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**Proceedings of the Standing Committee on  
Government Services**

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Review of the Draft Bill, *Real Estate Trading Act, 2019*

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## **GOVERNMENT SERVICES COMMITTEE**

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Chair: Pam Parsons, MHA

Members: Derek Bennett, MHA  
Derrick Bragg, MHA  
Alison Coffin, MHA  
Elvis Loveless, MHA  
Loyola O'Driscoll, MHA  
Barry Petten, MHA  
Sarah Stoodley, MHA

Clerk of the Committee: Elizabeth Murphy

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Appearing:

### **Department of Service NL**

Jamie Chippett, Deputy Minister, Regulatory Affairs

Renee Dyer, Superintendent of Real Estate

Michael Delaney, Assistant Deputy Minister of Regulatory Affairs

### **Newfoundland and Labrador Association of Realtors**

William Stirling, CEO

Edward Hollett, Manager, Communications and Member Engagement

### **Also Present**

Kim Hawley George, Law Clerk

Bobbi Russell, Policy/Communications Officer

Ted Whelan, real estate agent and mortgage professional

The Committee met at 9 a.m. in the Assembly Chamber.

**CHAIR (P. Parsons):** Order, please!

Good morning, everyone, and welcome to the Government Services Committee hearing. This morning we have convened to review the draft bill entitled An Act Representing the Regulation of Real Estate Trading in the Province. A new bill, which if passed by the House, will replace the *Real Estate Trading Act*.

The current act dates back from 1965. The bill we will discuss today is intended to modernize and improve the legislation and regulation of the industry, taking into account modern standards and technology, among other things. The predecessor of this Committee in the 48th General Assembly began the review process before the dissolution of the House. We are continuing the work begun by that Committee.

The last time a bill was referred to a Standing Committee was in 2002. Between 1989 and 2002, a number of bills were reviewed in this way, either in draft form or after second reading. The procedure today will be as follows: The presenter will have an hour and a half to speak, including time for answering questions from the Committee. Members will have 10 minutes to speak and may do so as often as they wish.

We ask that you identify yourself each time you speak for the benefit of Hansard and the Broadcast Centre. Before we start, we invite Members and presenters to introduce themselves. We'll start with the Committee.

**MS. COFFIN:** Alison Coffin, St. John's East - Quidi Vidi.

**MR. BENNETT:** Derek Bennett, MHA, Lewisporte - Twillingate.

**MS. STOODLEY:** Sarah Stoodley, MHA for Mount Scio.

**MR. O'DRISCOLL:** Loyola O'Driscoll, MHA, Ferryland.

**MR. PETTEN:** Barry Petten, MHA, Conception Bay South.

**MR. CHIPPETT:** Jamie Chippett, Deputy Minister, Service NL

**MR. DELANEY:** Michael Delaney, Assistant Deputy Minister of Regulatory Affairs with Service NL.

**MS. DYER:** Renee Dyer, Superintendent of Real Estate.

**CHAIR:** I'm Pam Parsons, MHA for Harbour Grace - Port de Grave.

Mr. Chippett, if you'd like to start, you can begin with your presentation.

**MR. CHIPPETT:** If it's okay, Chair, I just have a couple of opening remarks before the presentation.

**CHAIR:** Sure.

**MR. CHIPPETT:** I'll be brief.

Good morning, everyone, and thank you for the opportunity to be here today. As the new Deputy Minister of Service NL, I'm pleased to have this opportunity to speak to this significant piece of legislation, namely the *Real Estate Trading Act*. I'm equally pleased to have the departmental experts on these matters with me: the ADM for Regulatory Affairs, Michael Delaney and the director of Financial Services Regulations, Renee Dyer.

The Department of Service NL is the regulator for various professions and services throughout all of Newfoundland and Labrador. We all know that in every region of our province, individuals buy and sell homes every day. We know it can be the largest transaction a person will make in their lifetime.

Our goal as a department is to provide advice for the best possible legislative framework in which this transaction takes place, to meet the needs of the people of the province. We also want to ensure that real estate professionals have the appropriate mechanisms to help them provide a service in which consumers could have the utmost confidence.

Just a little bit of background, in terms of the process, to get to where we are. The current act

was proclaimed in 1965, as the Chair mentioned. Since that time, no substantial changes were made. In 2012, government engaged with industry in reviewing the act, which reinforced the view current legislation is outdated. In 2017, Service NL launched public consultations and gathered feedback from a number of sources. Staff met with key stakeholder groups to discuss issues of importance and potential changes. Feedback was also gathered by email and online at government's EngageNL portal. Ninety submissions were received during that process.

I want to acknowledge the contributions of the Newfoundland and Labrador Association of Realtors during this process. NLAR conducted its own meetings throughout the province and the feedback from these sessions was part of their submission to government.

I'd like to thank Bill Stirling specifically and the entire NLAR for their tremendous support and focus on helping bring about improvements in their industry. Through our review of this act, as well as the feedback through the consultation processes, several areas were identified that merit significant amendments, as well as a need to clarify language to ensure it is modern and clear.

A very important part of the process was trying to find the balance between the needs of consumers and the needs of those involved in the industry. The amendments cover everything from trust deposits and a recovery fund, to personal conflicts of interest and the establishment of personal real estate corporations. These are a few highlights but there are also additional amendments dealing with orders that can be issued by the superintendent, use of the term broker instead of agent and clarity to the act's language.

I'd just like to take a minute to thank the minister, the executive and, specifically, my predecessor, Sean Dutton, who would have really been involved in all the work on this; officials of Service NL, who worked hard to help bring about the changes we are discussing here today; and thank the staff who work day in and day out in this field.

Lastly, I look forward to the discussion with the Committee. We appreciate the opportunity and

look forward to any questions you may have. I'll run through the PowerPoint.

We've already started and stated a couple of times that the *Real Estate Trading Act* was introduced in 1965. There was a review in 2012, including some consultations, but no amendments proceeded at that time. There was a commitment to restart or redo the review in the minister's mandate letter and in *The Way Forward*. We've talked about already as well that the Newfoundland and Labrador Association of Realtors conducted their own consultations, released *What We Heard* and provided recommendations to government in their submission after consultations.

Through EngageNL.ca a survey was conducted and a *What We Heard* document released. As I mentioned earlier, there were 90 respondents to that particular survey.

Next slide, please.

**MS. COFFIN:** (Inaudible.)

**CHAIR:** It's up to the Committee. So are we okay with that, to go back and forth? Or did you want to ...?

**AN HON. MEMBER:** What's the time on this?

**CHAIR:** Hour and a half.

**AN HON. MEMBER:** (Inaudible.)

**CHAIR:** Yes.

**MS. COFFIN:** Will we save them until the end or can do this as a back and forth, whatever works for everybody. I can save it. That's no problem. I'm just wondering what the format is.

**CHAIR:** Okay, so we will decide. Do we want to do this back and forth or should we wait?

**MS. COFFIN:** What works for you?

**MR. CHIPPETT:** I'm fine with either.

**CHAIR:** Nothing from the Committee, so I guess we're fine.

**MS. COFFIN:** Okay, lovely.

In terms of the What We Heard, was that both industry and civilians, or individuals who were buying homes?

**MR. CHIPPETT:** It depends on – there were a couple of What We Heard documents; one was from industry.

**MS. COFFIN:** Right.

**MR. CHIPPETT:** Then there were results, I think, from the EngageNL survey that formed a part of government's What We Heard document, if you will.

**MS. COFFIN:** Okay, just wanted to make sure that we're getting both perspectives.

Thank you.

**MR. BENNETT:** I have one quick question.

**CHAIR:** Okay.

**MR. BENNETT:** I'm just wondering, you say in 2012 there was a complete review done. What was the process used in 2012 versus the process now? There were no amendments in 2012 and here we are seeing 53 recommendations that were put forward.

**MR. CHIPPETT:** I don't think there's anybody on this side this morning that could speak to why, from 2012, but I do know there was a consultation done. There were, I think, 18 submissions through that process, but, obviously, SNL is a department with lots of legislation, and I can imagine you prioritize over time.

Renee, do you have a comment on that?

**MS. DYER:** At that time, there was a submission that went out. While there was great feedback, the quantity of the feedback was low. For those reasons, based on priorities, it didn't come to fruition.

**MR. BENNETT:** Okay, thank you.

**CHAIR:** You can proceed.

**MR. CHIPPETT:** Thank you.

The next slide just speaks to a change in terminology that you'll see throughout the draft bill. It was considered to be the industry norm to refer to a broker rather than an agent, so that's changed in the Interpretation section and then throughout the bill. In particular, it's in section 2(1)(b).

There are changes in the bill as well with respect to licensing requirements. Obviously, the overall objective, which was the goal of both the departments and NLAR, was to provide more stringent requirements to register as a broker or a salesperson. So, specifically, section 7(1)(a) allows the superintendent to set the form of the applications for licence. Section 7 would require a criminal background check. Section 12(f), licensees would have to notify the superintendent of information changes.

Regulations would prescribe the requirements, qualifications and conditions for issuing licenses and would allow the superintendent to modify licence requirements. That's section 47. The minister would have the ability, under section 48, to set new fees or establish new forms.

I know that through the EngageNL consultations, the response that got the highest percentage in favour of any question in the questionnaire was the need for continuing education requirements. So the act in section 5(1)(b) would allow the superintendent the authority to prescribe continuing education requirements.

Next slide, please. Thank you.

Incorporation is addressed. Again, a lot of these amendments are about modernizing or recognizing current practice that is more common in other jurisdictions than here. So the act allows a salesperson, or salespersons, to establish and operate personal real estate corporations, similar to other independent contractors in other industries. The bill allows that in section 10. Section 9 says a personal real estate corporation could apply for a licence, and a licence could be issued to such corporation through the authorities in section 6(1)(e).

Generally speaking, the current act speaks more to an employer-employee relationship; whereas, in a fair number of the other jurisdictions, it

speaks to independent contractor status. This section of the act, the proclamation would be subject to changes to our IT system within Service NL.

**MS. COFFIN:** Thank you.

In terms of incorporation, I understand that you often incorporate to protect the individuals operating in the corporation, and it gives you different legal rights, legal responsibilities, but also legal protections. Will this have any impact on the consumers?

**CHAIR:** Just a reminder, if we could all introduce ourselves prior to speaking, every time, for Hansard.

**MS. COFFIN:** Got it. Okay.

**MR. DELANEY:** Ultimately, not to a great deal. I think a large percentage of this really, as I said, for incorporation is almost for tax purposes as well.

**MS. COFFIN:** Right.

**MR. DELANEY:** Really, it's allowing these individuals to change their tax set-up. The consumer is not going to notice the difference, other than it's really going to be behind the scenes where this individual is going to have to go and register as a company and file different taxes and things like that. But it won't be obvious, necessarily, to the consumer, the difference.

**MS. COFFIN:** Okay.

You've kind of opened up a slightly different path there. If taxes have changed – and I think corporate taxes are very, very low, which is substantially different than, say, an income tax. Has anyone done any analysis on what the effect would be on government revenue?

**MR. DELANEY:** The expected take-up of this is extremely low.

**MS. COFFIN:** Okay.

**MR. DELANEY:** So this is not something that really – I think the indications we got was that there's really only maybe 10 to, maybe at most,

20 individuals that might look to incorporate. This is not expected to have any material impact in terms of the tax base.

**MS. COFFIN:** Okay. I'm just thinking that there might be some, just given that the rates are slightly different. So that would be an interesting thing to watch.

Thank you.

**MR. CHIPPETT:** So we're on the slide entitled errors and omissions insurance, and this is really recognizing a standard that pretty much exists in a lot of the industry. So the new bill will require real estate brokers and salespersons to maintain errors and omissions insurance to protect professionals whose clients could claim damages as a result of that professional's negligent actions.

Section 7(1)(f) is the section that gives that authority or requirement. The amount of insurance would be set in regulations. You'll hear a few times throughout the presentation that there are things that will come a little bit later in regulations in terms of the details. We do say here that a million dollars in errors and omissions insurance is what we understand to be the industry standard.

The next three slides actually relate in one way or another to a code of conduct. During the consultations there was also a very high percentage who favoured the development of the code of conduct. We do know that the local association, provincial association, has a code of conduct for its members, but there's no legislative requirement around that. Similarly, the national association has a code of conduct as well.

This bill would allow the superintendent in SNL to establish a code of conduct. The section reference is 5(1)(a). Then, as I said earlier, further details would be provided in the regulations, including the ability for the superintendent to suspend, revoke or cancel a licence for a breach of the code. That is in terms of the regulation-making clauses, section 47.

**MR. BENNETT:** Madam Chair, a quick question. How does this relate to other jurisdictions regarding the code of conduct and

the ability of the superintendent to enforce these?

**MR. CHIPPETT:** I'm going to defer to Michael or Renee, but I do know a large number of the other jurisdictions have a code. I'm going to say PEI may be the only one that doesn't. I'm getting nods, so every other jurisdiction with the exception of PEI.

**MR. BENNETT:** Thank you.

**MR. CHIPPETT:** Next slide, please.

Conflict of interest is, obviously, closely related to code of conduct. The act would establish restrictions on salespersons providing real estate and mortgage brokerage services. There was considerable feedback but it was mixed on this particular question. The bill would restrict a licensed real estate salesperson from providing both real estate services and mortgage brokerage services to the same client during the same related business transaction. That's in section 28.

Lastly, in terms of things that relate to the code, the act would establish disclosure requirements for referrals by real estate brokers and salespersons for related services such as mortgage or inspection services. There is no such requirement today. In particular, in the second bullet here, we make reference to the fact that where there's a fee involved then disclosure would be required under section 20. Again, the code of conduct, which would be a separate exercise and be developed outside of the act itself, would provide further details on that.

**MR. PETTEN:** On the code of conduct, the conflict of interest and whatnot – enforcement. I know you have a superintendent of the real estate but how do you enforce real estate agents? They are everywhere. How do you know?

All this stuff sounds good in theory everywhere but it's all about enforcement. How will this be enforced? How do you know the referrals – I'm just wondering, thinking to myself, with a real estate agent it's pretty personal when you meet the buyer buying the house – the real estate agent and the person buying the house; it's a very personal relationship for a few weeks.

They're dealing and they're saying, well, you go get this inspector or I'll get this one.

How do you police that? I guess that's the question with all of this stuff. Or is that just an honour system?

**MR. DELANEY:** Certainly, I think that's the crux of the question. I think part of it will be answered in a couple of the slides in terms of the orders and the ability to issue fines, but coming back to the specific question, first, it's public awareness about what the rules are. It's one thing to have new legislation, but if the public, the actual individuals who are buying or selling, aren't really aware of the rules that their broker or salesperson are held to account, then they're not going to know to question things. If the public is aware, then a lot of the things we see through the regulatory enforcement are issues that come forward from the public.

The public will complain to Service NL maybe raising an issue that they were aware, maybe after the fact, that there was some kickback on a referral. They didn't know this home inspector knew this broker and they question Service NL about it. We would do an investigation to see if the code of conduct in terms of the disclosure was provided to the individual. Again, recognizing, in some cases, the disclosure was there but it was buried in paperwork and the individual may just not have read it and understood it. Again, I think it's making sure that the public is aware around the boundaries and what's acceptable and what's not.

The other way would be through monitoring. Certainly, we have the ability to inspect documents or request – we review sales agreements and things like that, purchase and sales agreements, because if money goes into a trust account and there are some question about it, we'd be able to see the actual agreement itself and maybe would identify issues.

So there's a wide variety, but I think the key is that the public is aware about what's acceptable.

**MR. PETTEN:** How would you make the public aware? Is there a way, when your real estate agent engages with a buyer, some sort of handout, information sheet – these are your rights. You can do a public awareness campaign,

but if the buyer does not know these are the rules that the real estate agent is supposed to operate under, again you are left in – most buyers probably would not know.

I'm just trying to get the information to the buyer that these are your rights. So if they violate your rights, well then it's incumbent upon you to bring it to the superintendent or whatever. I'm just wondering how you bridge the gap there. That seems to be a gap in the ...

**MS. DYER:** Oftentimes in our department, even though we feel that the public isn't aware, you just need a couple of instances and then all of a sudden news travels, but there is a complaints process. They would call in to our department, they would lodge a complaint and there would be a review. With the stronger legislation now, there's an opportunity for fines, for enforcement, for publicizing any type of contravention to the legislation. That really deters others from doing so.

One of the first things we're going to do is, certainly, educate and work with the real estate agents, making sure they understand the legislation and it's clear to them and understanding what the parameters are – if legislation is in contravention, what the fines, the administrative penalties are. So there's a lot more substance now with the new legislation that our department can provide a much stronger enforcement that, previously, we would have had to go to the courts to decide.

I think we're at a point in our department – we do have an investigative team that would go out and do investigations as well, but I think in working with NLAR, the association, working with the salespeople and working with the public in educating them further, it's going to be a period of time but you only need a couple of instances and all of a sudden everybody starts to fall in line pretty quickly.

**MR. O'DRISCOLL:** I'm just wondering on the inspection basis, would they have a sheet or a questionnaire that they would follow, all being the same for those guys that are doing the home inspections part of it.

**MS. DYER:** Well, some of the questions that come up are – purchasing a home is a pretty big

investment, so you really rely on a home inspection to ensure that everything is up to standard. Some of the complaints that we get is that the home inspector didn't find three or four things that potentially are substantial and they never would have purchased that home had they known otherwise.

They may find out that there was a strong relationship between this home inspector and the salesperson. What will need to happen now under the code of conduct is full disclosure. So if there is any relationship, any type of commission, referrals, fees that are being paid to a home inspector or the home inspector is paying the salesperson, it will have to be disclosed in advance.

**MR. O'DRISCOLL:** Okay.

**MS. DYER:** Any type of conflict of interest will have to be disclosed in advance to the purchaser of the home. What we're finding now is a lot of salespeople are providing three to four different options from a home-inspection perspective. They don't want to kind of taint the waters on any one home inspector. It's part of providing a better service to your customer that you're providing three or four different home inspectors. It's based on reputation, so you certainly want to make sure that your customer is happy and that the home inspection does meet those standards.

**MR. O'DRISCOLL:** Thank you.

**MR. CHIPPETT:** I'll just add one thing to that particular question. On the code of conduct piece the industry, the association was very much in favour of that, so we do expect that a lot of – obviously, the onus at the end of the day is on the agent, the broker or the salespeople to follow the code. I think there's a strong interest within the industry as well to be kind of upping their game with respect to certain aspects of their business.

We're on the slide entitled Recovery Fund. This really is a major consumer protection initiative. The goal here is to create a Real Estate Recovery Fund to protect consumers from financial loss in cases where a broker or salesperson is convicted of an offence, has a civil judgment made against them or declares bankruptcy. These would



replace the current bond requirements that are in place over time. Obviously, some of those existing bonds need to live out their time before you would move to the new Recovery Fund.

The bill would create the fund. The notion is that it would be financed by industry participants and managed by Service NL. That's in section 25 of the act. The regulations, again, would set out the details on the how; in other words, how licensees would contribute to the fund and the administration of the fund. Again, this is used in several other jurisdictions in the country.

On trust deposits, the goal here, the intent of the legislation, is to streamline the release of trust deposits where the conditions in a purchase and sales agreement have not been met. The bill would allow the deposit – this is really practice. It would confirm that the deposit could be released according to the terms of the contract signed, and that's in section 26(4). It would also enable the superintendent to direct the disbursement of the deposit in 26(4)(e). Further details would be reflected in the regulations, and section 47 is the regulation-making clause in the bill.

Question?

**MS. COFFIN:** In terms of the trust account and the Recovery Fund, does that exist right now and we're just putting more terms around it? I'm sorry, I'm not quite sure if I understand what's going on there. I understand what the first one is, the recovery account, if stuff goes wrong from the buyer's perspective or from the realtor's perspective, but this trust account, is that established when the negotiation is happening? Just a little more detail on that for me, please.

**MR. DELANEY:** Yes, so trust accounts exist right now.

**MS. COFFIN:** Right.

**MR. DELANEY:** So in terms of you agree to purchase a home, you give your deposit to the broker, who is required to place that money in a trust account, so held in trust. And certainly, the purpose of the recovery fund is to ensure that if something was to go awry, that the recovery fund would be able to make whole any issues with a trust account.

But the improvements – and it was something, again, that industry was looking for, is that there are a lot of issues with this money that gets placed into trust and there's an agreement that's signed, but the agreement falls through due to one issue or another, and then there's a dispute over who is entitled to the money that's been held in trust.

So, right now, there's a considerable amount of money that is really in limbo because the broker is unclear about who the money should be released to, and really the only mechanism is to go through the courts to have that money released. Again, the intent here is to, (a), clarify that if the agreement is clear in terms of who the money should be returned to, then the broker should be returning it to that party. And if not, if there's some ambiguity around that, that the superintendent would have the ability to adjudicate and then direct who would receive the money.

**MS. COFFIN:** Okay. So it's a simplification?

**MR. DELANEY:** Yes.

**MS. COFFIN:** Wonderful, thank you.

**MR. CHIPPETT:** So that's a perfect segue into the next slide, which is around aged trust deposits. And so the intent of the legislation here is to establish a mechanism for disbursement of aged trust deposits without going to court. So the bill, in particular, would allow the superintendent to adjudicate disputes over trust deposits. So that's in section 27.

It would also enable unclaimed trust money that had been in trust for more than two years to be paid into the Recovery Fund that we talked about earlier. That's in section 27 as well. Again, the regulations will put in the detail around the superintendent making decisions on the disputed trust deposits.

**CHAIR:** The Chair recognizes MHA Bennett.

**MR. BENNETT:** With regard to the decisions made by the superintendent, is there an appeal process if the buyer or the seller does not agree with it?

**MR. CHIPPETT:** Any decisions of the superintendent can be appealed to the Financial Services Regulation board.

The next couple of slides relate to the concept we talked about earlier with respect to enforcement. Obviously, any good regulatory system needs to have good enforcement and fines and penalties associated with it. In terms of administrative fines and penalties, currently, there were no such allowances in the act for those. So the intent of the legislation is to establish those for minor infractions and provide authority to publish the administrative decisions.

The bill would allow for these fines to be assessed by the superintendent for specific contraventions of the act. That would be section 35. The maximum fine would be \$10,000, set out in 36(1)(c) and the regulations would outline the specific contraventions and the time amount and manner of payment of fines.

**MS. COFFIN:** In terms of the \$10,000 limit, will that be sufficient or is that something – I guess the legislation will be reviewed on a periodic basis so that could scale. So that \$10,000 is deemed sufficient to cover off anything that might be, I guess, a breaking of those rules, but is that something that should be associated with the value of the house or is it something that should look at being scaled or will that be taken care of as we review the legislation into the future?

**MR. CHIPPETT:** First of all, these are for minor infractions.

**MS. COFFIN:** Right, okay.

**MR. CHIPPETT:** I'll let Renee, I think, speak to some of the things that – this could be as simple as reporting that the department should get that we don't get and so on. I think it is sufficient, but in terms of the specific types of things, I'll just turn that over to Renee.

**MS. DYER:** I do think it is sufficient at present. We have to walk before we run in this place.

**MS. COFFIN:** Okay.

**MS. DYER:** Most of these would be for administrative infractions. So, oftentimes, we're

challenged with certain real estate agents to file on time to get their licensing renewal information into us and their fees, and it can create a lot of additional work from a department perspective. So introducing an administrative fine to pay your fees and your information on time or you will be charged an additional fee, I'm hoping that we'll certainly get a higher submission of their fees and their information.

It could be for not disclosing the appropriate information to non-disclosure of having relationships, referral fees, or inappropriate conduct from a salesperson perspective. The infraction would determine the type of fine and we would certainly look to the other jurisdictions and what they've done in the past and follow a similar type of approach.

**MS. COFFIN:** Thank you.

**MR. CHIPPETT:** We're on the slide now entitled, court imposed fines. Again, the intent of the legislation is to increase fines under the act from the current range of \$1,000 to \$2,000, which would strengthen the regulatory system and promote greater compliance.

The bill that the Committee has in front of it would increase the maximum fine for individuals or incorporated bodies to \$50,000, where the person is found guilty of an offence for contravention of the act. That's laid out in section 45.

**MS. STOODLEY:** On section 45(3), it talks about the fact that if an offence continues over more than one day, they're liable to be convicted for a separate offence. I guess if it goes over three days, they get convicted potentially three times and get three fines.

I was just wondering if you could elaborate on how that would work and what an example of a conviction would be where something continues over more than one day.

**MS. DYER:** Sorry, what section were you referring to?

**MS. STOODLEY:** Section 45(3).

**MS. DYER:** Okay, 45(3), just to make sure.

What I would say is that any offence over a period of time we would certainly look at every incident and judge accordingly. If someone's fees weren't paid for the third day in, we wouldn't look at it as three different infractions; we would look at it as one. It really is dependent on the circumstances, but we wouldn't look at three different offences just because it was over a three-day period.

**MS. STOODLEY:** Thank you.

**MR. DELANEY:** I think this relates more so to the offences than the administrative issues. This is where there's clearly been contravention of the legislation. I guess the current legislation recognizes first-time offences versus second-time offences. That has been changed in terms of the bill that's being presented to the Committee, but still the concept of if there has been multiple infractions that we don't want the legislation, I guess, to limit that you can only seek an offence for that. If they're repeating the same offence over and over again, and it refers to one day, but I guess you can consider if there's been non-compliance and maybe money being removed from trust accounts or something significant, and they've even been warned by the superintendent and then they repeat the issue maybe a week later, but you can consider it two, three months later, that there's the ability to recognize that there's actually been multiple breaches of the legislation. Then each infraction can be brought forward to the court as a separate offence. Again, the court can then consider that when issuing any fines.

**MS. STOODLEY:** Okay, thank you.

**MR. CHIPPETT:** This speaks to enforcement and also to some of the additional regulatory authority that the department would be given. The goal here is to allow the superintendent to issue orders to correct the situation deemed not in the best interest of the consumer. So this speaks, I think, to MHA Petten's question earlier as well.

The bill would allow the superintendent to issue an order to suspend or cancel a licence, impose additional conditions on a licence and pay a fine of up to \$10,000 or some other order prescribed in regulations. That's laid out in section 36. As we talked about earlier, appeals to any of the

superintendent's decisions could be made to the Financial Services Appeal Board.

This is our last slide and it's on housekeeping and proclamation. The bill provides for the appointment of a superintendent and deputy superintendent by the minister, rather than Lieutenant-Governor in Council. Just to talk a little bit to the rationale related to that, these positions are public service positions that are hired through a merit-based competition process of the Public Service Commission. Really, they would happen through the normal competition process and come up through the deputy and the minister in the department.

There have been plain language amendments throughout the act and a reorganization and modernization generally throughout the act, just in terms of readability and organization. At present, it indicates that the law would come into effect on January 1, 2020, except for sections dealing with the Recovery Fund and personal real estate corporations, which would be proclaimed once the appropriate administrative measures are in place. And that's in section 54.

**CHAIR:** Do you have any questions?

MHA Stoodley.

**MS. STOODLEY:** When I was speaking with my real estate colleagues about this bill, they seemed very excited, so that's good because I'm not a real estate expert. But there was one area where they understand that the legislation is changing that I didn't see, and I couldn't pick out in the legislation.

I was wondering if you could speak about how this is protecting or informing consumers and the general public if a real estate agent is both representing the seller and the buyer. Is that covered in the legislation, and how so? What changes are being put in place when the same person is both representing the seller and the buyer?

**MR. DELANEY:** So, yes, dual agency – in terms of the consultations, that was one of the areas where there wasn't a clear direction, consensus in terms of whether, for example, to restrict dual agency. So British Columbia is the only province that actually prohibits dual

agency, I believe, in certain circumstance. I'm not sure even in all circumstances. And that was certainly something that was considered. When you think about the rural impacts of that, there are concerns in terms of you have some smaller regions around the province where there may only be one broker, and then forcing one of the parties to find someone else, there are concerns with that side of it.

So the approach that's been taken will be to deal with that more through the code of conduct and the disclosure requirements, just to make sure. This works well in other jurisdictions. I used to live in Nova Scotia and I remember purchasing a home there, and there were these disclosure requirements around the dual agency, just to make sure that you're aware that the broker is working for both parties, or the salesperson is working for both parties.

We'll certainly be leveraging the disclosure requirements in other jurisdictions. There hasn't been a lot of public – it's identified as a potential conflict of interest, and I would speak for the department, but we haven't seen a lot of issues come forward to the department around this. I think the industry is accustomed to dealing with this, and really what we want to do is make sure that the rules, the code of conduct, are clear for everybody in industry so there is a standard approach in terms of dealing with this.

**MS. STOODLEY:** Okay, good.

Just a follow-up question then. In terms of the disclosure and the code of conduct, if I was selling my house and my real estate agent was also dealing with the buyer, how would I know – I guess I probably would see the same email address on my emails. In terms of the disclosure, how would that pragmatically look like for the buyer or the seller?

**MR. DELANEY:** Some of it will have to be kind of worked out in specifics, but you can certainly see that there would be documentation, to some extent, provided to the individual or, certainly, that it would be verbally explained to the individual that I'm representing the other party in this and explaining how that could potentially create a conflict and assure the buyer or the seller that the salesperson can assure them

that they can deal with that and treat both parties separately.

At the end of the day, the individual would then have the choice to say no, I'd rather deal with someone else. I think as long as they're aware, and, certainly, part of it may be if they want to call into the department to get some information from the superintendent of real estate around what they means and what the potential risks are, you could envision that as part of the solution as well.

**MS. STOODLEY:** Okay, thank you.

**CHAIR:** Okay.

MHA Bennett.

**MR. BENNETT:** First of all, I just want to commend the department for the great job they did in the public engagement part of it, getting the feedback from the realtors' association and all the public consultations and through EngageNL.

Through the process, were there any other issues of significance identified by either of the groups that are not being addressed now in the legislation that would address further concerns?

**MR. CHIPPETT:** I don't think so. I think everything has been addressed in one way or another. I think, obviously, there are some things – the details will come later when you do the regulations, but the things that got high percentages of feedback in the survey were the things like clarity around trust deposits, the continuing education piece and code of conduct, in particular, was a high one as well.

Anything that came up multiple times or what have you, that we would gage to be either an issue raised by the public on a frequent basis or the realtors on a frequent basis, I think, have been addressed.

**MR. BENNETT:** Good, thank you.

**MS. COFFIN:** I like this. I see what the industry has done around protecting consumers, which is very, very important. I see what's been done around protecting the industry and establishing a high standard within that industry,

and that's very reassuring as well. One of the quotes is: I don't want a criminal in my home. Good, I'm very happy to hear that.

I guess something that I'll look forward to seeing is how they roll out the professional development training and what standards that comes from, where that belongs and things like that. That will be a very interesting piece, but I think that will strengthen the industry as well.

I guess one piece that might be an issue – I didn't see anywhere in your presentation, but does this new legislation mean that everyone buying a home must go through a realtor; someone certified under this? Because I know, at your own peril, people can buy houses without going through a real estate agent. I thought I saw one little piece there where someone doesn't have to be registered or doesn't fall under it, but I think that was a legal person.

So is that still possible under this legislation or does everyone have to get funnelled through this piece?

**MR. CHIPPETT:** The existing arrangements would still apply.

**MS. COFFIN:** Okay, good. That's reasonable.

Competition in an industry is very important as well. Will this reinforce the standards around professional conduct and relationships in terms of money and all of those things, and relationship with government? Does it dampen the competitive spirit within the industry? That's a concern as well.

**MR. DELANEY:** No, I don't think – it's not changing. So, I guess, one of the considerations or one of the potential models would be, for example, co-regulation with the association or providing the association more of a – making them responsible for the enforcement and the regulation.

When I say the association, the Association of Relators, NLAR. I think they had indicated, and they certainly indicated to the department and they indicated in their documentation, that, at this time, they're not interested in a co-regulation type approach. They are happy enough, I guess, to be the association and allow

the legislation and the superintendent to be responsible for enforcement.

Part of that, I guess to go back to your question, not all of the brokers and salespeople are part of NLAR. There are those, a relatively small percentage, who are not and this again is not looking to require any of those individuals to join up with the association or change, I guess, the current arrangements that are in place.

I think when you move towards some of the enhancements around, certainly, the continuing professional development, code of conduct and those types of things, that's why the department will then be responsible for rolling that out and making sure that it is accessible. For example, training, if there's minimum professional development requirements, that it's accessible to brokers and salespeople in all regions of the province. Again, you can envision not maybe having it in person, but there's more online availability in allowing that.

It's not to prohibit any individual from becoming a professional. I think there will be – and it's something industry is looking for – enhanced standards and, certainly, there is a licensing requirement now and an examination in terms of becoming a salesperson. Again, not looking to necessarily open it up to everyone, but allowing those who have the qualifications to operate a business.

**MS. COFFIN:** Okay, good.

I think you've answered that quite reasonably. What I was worried about was there would be undue barriers to entry to the industry, but that doesn't seem to be the case. There are higher standards, but as long as you can meet those standards you can get in. So, yeah, that's quite reasonable.

Thank you.

**MR. O'DRISCOLL:** Just a question on the salesperson.

A new person going in getting some help from another salesperson, is that actually in the legislation? I don't know how someone that's already – that was in this when I was reading this information before; I don't know how that

person that's already there is going to help someone else. Sometimes that doesn't happen as easily as you would think, from being a former salesperson.

**MR. CHIPPETT:** There was certainly discussion of that throughout the process. Again, when you think about the conversation we had about do you eliminate, for example, the notion of dual agency. There's some concern when you put a rural lens on things that an experienced person in a given area might not even be in existence.

I think the association was certainly talking about the value of that, but concerned about the limitations in some areas of the province. I think you'd see that mentorship happening in, obviously, the different organizations between more senior salespeople and newer people, but there's no requirement in the legislation for it.

**MR. O'DRISCOLL:** Okay, good enough.

**CHAIR:** Okay, any further speakers?

You guys are all good?

Okay, on that note, I guess we can recess until 10:45 for our next group.

Okay, thank you.

### Recess

**CHAIR:** Okay, I think we're ready to get started.

Good morning everyone and thanks for coming.

The procedure today will be as follows: The presenter will have an hour and a half to speak, including time for answering questions from the Committee. Members will have 10 minutes to speak and may also do so as often as they wish; however, last time we kind of had open dialogue all the way through, so if that's okay we can certainly proceed the way we did last time.

We ask that you identify yourself each time you speak for the benefit of Hansard and the Broadcast Centre.

Before we start now, I'll ask members to introduce themselves.

We'll start with the Committee.

**MS. COFFIN:** Alison Coffin, MHA, St. John's East - Quidi Vidi.

**MR. BENNETT:** Derek Bennett, MHA, Lewisporte - Twillingate.

**MS. STOODLEY:** Sarah Stoodley, MHA, Mount Scio.

**MR. O'DRISCOLL:** Loyola O'Driscoll, MHA, Ferryland District.

**MR. PETTEN:** Barry Petten, MHA, Conception Bay South.

**MR. STIRLING:** I'm Bill Stirling, I'm the CEO of the Newfoundland and Labrador Association of Realtors.

**MR. HOLLETT:** Ed Hollett, Manager of Communications and Member Engagement.

**CHAIR:** I'm Pam Parsons, Chair of the Committee and MHA for Harbour Grace - Port de Grave.

Now, we will get started.

**MR. STIRLING:** I just have some opening comment, I guess, to begin with and then ready to answer whatever questions the Committee may have.

Before I begin, I'd just like to start by offering my congratulations to anybody who's been elected for the first time, and for those of you coming back, congratulations on your re-election. We were out during the recess looking at the previous roles and I'm reminded my own father was a Member of this hon. House back in 1979 and, for a period, actually sat in this seat, although it was upstairs at the time. Congratulations. It's an honourable profession and I look forward to seeing you serve the people well.

Good morning, we really appreciate the opportunity to be here this morning. The Newfoundland and Labrador Association of

Realtors represents 650 real estate licensees in the province. We're pleased to be here to talk about the new legislation.

Modernization and renewal of our governance system for the real estate industry in this province has been an advocacy priority for our association for many, many years. As you know, the current legislation, the old legislation, dates back to the mid-1960s when this building was a brand new building.

We are an industry association representing most licensees but not all licensees. We provide supports to our members, educational programs and services for our members across the province. We are an industry association not unlike Hospitality Newfoundland is the tourism industry association and CME would be the manufacturing industry association. Oftentimes, people in the public confuse us with the regulator and the role that we play in ethics enforcement, but we are not a regulator, obviously, as you'd be aware.

We operate the only Multiple Listing Service in the province; we offer technology products, insurance products and services and educational programs for our members. We also require that our members abide by the realtor Code of Ethics, the Standards of Business Practice. With our relationship with Service NL, with the regulator, we deliver the pre-licensed training programs for people who want to write the salesperson licence or the broker's licence. We deliver that on behalf of Service NL, and we coordinate the exams with the College of the North Atlantic for that.

When the department announced the review of the *Real Estate Trading Act* in 2017 we very quickly mobilized. We had done a lot of work over the years on our recommendations and our thoughts on where the legislation needed to go, but we also wanted to hear from members, we wanted to hear from consumers. So we went on the road and we did 16 meetings in eight locations around the province in January and February of 2018. We were in St. John's, Bay Roberts, Clarenville, Grand Falls, Corner Brook, Goose Bay and Lab City. We did public meetings and we did meetings with our members.

Out of that we heard from a couple of hundred people. From that, we compiled two reports, which were shared with the Committee prior to this, and was shared with the department. One report was a compilation of what we heard from our public engagement and then there was a series of recommendations in the second report.

What we heard when we were on the road clearly was a call for modern regulation. The real estate industry has evolved in the digital economy in ways that we could never have foreseen and trying to manage the industry with a set of rules that were written in 1964 just doesn't work. We heard a loud call for better enforcement tools for the regulator, for more modern education, for a variety of improvements and so we put all of that in our 53 recommendations. We worked closely with the department as part of that consultation process. They had representation at a number of our meetings.

We're thrilled to see that a lot of our recommendations have made it into the legislation. We're particularly pleased to see a streamlined process for dealing with disputes over deposits on transactions that don't close. The establishment of a Recovery Fund I think goes a long way in terms of protecting not only our members and licensees, but also consumers from situations where right now the protections are not there in the legislation.

We are, I think, the only jurisdiction currently in the country that does not have a requirement for continued professional development for anybody who has a real estate licence. We have a professional development program requirement for our members, so it's great to see a requirement for professional development for all licensees in the province.

The addition of a code of conduct and the requirement for certificates of conduct for all licensees is something that we were recommending and we're glad to see it. We're glad to see the ability for licensees to self-incorporate. For the most part, real estate agents, salespeople, while they're licensed under a broker, they work for a company. For all intents and purposes they are self-employed, independent contractors. In the eyes of the law, in the eyes of Revenue Canada and workers'

comp they are self-employed individuals, yet they can't take advantage of any of the benefits of being able to incorporate. So we're glad to see that is in the new legislation.

I think what's really important is the range of enforcement tools that the superintendent will have to deal with matters. Right now, the only tool that the superintendent has is to cancel somebody's licence. We often see, for example, somebody might be a week late in filing a report or renewing their bond and, as a result, their licence is cancelled. That means they have no livelihood, they have no ability to generate income, they're not allowed to talk to their clients about their listings. Everything comes to a grinding halt simply because of an error in filling out a form or renewing a bond.

The new legislation gives the superintendent the ability to charge a fee or a fine or impose a less severe penalty for something that's really a minor administrative thing. We're glad to see that. We're really pleased to see the maximum fines being increased beyond the current level. That's the single-largest deterrent for behaviour is the financial deterrent, so we're pleased to see that.

Just in conclusion, we're pleased to see that the regulators listened to consumers across the province, they've listened to members of our industry and we see that new legislation looks across the country at where the best practices are and adopts a lot of the best practices that we see in other jurisdictions and we're glad to see the department moving ahead with it.

We'd like to thank the minister for her efforts, and her officials for their efforts and their co-operation with us. With that, if there are any questions, we're pleased to take them.

**CHAIR:** Any questions from our Committee?

MHA Stoodley.

**MS. STOODLEY:** One of the issues you raised, I think, rightfully so in your book here, you called Modernization and Clarity in the Information Age, under Digital Revolution, and you go through that in the first and second volumes of your recommendations.

When I read this again and now think back through the legislation that we're reviewing, I'm not sure that we're covering this. I'm just wondering, I guess, from your perspective, is that a big deal. Are there gaps still in terms of legislation around aggregator sites pulling information from your MLS system? Do you see any big gaps there, immediately?

**MR. STIRLING:** The short answer is no. Some of those kinds of issues, when you dig into them, are not really issues that can be governed through a broad piece of legislation. It's more around data protection and intellectual property protection that we have, as the operator of an MSL database with 300,000 listings in there. That's part of our responsibility is to protect that data on behalf of consumers.

There is an issue that we see where consumers aren't necessarily aware when they're looking at a website whether or not that is a website of somebody who is licensed to trade real estate in this province or somebody who is not. There are services out there that are available to consumers and it's not always clear that you're looking at something that is a licensed website.

I think there is a consumer education program that we can do around that to create awareness. Again, that's not something that we would see as being legislated, that's more about a consumer awareness campaign.

**MS. STOODLEY:** Are you aware, just by chance, of any other jurisdictions doing any legislation around modernizing the real estate sector?

**MR. STIRLING:** Not particularly. Again, part of the challenge that we had with the old rules – and I'll use Facebook as an example – our rules were written in a time when the only way you knew a property was for sale is if you saw a sign on the lawn or you saw a printed ad in the newspaper. There was very specific rules around what that ad had to contain.

If you move into today's world, where everything is online and consumers know so much about a neighbourhood or so much about a property long before they ever call a real estate agent, it's hard for us to enforce advertising rules and standards that were written for a print



era in a digital world, because advertising is advertising whether it's on Facebook or on the Internet on a website or it's in an ad, we're trying to apply the same rules to the same advertising.

For example, for our members, we have a rule that says you cannot advertise a property until it has an MLS number, which means it's in our database, which means everybody who's a member of ours has access to the information, and that's about fairness of competition.

Is an Instagram post an ad? That's something that we struggle with all the time is how far do we go in policing all these online points of presence?

It's a lengthy answer I know, but the wording in the old act couldn't conceive of those kinds of applications, right? So that's the kind of thing we're trying to move towards.

**MS. STOODLEY:** Okay, thank you.

**CHAIR:** Good? Okay.

MHA Petten.

**MR. PETTEN:** Thank you.

Just a couple of questions. When you did your consultations – I know a lot of things in the legislation when Service NL was just in previously like code of conduct is one big one I guess – did all the agents agree?

It seems like both parties are happy with this legislation, but it's bringing new rules in place for relators. Did they all agree when you had your consultations?

Is the industry very happy about this legislation because it's going to create a lot of good in this for the buyer and for the public, but it's going to put a whole new layer for your association and your realtors? I know it's more about transparency and accountability, too, but, I guess, generally, are they all welcoming this change to the legislation? There's an increase in penalties, obviously, as well.

**MR. STIRLING:** The short answer is yes, absolutely. The more we can do to improve

professionalism in this industry the better off our members are served and the better off consumers are served.

Like every profession out there, our industry is a microcosm of society. There are people who are licensed who are the utmost professionals and, at the other end of the scale, there's a continuum that goes the opposite direction.

Our members are strongly in support of improved enforcement, strongly in favour of improved educational standards, making it harder to get into the industry. I don't mean harder in terms of more difficult financially or whatever, but making the level of professionalism higher. You have to clear a higher height bar to be licensed and maintain your licence than we currently have. Most people in the industry absolutely support that kind of improvement in our regulation.

**MR. PETTEN:** In the code of conduct as well – I asked this question earlier so I just want to get your side too. Educating the buyer of their rights, this disclosure or whatever, form, handout, certain thing you'd have to sign to acknowledge that the buyer has rights, outside of what realty was many years ago, you'd see a sign on a lawn or you knew this person that was in real estate. As an association is this something that – I'm curious about the policing part of it, actually.

It's all good, and every piece of legislation that comes to this place there's always an enforcement or follow-up or accountability piece to any piece of legislation. That's as good as any legislation is.

I know we have the side from Service NL with the superintendent, but from your end of it, it's a role for both sides to play in keeping everyone above board.

**MR. STIRLING:** Yeah.

**MR. PETTEN:** What you just said, I agree with you, you're raising the bar. The level of professionalism, you can't go wrong; it helps any industry, any group.

From that end of it, do you have any plans in place for that part?

**MR. STIRLING:** It's interesting. The law has evolved. Consumer law has evolved over the years. What we refer to as agency law has evolved since the time of our legislation. Following through the lead of the Canadian Real Estate Association, our members have been operating using agency and agency representation for many, many years.

When you list your house with an agent, they will have a discussion with you about your rights as their client and what their responsibilities are, what their fiduciary responsibilities are and how they represent you and represent your interests and the level of confidentiality and that. Similarly, when you're a buyer and you're working with an agent, there will be a discussion around representation. I know you had some questions this morning; I was listening to the live stream about dual agency. We can probably have a chat about that after.

We have operated very clearly and within our code of conduct. Our members know very well their responsibilities as a buyer's agent or a seller's agent, or if they're in that dual-agency kind of representation, how they have to protect both sides. We've been operating that way for many, many years. It's in our code of conduct. It's in our Realtor Code, our Standards of Business Practice.

The difference though with the legislation is that our rules, our code of conduct, apply to our members and we forget oftentimes that not everybody who is licensed is a member of ours. We're not like the College of Physicians where everybody is a member; we are not the regulator. There are licensees that are not captured by that, so they don't have the same tools to guide them. I brought along a couple of examples I can share with the Clerk of our agency disclosure forms and the information that is required to be disclosed to clients.

We've done a lot of work and, again, through the Canadian Real Estate Association, we use the same agency – kind of buyer-seller dual-agency language right across the country. What's nice about the legislation is that it will bring that same level of responsibility to everybody who's licensed.

**MR. PETTEN:** It's interesting, as you say. Those groups I remember because I was on the Committee the last go around; I remember this conversation. Wouldn't it be important or wouldn't it be worth considering having everybody make it mandatory to be part of this association?

It's not unlike many other groups in the province. It keeps the regulations tight and it protects the consumer, which is, again, the most important thing that we try to protect. You're trying to protect everyone's interests. If you have this group that are not really holding to any association rules, they're separate entities, so it brings –

**MR. STIRLING:** Yeah and that's the model in New Brunswick.

In New Brunswick they actually have two pieces of legislation: They have the equivalent of the Trading Act, but they also have the New Brunswick Real Estate Association act. It requires that everybody who is licensed be a member of the association. Then the association takes on a co-regulator kind of role, particularly around education and Realtor Code enforcement.

We had some discussion about that when we were putting together our recommendations. Our board of directors and our membership felt that membership should be an option, it should be a choice. Members join us because we have a value proposition and we offer services that help support them in their career. We felt at this point that we wouldn't – we can have a discussion with the regulator about that sort of mandatory membership, but at this point we weren't comfortable in recommending that because it fundamentally changes the nature of our association.

As an industry association we want members to be members of ours because they choose to be, because there's a value proposition and we provide services and they're engaged in (inaudible). If everybody is a member because they have to be, that changes the perspective, changes the language, changes the interaction we have with our membership as well, and we weren't prepared to go there right yet. Now,

whether we get there five years from now, it could be an option.

We already have a mandatory education program that we deliver online throughout the province. We have members in Lab City and we have members in Goose Bay who do our online education program. We'd be interested in having a discussion with the department about having our educational offering qualify as part of the required professional development, or we could offer training to non-licensees and that might achieve the same thing.

If licensees, who are not members of ours, have to do our education program, have to use our E and O insurance, they may choose to join us, but then it's them choosing as opposed to us dictating. I think that was the same answer I gave you last time.

**MS. COFFIN:** Can I jump in?

Education; I'm always interested in education. How are the programs working right now? I know very little about the licensing part. I know that you're licensed with the province.

**MR. STIRLING:** Yes.

**MS. COFFIN:** Your programming – I guess you're licensed with the province, so you have to write a standardized test and that standardized test is, of course, regulated by the province. Does that sit under AESL do you know?

**MR. STIRLING:** No, it doesn't. It's a curriculum that was developed through Service NL. All of the regulators across the country collaborated. It's sort of a common curriculum right across the country for all pre-licence training in terms of the basic fundamentals of real estate we call it. Other jurisdictions have other courses you also have to do to get a licence. Ours is probably the easiest place in the country to get your licence.

We deliver that training; it costs \$1,500 plus HST. We send you a kit and we send you the books. When you're ready, you let us know and you can write the exam at the College of the North Atlantic in a number of locations around the province.

It's an old way of delivering educational materials. We would like to see that all delivered online. I think that's something that we will move forward with, with the department, once we get through the rollout of the legislation. I think that's one way they're interested in modernizing education delivery.

There are two courses. There's a salespersons course and there's a broker's course. You sign up with us; we send you the package of information. When you're ready, you write the exam. Then you go talk to a broker about getting licensed.

**MS. COFFIN:** Okay.

I'm just wondering about the mechanisms for who establishes the program. You are the conduit. If I wanted to be a real estate agent tomorrow, I need to come to you and you would set me up in the program, but I don't have to be a member of yours.

**MR. STIRLING:** No, that's right.

**MS. COFFIN:** Okay, and then, if I pass my exams and everything works well, I get my licence. I could become a member or I can operate independently.

**MR. STIRLING:** Yeah, that's right.

**MS. COFFIN:** Okay, that's quite reasonable.

The curriculum now – there's going to be a fair bit of work involved with putting all of your materials on – well, you can put a PDF on and say good luck –

**MR. STIRLING:** Yes.

**MS. COFFIN:** – but it's a different beast to develop a course, which is being offered online, compared to the materials are online and good luck to you, your exam is in six weeks.

**MR. STIRLING:** Yeah.

**MS. COFFIN:** How do you envision that? Are you thinking about making it a course online, or kind of similar to what you get right now of: Here are your materials and good luck, Sir?

**MR. STIRLING:** Taking the existing stuff and making that available so that we don't have to print off a binder that big –

**MS. COFFIN:** Yeah.

**MR. STIRLING:** – and put it in the mail –

**MS. COFFIN:** Right.

**MR. STIRLING:** – is one way of at least moving in the right direction.

**MS. COFFIN:** Right.

**MR. STIRLING:** But, again, there are best practices in other jurisdictions across the country. We have our own learning management system, our own platform that our members do training on. We could make it available, certainly, through that, through a series of modules or whatever.

We had made some recommendations around there being sort of an introductory course, so here's what you're getting yourself into in the real estate industry, and then do a second course that's more sort of the fundamentals of what you need to know.

One of the challenges that we've seen in our industry in the last – well, I guess going back many years now, there's a lot of people who look at our industry as a career choice, as a career opportunity; they think they're going to make a lot of money real quick. It's not real expensive to get your licence. It's not a real high height bar in terms of educational requirements, so they get their licence and then they realize, geez, I might not make any money in my first year, and in their second year they might make two or three sales, right.

So, we get a lot of churn, we get a lot of people come into the business for a year or two. It's not the panacea they think it's going to be and they get out again.

One of the things that our members have said loud and clear during our consultations was maybe we should weed those people out before they actually make the commitment to join the industry, because once you're in, you've kind of

invested all of that time and money and you owe it to yourself to at least give it a try.

If we had an introductory course that might be \$500 or \$600 as opposed to \$1,500, where, at the end of that, they might realize just what they're getting themselves into, might eliminate some of that churn, might eliminate people who get into the business and it's not the right career for them.

**MS. COFFIN:** I totally understand that. I've seen so many people take courses and go: This is not what I'm supposed to do. Part of that is life.

**MR. STIRLING:** Yeah.

**MS. COFFIN:** But it's also good because I can see why you want to do that introduction of this is what your life is going to be like. You want to help people make better life choices, which is excellent.

In terms of numbers, how many members do you have? How many relators are there? I guess, your relators in total, numbers who are your association and give me some sense of how many you see running through in the course of a year.

**MR. STIRLING:** Just a little bit of trademark protection. Relator is actually a trademark of the Canadian Real Estate Association so anybody who is a member of ours or the Canadian Real Estate Association is actually a relator. They're the only ones allowed to use that term.

**MS. COFFIN:** Okay.

**MR. STIRLING:** However, just like escalator and Kleenex, it's kind of become a little bit of a catch-all kind of phrase. So, there's probably, I haven't looked at the numbers this week, but there are probably close on 700 licensees in the province and we have about 650 of those as members of ours.

**MS. COFFIN:** Okay, interesting.

**MR. STIRLING:** There's really only one significant brokerage in the province that's not a member of ours and that's a company in Labrador City. Most of the brokerages around that are doing residential real estate would be

members of ours because they want to participate in the MLS system.

Most of the brokers that are not members of ours would be some of the larger commercial companies who don't need our services, and a few restricted or a few people who are doing construction and construction of new home sales. They might do a subdivision and sell the properties directly to consumers so they don't need our services, but we have about 650 members and there are probably close to 700 licensees in the province.

**MS. COFFIN:** Interesting, thank you.

**CHAIR:** Any further questions?

**MR. O'DRISCOLL:** When it comes to the MLS numbers, that's going to help you with the legislation in regard to advertising on Facebook compared to the other avenues that you have?

**MR. STIRLING:** No, there's nothing specifically in the legislation that would apply to our MLS system. Our recommendations around that were more, as I was saying earlier, about clarifying the rules around advertising as opposed to anything that would regulate our MLS system.

**MR. O'DRISCOLL:** Okay.

**CHAIR:** MHA Stoodley.

**MS. STOODLEY:** In your recommendations, again, you talked about dual agency, and you mentioned that already. You mentioned that this definition needs to be clarified so that it mirrors the rest of the country and refers to one individual and not everyone in the brokerage.

**MR. STIRLING:** Yes.

**MS. STOODLEY:** I know that dual agency is not a definition in the legislation. I'm just wondering if that's been handled, or are your concerns there handled or are there still any outstanding.

**MR. STIRLING:** A lot of that detail, I think, will be in the regulations, which are still yet to be developed, and in the code of conduct that

comes out of that. We have our definitions of agency.

What we're referring to specifically in that recommendation is under our current act, the broker – and the broker might have 70 salespeople – is the agent under our current legislation. So that means that if I have my house listed with ABC company and they have 70 agents, I might have it listed with one particular agent, but everybody in that office would be considered a dual agent under our current legislation because the broker is the agent. The rest of the country doesn't see it that way.

So, because, for the most part, agents are self-employed, independent contractors, the rest of the country views dual agency as attached to that individual, so that one individual representing both sides as opposed to two people in the same office.

**MS. STOODLEY:** I should've asked this, I guess, when we had the staff in this morning, but do you know if that's covered in the new proposed legislation, changing the definition? Or will it still be two salespeople within the same brokerage, will they still be considered ...?

**MR. STIRLING:** The legislation itself is pretty well silent on agency.

**MS. STOODLEY:** Oh, okay.

**MR. STIRLING:** It doesn't refer to it at all. I think that will be in the regulations and in the code of conduct.

The key with dual agency is making sure the consumers are fully aware. The code of conduct and the regulations, I would expect, would be where you would see the requirements around disclosure of those kinds of relationships. We haven't seen the regulations yet. I don't know where the department is in terms of drafting those. We haven't been a part of that.

**MS. STOODLEY:** Thank you.

**CHAIR:** No further questions?

Anything else that you'd like to add?

**MR. STIRLING:** I don't think so. I know I was listening to the stream this morning and, MHA Coffin, you were asking questions around how the professional development could roll out. We're curious about that as well.

I would like to see us working closely with the department. We do have a learning management platform that our members use; we have professional development materials that our members have to do on a regular basis. That's not sales training, that's not how to do an open house, that's things like economic forecasting, legal issues, how to better protect your client, those sorts of things. It's more about truly professional development than how to make more money. We see that as the broker's role.

We'd like to continue the kind of partnership that we have now around the pre-licence training. We'd like to see that as well with the professional development program for licensees as well.

I don't think there's anything else we'd want to add. Thank you again for the opportunity. If there is anything else that we can provide in terms of clarity or more information, just let us know and we'll make it available.

**CHAIR:** Okay, thank you very much –

**MR. STIRLING:** Thank you.

**CHAIR:** – to our Committee, of course, and to you guys.

On that note, I guess we will conclude.

Thank you.

### Recess

The Committee resumed at 1:30 p.m. in the Assembly Chamber.

**CHAIR:** If we're all ready, we'll get started.

Welcome back to the public hearings of the Government Services Committee on its review of the draft bill, *Real Estate Trading Act, 2019*.

This afternoon the Committee will hear in-person submissions from members of the public.

As indicated in our press release of September 4, 2019, those wishing to present to the Committee were required to pre-register via email by Thursday, September 12.

Following the deadline, there was one individual who indicated an intention to appear before the Committee today, Mr. Ted Whelan. Welcome.

The Committee is also accepting written submissions from the public until Friday, September 20. Those can be submitted via email to HOAGovServicesComm@gov.nl.ca.

Mr. Whelan will have 10 minutes to present, followed by five minutes of questions from the Committee. For the purposes of recording audio and Hansard, please state your name each time you speak.

On that note, I'll have the Committee introduce themselves.

**MS. COFFIN:** Alison Coffin, MHA, St. John's East - Quidi Vidi.

**MR. BENNETT:** Derek Bennett, MHA, Lewisporte - Twillingate

**MS. STOODLEY:** Sarah Stoodley, MHA, Mount Scio.

**MR. O'DRISCOLL:** Loyola O'Driscoll, Ferryland.

**MR. PETTEN:** Barry Petten, MHA, Conception Bay South.

**MR. WHELAN:** Ted Whelan.

**CHAIR:** I'm Pam Parsons, Chair, and MHA for Harbour Grace - Port de Grave.

Mr. Whelan, we're ready for you.

**MR. WHELAN:** Thank you very much, first of all.

As mentioned before, my name is Ted Whelan; I'm a realtor with Royal LePage Vision and a member of the Newfoundland Association of Realtors. I've also been a mortgage broker with Dominion Lending Centres for the past 10 years. Previous to that, I held several roles with HSBC

Finance, which was then HSBC Canada. One of my roles with HSBC was branch manager where I worked closely with the national regulatory and compliance departments for HSBC.

My reason for being here today is to relate some of the concerns I have regarding some of the recommendations proposed to the *Real Estate Trading Act*, specifically, one recommendation made in regard to providing both mortgage broker services and real estate services to the same client on the same transaction. I feel my experience in operating on both sides of this industry gives me a unique perspective and insight on potential conflict of interest or lack thereof. My concern with these recommendations is they were made with insufficient education and understanding of the mortgage broker industry, and the level of due diligence that the lenders and banks hold mortgage brokers to, as well as the high level of regulatory oversight that both banks and lenders face from the federal government.

Our job as mortgage brokers is to know lenders' policies, products and procedures, then, based on that knowledge, find the best product and interest rate for our clients. Our level of commitment, the relationship and fiduciary duty to our clients, does not reduce at any point in time. All the underwriting, due diligence, support documentation review and sign-off is done first by the mortgage broker, then by the bank or lender and finally is subject to audit by various federal agencies, all of which report to the Minister of Finance.

As a mortgage broker, our job starts with an application. Its details include demographic information, employment information, credit history, net-worth information and source of our client's down payment. The application is submitted to a bank or mortgage lender for approval. It is the underwriting department that reviews the information and either approves or declines, based on their own policies.

Similar to a lawyer, we get to plead our case and provide evidence, but it's the bank's underwriter who gets to make the decision. Mortgage brokers do not have the ability to approve a mortgage application. Assuming an application is approved, the next step is to provide the support documentation that the lender has

requested. Most of the time this includes: a letter of employment, recent pay stub, tax returns, it could be notice of assessments, T1 Generals, maybe financial statements for a client's corporation. As mortgage brokers, we provide what it is a lender has requested and they fully verify these documents. Again, we have no power to approve the actual application, and the bank reviews in detail all documents that we've submitted.

The banks are then subject to supervision from the Financial Institutions Supervisory Committee, the Bank of Canada, the Office of the Superintendent of Financial Institutions and the Financial Consumer Agency of Canada. All these agencies report to the Minister of Finance. In other words, the mortgage industry is heavily regulated with the federal government.

When it comes to this area of concern, this specific concern regarding one individual providing mortgage broker services and real estate services to the same client, my understanding is that both Service NL and NLAR assume that there is a potential for conflict of interest. Service NL's consultation questionnaire filed that question, actually, under the topic of conflict of interest, and both of NLAR's proposed solutions still assume that there is a conflict of interest.

The problem here is that there is no conflict of interest. I've spoken to dozens of realtors and mortgage brokers, and we've failed to conceive of any situation where the possibility of a conflict would exist, or where restricting the individual's ability to provide both mortgage and real estate services would be better served or better protect the general public.

When one person is providing both real estate services and mortgage broker services to the same client on the same transaction, there still is only one client. My fiduciary duty to my client never diminishes. My duty to provide the best expert advice never diminishes. The duty to provide professional guidance never diminishes and my responsibility and ability to do that as a realtor is not diminished by acting as the client's mortgage broker. I'm simply providing two different services with the utmost care to the same individual.

In one role, I want to ensure that the client gets the best price when buying or selling their property, and in one role I want to ensure that the client gets the best mortgage product and interest rate for their purchase. When building a house, your painter and your plasterer can be the same person. Chances are when you bought your car from a dealership, more likely than not you got the vehicle financing from that same dealership.

I'd go so far as to argue that being able to provide both services to my client empowers the client and leaves them better educated about the transaction; better protects them from financial difficulty in that I fully understand their financial situation and I'm better able to advise them on their real estate transactions; and helps them to avoid financial missteps by better understanding their mortgage and their market.

I agree with Minister Gambin-Walsh, buying and selling a home is perhaps the largest transaction a person will make in their life and it's imperative that we have legislation that protects consumers. If I'm a member of the general public, I want a realtor who's fully versed on my financial situation and well educated on what impact the financing of that purchase could have on the well-being of my family. I understand NLAR has learned some painful lessons recently, and I agree with Mr. Stirling that we do need stronger accountability and I agree with most of the proposed legislation. Unfortunately, this particular point of the proposed legislation is a great solution to a problem that simply doesn't exist.

It unnecessarily reduces consumer choice and only helps to further mystify the process of buying or selling a home to the general public. In no way does it provide additional protection to Newfoundlanders and Labradorians looking to make, what will likely be, the largest and most significant investment.

The ability to provide both real estate and mortgage broker services has been approved by all major banks and lenders in the broker channel. These institutions are not known for taking unnecessary risk and, as highlighted earlier, they are heavily regulated at the federal level.

In closing, I understand that the government and NLAR's intention is to protect Newfoundlanders and Labradorians but this is protecting them from something that doesn't exist. It will only provide unnecessary limitations to the level of guidance and expert advice that we, as industry professionals, can provide while reducing customer choice and further complicating an already intimidating and overwhelming process to the general public.

Thank you.

**CHAIR:** Thank you.

Okay, now, we'll move to our Committee. Are there any questions?

Ms. Coffin.

**MS. COFFIN:** A couple of quick questions here. I completely understand where you're coming from and I understand the separation of the two services. I'm trying to get my head around why the association would make a slightly different recommendation.

I guess they're concerned about manipulation of the process if you are involved in both. I understand the regulations around mortgages, but a couple of things you touched on were: What would be the payments from both services? Would those both be a percentage of the value of the mortgage and/or the sale of a house?

**MR. WHELAN:** Yes, that is correct.

**MS. COFFIN:** Okay. So the relationship between the mortgage and the house I guess would be – and I'm not saying you do this, but is there any incentive for a mortgage broker, knowing the finances of individuals, to maybe manipulate, like if I know you can afford a house that's \$500,000 versus you're only looking at something that's \$300,000, and this would still perhaps happen if you weren't a broker. If you were a broker, would there be any potential for manipulation saying, well, I know you can afford \$500,000 so let's go look at \$500,000 houses? Would there be any incentive on the part of an individual in this situation to do that type of thing?



I guess then the secondary question would be: What possibility exists for a manipulation within that? Not saying that you do that, we're just being prudent about it.

**MR. WHELAN:** When the banks look at you for approval, they basically look at two things: They look at your ability to pay and your willingness to pay.

**MS. COFFIN:** Yes.

**MR. WHELAN:** Your willingness to pay is your credit score, how you paid things in the past. That's of your own control. Your ability to pay is just straight math. It is two ratios they look at: Your gross debt-to-service ratio and your total debt-to-service ratio. Those you can't manipulate. You have a certain level of debt; you have a certain level of income. The banks will allow 42 per cent of your gross income to go towards covering off those debts and that's it. I'd like to be able to manipulate math sometimes, but, unfortunately, math is math.

**MS. COFFIN:** Yeah.

**MR. WHELAN:** When it comes to what the banks will usually approve a client for, I find myself more often than not talking them back from what the bank will do. The bank will oftentimes let you go a little further than maybe you should and if you're depending on things that are outside the application, if you're a young couple and you're planning on more kids in the future, those are going to be life-changing events that the bank doesn't look at and doesn't understand.

They may say, yeah, we'll approve you for \$500,000, but my conversation with my client is going to be what's your plan for the future? Are you planning more kids? Are you taking another job? What's going to be those factors that apply later? Maybe we should look at \$420,000; maybe we should look at \$380,000 and kind of roll it back from there.

My duty to my client is not just one transaction and out the door. In this industry, it's your repeat clientele that pays the bills, so you want to make sure you have a long-lasting relationship with these people.

**MS. COFFIN:** Okay, that's great.

Can I have one more question?

**MR. WHELAN:** Sure.

**MS. COFFIN:** How many people are in the same situation as you where they have these dual roles or dual abilities? Are there many?

**MR. WHELAN:** I think the answer is Ted Whelan. I'm pretty sure I'm the only one. There's a handful around, I think, who have done it in the past. There's a gentleman in the Carbonear area, actually, who does both, but is finding the mortgage side of it more and more difficult.

My concern with stuff like that is I do a fair bit of this in the Harbour Grace area as well and there's not a lot of mortgage brokers out there, so people don't have a lot of choice. So, now, if I have somebody who I've developed a relationship with over the years, they want me to list their house or help them with the purchase of their house, now I can't help them on what I've done best my entire career and why they trust me and why they've contacted me to begin with.

**MS. COFFIN:** Right.

**MR. WHELAN:** No, I don't think it's a big problem. I'm pretty sure I'm the only person who truly does it. There are a few other realtors who are in and out of it. I mentioned Al Stacey in Carbonear. I think there is an individual with their real estate broker licence who is also a mortgage broker, but I don't think he does any sales on the real estate side.

**MS. COFFIN:** Okay.

Can I have one more?

It sounds to me as if the recommendations that came out of the Volume I was based on best practices and it doesn't seem to reflect what you're saying is the situation here. Is there a way that we can perhaps adapt, maybe, the regulation or what we're talking about in the legislation? Do you see a way where we can eliminate any potential for a conflict of interest? Because upfront you'll say I can do this and do this, instead of saying I can do this and my wife,

child or good friend can do this other thing. So, even just disclosure would address that.

Do you think that would be a reasonable thing? Maybe some of the mechanisms that they've proposed where you can't have a conflict of interest, like you can't represent both buyer and seller. There is another fix around this that would not be unnecessarily punitive to you and others in your situation.

**MR. WHELAN:** Yes, that's correct. I keep drawings parallels from the dual-agency situation on the real estate side. There is actually a disclosure designed just for that purpose.

**MS. COFFIN:** Right.

**MR. WHELAN:** I guess it's just both sides signing and saying that you know that your agent is representing both the purchaser and the seller in a given situation. I think something like could set everybody's mind at ease a little bit. Again, I don't think this is a huge problem. I'm pretty sure I'm the only person doing it.

So yes, I'm open to other suggestions from NLAR as well.

**MS. COFFIN:** Okay, good.

Thank you.

**CHAIR:** Mr. Petten.

**MR. PETTEN:** Ted, did you say you don't know of any more people at that same thing you're doing, is that what you're saying? Are you the only person in this boat?

**MR. WHELAN:** Yes, I believe I am. I know there was another real estate agent who was doing this, but I think his daughter now runs his mortgage business and I don't think he has any direct ties to it. There are some other brokers who I think own mortgage brokerage franchises, but I think I'm the only dual agent, we'll say.

**MR. PETTEN:** Interesting.

Now, I'm listening, there's no doubt, at face value I take your word on it. I guess in your case I have no reason not to believe you, you're above board, but some of this legislation has

prevented it because not everyone will carry the same principle and it won't be as principled. It's like everything.

To Alison's point, during these consultations, it is best practices and there was feedback from both, with the public consultations and whatnot, so obviously, there was a concern raised by one group or another to make this dual-agent issue. Obviously, someone made this an issue for it to be in this legislation. I guess that's where I am kind of in my mind. I'm thinking if there are not many of you doing it, then why is this an issue? Obviously, it's an issue because it's in the legislation, so you know where I'm trying to ...

**MR. WHELAN:** Yeah.

**MR. PETTEN:** It seems a bit muddy to me. I don't know if you can clarify it or pass your views.

**MR. WHELAN:** Yeah, so my understanding is that this issue did come up during the public consultations. I'm happy to say that they were between January 22 and February 8 of 2018 and I got my licence in May of 2018, so it wouldn't be directly tied to myself.

My theory is that the questionnaire that was given out – the question was a little leading in my opinion. I don't have the actual wording for the question but I had the description of the question from Service NL. It said something to the effect of when asked if customers were being harmed by practices where there was a potential for a conflict of interest, 62 per cent of people responded yes. If there's a potential for a conflict of interest, I think the answer should have been 100 per cent of people say yes. No one wants to put themselves in some sort of conflict of interest.

I have talked to NLAR a little bit about this as well but, again, because I came along so late in the process, the public consultations had already happened. I didn't have much of a voice at that point in time to shoot holes in those theories. Really, I don't know where it came from but, yeah, it's been floating around there a little bit.

**CHAIR:** Ms. Stoodley.

**MS. STOODLEY:** I'm just curious, do you also sell those customers home insurance or do you offer to be their insurance broker as well.

**MR. WHELAN:** No.

**MS. STOODLEY:** No, okay.

In a former life of mine, I worked very closely with insurance and mortgage broker deals, actually, so I guess I just have a huge appreciation for how legally complex the Canadian financial services industry is. You have the *Bank Act* and these big, monstrous, really strong pieces of legislation that is like this huge financial services framework, so I'm just not sure that we can have an educated discussion on this.

I take your point. It must be very frustrating for yourself, as a mortgage broker and a real estate agent, where this legislation is going to change the amount of money you have in your pocket at the end of the year and it's going to change your business. We'll have to take it away.

Anyway, thank you very much. I do have a strong appreciation for how complex the legislation is around some of this, federally and provincially. It's just a very complex thing.

Thank you.

**MR. WHELAN:** I understand the complexity of it, certainly. My concern is that because I came along so late in the process that I won't be able to change the direction of the ship, but I do feel not just for my own personal benefit but for the benefit of Newfoundlanders and Labradorians who are looking to purchase – I talked about the situation in Harbour Grace where there's not a lot of choice in the way of mortgage brokers, so we're reducing that.

When it comes to the fact that I'm also a realtor, I still fall under what Mr. Stirling talked about earlier, the Code of Ethics that will still apply, whether I'm in real estate or a mortgage broker. I keep drawing parallels between what I do and dual agency. The difference with the two and how I feel that sort of establishes the standard of care, if dual agency is okay, why isn't this? Dual agency where I can represent two people in – and as NLAR says in their training manual an

impossible situation where you're representing both the buyer and a seller in a fiduciary duty. How can you represent both of them when they have opposing positions on a topic?

For what I do as a mortgage broker and a real estate agent, there are no opposing views. It's one client. I don't have to worry about anyone else's issues. It's I want to get my client the best purchase price for the property and the best mortgage interest rate for their purchase.

**CHAIR:** Mr. O'Driscoll go first and then –

**MR. O'DRISCOLL:** No, I appreciate, as a car salesman myself, we would represent the customer and do the financing as well. So I know building a trust relationship is what it's all about and that will get you referrals and get your side of that story for sure. I certainly wish you good luck with it.

**MR. WHELAN:** I appreciate that.

**MR. BENNETT:** Ted, you mentioned that you had a few meetings. You came in after a lot of this consultation process was done. You said you did have some meetings with NLAR. Are they open to the idea? What was the conversation or feedback back and forth? Is it something they feel that we can work together with to be able to accommodate? Or are they steadfast, no, this is something they feel would be negative towards the legislation?

**MR. WHELAN:** When I came on it had already hit, I think, the first and maybe second reading in the House at that point in time. I contacted my MHA and the Minister of Service NL at the time. I didn't contact NLAR at that time because the recommendations had already been submitted.

Since the bill died on the floor after the last sitting, I think this last Thursday was the first notification that we knew there was going to be another public hearing. So I did reach out to NLAR earlier this week and was unable to have a real good conversation with them. I did sort of ambush Bill Stirling in the lobby here earlier this morning and we had a quick conversation.

Nothing against Mr. Stirling, I think he's great and his leadership has been great for our

association, but the lack of education is certainly there. He's not a mortgage broker; he doesn't understand that side of the business and what we do and the oversight that we go through.

I think he'd be willing to talk about some solutions, for sure. I think, as Alison mentioned earlier, the disclosure might be a great idea, because if all it takes for a dual-agency situation to be okay and the standard of care to be met, is that disclosure needs to be signed, then I feel like the risk for any sort of conflict of interest is so much less in what I do, that disclosure statement should be more than enough. It's a suggestion we could certainly make.

**MR. BENNETT:** No, I definitely appreciate where you're coming from on it. I think it's something we definitely can take back for review.

**MR. WHELAN:** Okay.

**CHAIR:** Thank you.

Mr. Petten.

**MR. PETTEN:** Yes, Ted, I want to thank you as well. It's put a different perspective than what I think we had as a Committee. This is my second go, though, because I was on the previous Committee prior to the election in May. It's been twice I went through the same presentation, but it's different.

One question – and I know you probably already said it – the services you provide to the buyer, you're providing the mortgage services and realty, like selling the home. What about inspection? What about all those other – surveys, like all those other added features? Do you have any input into that to the buyer? If I go to deal with you to get a house, are you going to be the one-stop shop for everything, or is it just the financing and the actual sale?

**MR. WHELAN:** I thought about going back to school and getting my law licence but no, it's just –

**MR. PETTEN:** That's all that's missing, and the lawyer's fee.

**MR. WHELAN:** Real estate and mortgage broker is it. When it comes to the home inspection, appraisals, all that stuff, we can make recommendations of professionals who we value in the industry, industry professionals, but no, that is not something we do.

**MR. PETTEN:** I'm not saying you do it but you'd offer a suggestion, like Alison Coffin does great surveys. Do you know what I mean, just referrals.

Some way of thinking, if you want to try to minimize directing or just keeping everything, you could offer a list of inspectors, a list of reputable surveys as a – so save me or anyone from going to the Yellow Pages or going online or whatever you want to do, right? I mean mostly online now, of course, but just the point of not leading into your own little empire.

I think that's something that I know has been discussed. I know last time around it was discussed, the one-stop shopping. It was a little bit alluded to – less this time than it was last time, actually – about one realtor dealing with everything. I think if my memory serves me right, that came up a lot in our first go in April when we had Committee meetings on it and there was a lot of discussion about the realtor controlling everything. Maybe that's where this all evolved into, where we're to today. Maybe it was more on the department side, more so than the NLAR.

No, I do appreciate it. It gives me a different perspective, too. I get where you're coming from, I really do.

Thanks.

**MR. WHELAN:** Yes, I get what you're saying about referring home inspectors and appraisers and what not. The best practice that I think NLAR has kind of suggested that you do give a list. The reality of the situation is that this is a small province. There are not a lot of people out there who do these jobs. I have been around for a while and you get to know who's good at their job and who's not so good at their job. So, while you could paint this as I want to keep it to my group of people, but, really, those group of people – there's a high level of service that I expect from those people.

So, yes, I do make one or two recommendations on a home inspector, but I've used them on multiple, multiple occasions. Same thing with lawyers, I know that they can deliver a level of service and guidance to, especially, first-time home buyers, that's decent for sure.

**CHAIR:** Thank you.

Any further questions from our Committee?

Okay, Ms. Stoodley.

**MS. STOODLEY:** So the real estate association or your company that you're associated with or the mortgage broker association, neither of them have concerns that you're doing both, or they're all fully aware and okay with that?

**MR. WHELAN:** Yes, that's correct.

**MS. STOODLEY:** Okay.

**MR. WHELAN:** My real estate brokerage, I had a lengthy conversation with him before I started. He had no issue with it.

Where the problem would've or could've laid is with the lenders. I work for an independent brokerage, Dominion Lending Centres, but the lenders that we use – I think there are 90 of them across the country, we don't use that many, but most of the big banks are there as well. If they don't want to use you because you're a realtor, then obviously you're not going to do a whole lot of business because you don't have many lenders to use.

So, no, they've all approved it. There are a load of people in Ontario who do this. The only stipulation is most want you to disclose upfront when you submit the application to the lender that you will be acting as both the realtor and the mortgage broker.

**MS. STOODLEY:** Okay, thank you.

**CHAIR:** Mr. Petten.

**MR. PETTEN:** That triggered one question when you came back that time, Ted.

How many other provinces allow what you do? You said Ontario, so do you know how many

other provinces across Canada allow the same thing you're – the dual representatives?

**MR. WHELAN:** It's a little tougher to find out than I thought it was going to be. I do know that Ontario – and this comes from most of the lenders that I used when I first started asking are other people across the country doing this. One of the lenders that I use most said, yeah, we've got a dozen in Ontario for sure. I know there's a couple in BC and Alberta. I don't know what the situation is with the rest of Atlantic Canada.

The problem we have on the mortgage broker side is that we're not a huge industry and then especially in Atlantic Canada, we get even smaller and smaller. So, right now, we're members of CMBA, Canadian Mortgage Brokers Association, but then we don't even get a provincial section of that, we get the Atlantic Canadian section of that. Out of those four provinces, we then have a one-person director here in Newfoundland.

What their stance is on it, I don't know, but, again, because there's not a whole lot of us out there, you have to kick up an awful stink to get someone to give you an answer.

**MR. PETTEN:** Thanks.

**CHAIR:** Okay, Mr. Bennett.

**MR. BENNETT:** Ted, how long did you say you've been practicing both as a relator and a broker? You started in May 2018?

**MR. WHELAN:** Yes, May 4, 2018.

**CHAIR:** Okay.

Any further questions? Anything else you'd like to add?

**MR. WHELAN:** No, thank you.

**CHAIR:** Okay, well, on that note, I thank you for coming and, of course, thanks to our Committee.

Thank you.

On motion, the Committee adjourned.