to do Super Bowl ads to get name recognition and all that sort of thing, so we have to figure out how we do that.

We've tried a lot of things. We've tried, for example, going to shows that are milestones in people's lives, like, for example, a baby show. You've got a little one coming, maybe you're looking at buying a house. Let's go to the baby show or the retirement show. So we've done all of that, but quite honestly, we've not really felt that we've made that much of an impact through that, because it's a lot of work and it's a lot of cost and there's a value-for-money concept.

We feel that one of the biggest changes with getting what our role is—other than, by the way, being able to google. If you google “Ontario complaint real estate” etc., we usually bubble up to the top of that. So it's important that people know we exist, but what's coming in the new regulations starting December 1 and forever after that is this information guide.

Now, this information guide is key. In fact, we think it's a game-changer, not just in terms of the content of the guide, which is designed to inform consumers about the relationship, what to expect, what their obligations are, and that type of thing, but it's the timing. And it will be mandatory from the 1st of December for a real estate agent, the first time a buyer or seller contacts them and touches them, to say, “And I want you to have a look at this guide.” There's a very, very definitive requirement under the regulations to acknowledge that and for the real estate agent to take them through. We now are in a position of being at the right place and at the right time, which we never heard before.

So hopefully that solves the conundrum that we share with you, which is, how do we get ourselves out there? Because not everybody is looking to buy or sell a house at a particular time, and a lot of that messaging just flies off into the ether. This is a game-changer for us.

M^{me} France Gélinas: Okay. Another thing that surprised me is that the Auditor General tells me that RECO had not updated the checklist for its inspector used to carry out inspections since you were created 25 years ago, when Google did not even exist. How could it be that a consumer protection agency does not update their checklist for 25 years?

Mr. Michael Beard: So you're referencing the checklist for inspections. I'll hand over to the registrar to share with you how that checklist works and the evolution of that. In fact, indeed, inspections attracted the bulk of the recommendations and input from the AG, which has caused us to obviously think and improve the way we do those two. So I'll hand over to the registrar to fill you in on how that works.

M^{me} France Gélinas: Okay. Because I only have 20 minutes, try to really focus on “25 years, no changes; how come?”

Mr. Joseph Richer: Thank you for the question. I think, simply put, real estate transactions themselves have not changed appreciably for decades. You have a buyer and a

seller. The laws remain relatively the same. They have to provide financing, they have to approve financing and the like. There's an agreement of purchase and sale. There's an agreement between the buyer and the brokerage. There's an agreement between the seller and the brokerage. Substantively, the transaction has not evolved per se.

That said, the new approach we've taken with inspections has revised that checklist to look in more detail with different triggers. Depending on the conduct that we're seeing in the inspection, we're introducing different types of inspection, allowing us to escalate. If there are more substantive issues identified, then we will do a deeper dive. For those demonstrating high levels of compliance consistently, then we can spend less time with them and more time with the less compliant folks.

M^{me} France Gélinas: Kind of along the same lines, some of the complaints I was getting—I'm from Nickel Belt, in and around Sudbury. The market was red hot two years ago, so I would get people coming in saying, “France, the real estate agent came on Tuesday. I signed the paper on Tuesday. My house was sold on Saturday. Everything's done. How come I had to pay \$40,000? Who makes \$10,000 a day to sell a house?” The minute they put it in, everybody bid higher than what she had put her house up for sale at, and yet when we ask you, you say, “Oh, no, we don't look at how much they charge. The real estate company decides how much they charge.”

This is consumer protection. Protect the consumers from real estate agents who start charging 40 grand for four days of work. Don't you see this as consumer protection, or is it just me?

Ms. Renu Kulendran: I appreciate the comment and the comments from other members about commission rates. It's something that we'll certainly take back.

I would say that there has been a very ambitious policy and legislative agenda over the past few years to strengthen consumer protections more generally in the sector, and that includes the creation of the Home Construction Regulatory Authority compliance—

M^{me} France Gélinas: It does not include making sure that you don't pay your real estate agent 40 grand for four days of work. I was there when we passed that law. That law does not include this. There is nothing in the law, nothing in regulation, nothing in the rules that they work with that will make sure that consumers are not charged 40 grand for four days of work.

Ms. Renu Kulendran: I appreciate that there's variation in the rates that are charged. They're generally around 4% to 5%. Certainly we'll take the comments of this committee back. It's a marketplace issue more generally, and it's something that needs consultation because it's a big shift. So I would say that I appreciate the feedback, and we'll take that back to the ministry.

M^{me} France Gélinas: Just remember: You exist to protect the public. The public needs to be protected from circumstances that allow real estate agents to make 40 grand in four days. Nobody will say that there was 40 grand worth of work done, but this is what she had to pay.

Interjection.

M^{me} France Gélinas: I want to use my time wisely. Your comment is very short?

Mr. Joseph Richer: Three very quick things: The rules have changed around the disclosure of commissions in the agreements between the brokerage and the individual. There's an obligation to be much clearer around that. I think that's a very positive move. The guide will have information encouraging buyers and sellers to shop around, to look at that, to ask those very questions.

Also, keep in mind that the work that the real estate agent does goes beyond those four days. It goes until the closing of the transaction. I appreciate the concern.

Also to consider: Quite often if that's a seller—assuming it's a seller—that is quite often divided between the seller agent and the buyer agent, but your point is well taken that it's \$5,000 a day, and I appreciate your concern. But it is around making certain that consumers are aware of their rights so they can make informed decisions.

1540

M^{me} France Gélinas: Just to check, for your board of directors, does the board of directors get paid, or is it volunteer work?

Mr. Michael Beard: There is a per diem rate that board members are compensated at, yes.

M^{me} France Gélinas: How much is it?

Mr. Michael Beard: It's \$500 a day, or \$250 for half a day.

M^{me} France Gélinas: And do you have regional representation on your board of directors?

Mr. Michael Beard: No, we don't, and it's one of the areas that can be very confusing, because when you're on the board of RECO as a director, even though you've been voted in by members from different regions, there's an expectation that you represent them. That's a misinterpretation of what's going on. If you're on the RECO board, you're on the board to fulfill your responsibilities, your fiduciary responsibilities, to RECO and its consumer protection mandate to ensure you're doing all the things that boards do. You're setting the direction and strategy for the organization, that type of thing. So it's not a representation structure.

The board is responsible for ensuring good governance, good strategy. There's an oversight responsibility, obviously, of myself and the organization, of the registrar and his work as well, that they fulfill, but there's no representation as such that somebody from a particular region might phone them and ask them to put a case forward on their behalf. We're not structured like that.

M^{me} France Gélinas: I went on your website because, like I said, I did not know you existed. I read a little bit about it. Forty per cent of the people I represent are francophones. I could not find one word in French on your website or anywhere else. Are you able to take a complaint over the phone in French?

Mr. Joseph Richer: Yes. We have a number of our intake officers who are bilingual, who could engage. If necessary, I would certainly engage with them, and I have from time to time. But we certainly have the staff there.

It's unfortunate you couldn't find the French part of our site, but there is a substantial amount that is in French.

We'll certainly have to take that away and look to make sure that it's readily available.

M^{me} France Gélinas: Well, it's not readily, I can guarantee that much.

Vous parlez français? Ah, OK.

Et combien, diriez-vous, de personnes travaillent pour votre agence et combien d'entre eux parlent français?

M. Joseph Richer: Je ne sais pas exactement, mais je dirais environ une dizaine, peut-être.

M^{me} France Gélinas: Et combien d'employés en tout?

M. Joseph Richer: Il y en a 160, environ. Je vais dire aussi qu'on a presque—ça me choque qu'on n'a presque pas de plaintes ou de messages en français. Ça me surprend beaucoup, parce que dans mon domaine—j'étais dans le domaine funéraire avant—deux fois, trois fois par semaine, je parlais français. Ici, je ne parle presque jamais français. C'est surprenant. Je ne sais pas pourquoi.

M^{me} France Gélinas: Vous attendez-vous à ce que ça change—parce que maintenant on sait que vous existez puis on sait que vous pouvez parler français. On ne le savait pas avant. On ne savait pas que vous existiez.

When we talked among ourselves, we looked at making an administrative authority—which is how we describe you in law—covered by the sunshine list, as in everybody who makes over \$100,000 would be added to the list. Do you figure that would cause many grief within your agency, or would you be open to that?

Mr. Michael Beard: I think the administrative authority model that you're talking about is very specifically designed to be separate, for all the benefits of that and also to be strongly overseen—and for all the benefits of that. At this stage, that would be sort of crossing the line, let's say, to go into that world, to share that type of information. But we obviously are aware of the sunshine list.

What sort of impact would that have? I can't speculate on what would happen if that information was released or not. But please be assured that our structure of salaries throughout the organization is something that is closely monitored by the board. We set salaries based on utilizing surveys and resources in the market of what's out there—all different salary levels. We've actually got a pretty robust system in place, and we apply that and the board oversees that. So I just want to assure you that there are some solid processes in place to manage compensation.

M^{me} France Gélinas: I want to come back to real estate agents representing buyers and sellers. Deputy Minister, I thank you for explaining to us what is coming with the difference between a brokerage relationship and a designated representative. For the life of me, I cannot see how an agency that exists as a consumer protection agency would be reluctant to say, "No more representing both."

How could you do a good job of getting the best prices for your client or getting the best money for your client? Those two cannot be under the same hat. How could it be that as a consumer protection agency, you wouldn't do everything possible to move to the recommendations of the AG, the recommendation of some of my colleagues that say, "Let's stop this, the sooner the better"?

Ms. Renu Kulendran: The multiple representation situation could only exist upon consent. We want to make sure that a consumer, the buyer, has a choice—buyer and seller have a choice here. So what we're introducing is this option around designated representation. What we had heard is that, in some communities, there are not as many options. So what this provides for is that consumer choice, and it also provides for a whole bunch of disclosure obligations that didn't exist before, so it's focused on transparency.

We are implementing the changes December 1. We'll watch to see how those changes impact the sector. We're watching what is—BC's changes were only implemented this January, and they're the first jurisdiction to go there. So we're watching what BC is doing to see whether that, based on the general experience, is somewhere that we need to go. But we were very mindful, and we heard back in our engagement that that would be a challenge for some communities.

M^{me} France Gélinas: Okay, so I probably represent those communities where it's a challenge. There are no real estate agents in Gogama, in Biscotasing, in Westree, in Shining Tree—I can name you 33 communities where we have zero. But I can tell you that all of those 33 communities and the people who live in them don't want choice; they want protection.

This is the biggest—we all know that this is the biggest purchase most of us do in our lifetimes. We don't do it often. There's a ton of stuff to learn. Put consumer protection way ahead of consumer choice. The choice to be screwed? Like, what are the choices? You cannot wear both hats under the guidance of consumer choice. You either protect the consumers and make sure that the real estate agents that are trying to get them the best prices are not the same agents trying to get the most money for it—there is no way to reconcile those. And to be told, "Oh, we want to give consumer choice"—this is not a choice that anybody wants.

What they want from their real estate agent is somebody who will go to bat for them to either get you the best price possible for the house you sell or the best price possible for the house you're buying. Put consumer protections way higher than you've ever put it, because it doesn't matter if we look at every single one of the recommendations that the Auditor General has done, if consumer protection had been at the top of the list—

The Vice-Chair (Ms. Donna Skelly): One minute.

M^{me} France Gélinas: —it would have been done already.

So I guess I'll leave it to you. How can you convince us that you will put consumer protection at the top of your to-do list?

1550

Ms. Renu Kulendran: Maybe just in the time remaining, I would say that we have a fairly impressive list of regulatory and policy and legislative amendments over the course of the past few years that are all focused on putting the consumers at the forefront in the home care sector and real estate sector. And I would say that the implication of the changes and the fact that RECO is on track to implement

75% of the Auditor General's recommendations indicates that we are taking this very seriously. We continue to work with the Auditor General's office to implement those changes, as well—

M^{me} France Gélinas: This is what worries me. You are very capable—

The Vice-Chair (Ms. Donna Skelly): I apologize, MPP Gélinas, but you're out of time.

Now, it's time to go to the independent. MPP Collard?

M^{me} Lucille Collard: I guess, maybe, an ultimate question: The audit found generally that the ministry lacks sufficient information from RECO for the ministry to have efficient oversight. I would just like you to tell us, what are some of the priorities that the ministry is contemplating, going forward, to make sure that you develop a better collaboration between RECO and the ministry?

Ms. Renu Kulendran: Thank you to the member for the question. There are a number of things that the ministry does with respect to—I would just talk about the oversight relationship in general. The relationship between the ministry and the entity is governed through the administrative agreement, which is between the minister and the chair of the organization. It's a prescriptive document that sets out the obligations of the administrative authority, including reporting requirements through annual reports and other documentation, and sets out performance measures.

The way the relationship works is we have meetings at all levels of the organization to talk about the work of the administrative authority, so there's regular reporting. We have a regular oversight relationship. We also work through collaboration councils that include all of the administration authorities together.

The administrative agreement is refreshed every number of years, and the administrative agreement between the ministry and the Real Estate Council of Ontario will be updated in 2024. A lot of the things in terms of the recommendations around performance measures information that were raised in the Auditor General's report are things that we are looking into in terms of additional pieces we can add to improve the administrative agreement.

I'm going to turn it over to my colleague Michèle Sanborn. Her division works with all delegated administrative authorities, provides oversight, and also—

The Vice-Chair (Ms. Donna Skelly): You have 40 seconds left.

M^{me} Lucille Collard: Can you just include in your reply if the admin agreement is something that's public as well? It is?

Ms. Michèle Sanborn: So the admin agreement will be public. Those are usually posted on the administrative authority's website. The administrative agreement with RECO, as the deputy said, would be updated in 2024. We wanted a bit of time to incorporate some of the elements of the audit into the administrative agreement, as we've done with other administrative authorities who have been subject to an audit, to strengthen that document and strengthen the oversight.

The Vice-Chair (Ms. Donna Skelly): And that is all the time we have. I apologize. Thank you.

Yes, Madame Gélinas?

M^{me} France Gélinas: Chair, could we have unanimous consent to have one more round?

The Vice-Chair (Ms. Donna Skelly): Do we have unanimous consent to have one more round? No. I apologize, no.

That concludes the time for questions this afternoon. I would like to thank all of you for appearing before the committee today. You are all dismissed.

We will now pause briefly as we go into closed session so that the committee may commence report writing.

The committee recessed at 1555 and later continued in closed session.

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