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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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Department of Service NL

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Jamie Chippett, Deputy Minister, Regulatory Affairs
Michael Delaney, Assistant Deputy Minister, Regulatory Affairs
Renee Dyer, Director of Financial Services Regulation
Melony O'Neill, Director of Communications

Newfoundland and Labrador Association of Realtors

William Stirling, CEO
Edward Hollett, Manager, Communications and Member Engagement

The Committee met at 10:30 a.m. in the Assembly Chamber.

CHAIR (P. Parsons): Order, please!

We're going to reconvene now. And just for a recap for our listeners at home, and for Members here of the Committee and the department, we're here to review the draft bill entitled, An Act Respecting the Regulation of Real Estate Trading in the Province, a new bill which, if passed in the House of Assembly, will replace the *Real Estate Trading Act*.

Of course, we had some questions from a member of industry. We are here now and I think we all know each other. We've done the introductions last time, so we can get started right away.

Whoever would like to go –

MS. COFFIN: Oh, sorry.

Alison Coffin, MHA, St. John's East - Quidi Vidi.

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

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

MR. LOVELESS: Elvis Loveless, MHA, Fortune Bay - Cape La Hune.

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

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

MS. DYER: Renee Dyer, Director of Financial Services Regulation, Service NL.

MS. GAMBIN-WALSH: Sherry Gambin-Walsh, Minister of Service NL.

MS. O'NEILL: Melony O'Neill, Director of Communications, Service NL.

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

We can begin now by our Committee, if we have any questions?

MS. COFFIN: Am I correct in understanding that we were going to get a little bit of an overview of the implications of or changes in the regulations? Is that what my understanding was, is that we had posed this issue, we were going to bring it back to Service NL and get an overview of what the implications were of changing the proposed legislation?

CHAIR: (Inaudible) question.

MS. COFFIN: Is that where we were?

CHAIR: The presentation based on Mr. Ted Whelan.

MR. PETTEN: Yeah.

MS. COFFIN: Yeah. That was my understanding, is that this was going to get bounced to Service NL. We were going to get an understanding of what the implications were of separating the two roles of, I believe, a mortgage broker and a real estate agent and how that would have the proposed legislation. Is that –?

CHAIR: Yes, that's correct.

MS. COFFIN: Is that everyone else's recollection?

CHAIR: Yes.

MS. COFFIN: Okay.

MR. CHIPPETT: I have an opening summary, if that would help.

MS. COFFIN: Lovely.

MR. CHIPPETT: Maybe then we could get into some of the Committee's questions.

MS. COFFIN: Perfect.

CHAIR: Go ahead.

MR. CHIPPETT: Good morning.

I'd like to thank the Committee for the opportunity to discuss what I understand are some outstanding questions with respect to section 28 of the draft bill. I'd also like to acknowledge Newfoundland and Labrador Association of Realtors, who I believe were already here this morning.

Under section 28, the proposed bill would prohibit a person licensed under the *Real Estate Trading Act* from also acting to broker a mortgage for that same transaction. Specifically, the draft text states: "a person who is licensed ... under the Act and either registered as a mortgage broker under the *Mortgage Brokers Act* or employed or contracted by a mortgage broker registered under the *Mortgage Brokers Act*" shall not provide services under the authority of this Act and the *Mortgage Brokers Act* to a person in relation to a trade. So, in other words, for a specific transaction.

As we discussed the first time around with Committee, one of the goals of this legislation is to ensure consumers could have the utmost confidence in all aspects of the real estate transaction. A very important part of the process was trying to find a balance between the needs of consumers and needs of those involved in the industry.

While the response to banning or restricting exclusive listings and dual agency was mixed, the response on preventing a real estate licensee from also providing mortgage brokerage services was strongly supported. Eighty-three per cent of respondents to Service NL's survey indicated that real estate salespeople should not be registered under the *Mortgage Brokers Act*.

I also understand from NLAR's consultations themselves, that there were two schools of thought. One which thought you shouldn't be able to hold the two licenses, but another school of thought that basically espoused you shouldn't be able to do it on exactly the same transaction. So that's the way the legislation is drafted, mirrored on that latter feedback.

We do acknowledge the feedback the Committee received earlier this month. We agree with much of it, but we do still see the

potential for a conflict of interest that could impact the consumer, and that's why we ultimately recommended a restriction in section 28.

We're happy to take any questions that the Committee might have.

MS. COFFIN: I think when we heard from the individual who was both the broker and the agent, their rationale was that they fall – both the broker and the agent – under separate pieces of legislation which maintain integrity and ensure that that integrity is there and that the confidentiality of the individuals are there.

I think my understanding, from the presentation, was that there were a lot of consumer protections built in to the legislation and regulations around brokerages and being a broker and how one would get a mortgage, and that was separate and distinct from being a real estate agent and the responsibilities there. So there were already two sets of legislation that addressed both of those things. My understanding was that both of them together would keep consumers protected, because certainly you can be a broker and you have to represent your clients in a manner that shows integrity and confidence and best represents their needs.

So can we perhaps clarify why this extra layer of protection is perceived to be necessary, and how it might address some things that perhaps we haven't seen already?

MR. CHIPPETT: We certainly agree with the feedback that on the mortgage broker side there's considerable federal regulation. I think that was the specific reference in the transcript. And there's no question that protects the individual in terms of types of documentation and so on and procedures to be followed, but we still feel that at that moment when an individual's representing both of those services, we'll say, there is that moment in time when you've got access to the mortgage side of things – what people have been approved for – and then you're also on the other side of the coin trying to provide, obviously, the best possible price from a real estate perspective. We think being in that position still represents a conflict,

or a potential conflict. So it's that particular point in time that we're concerned about.

We do have mortgage broker legislation as well, but it's not the same as a lot of the jurisdictions across the country. So we feel right now the best option to protect the consumer in that instance is this restriction.

MS. COFFIN: Okay.

CHAIR: Just a reminder, if we can identify ourselves before speaking.

MS. COFFIN: Sure. I'm sorry; my speaker was on, so I had assumed that they knew.

I'm trying to pick this apart as best I can. So what you're saying is the mortgage broker legislation, provincially, is perhaps insufficient. The potential for a manipulation of the information possessed by an individual, both a broker and an agent, could come to a head when the agent might know the ceiling that an individual could borrow at and might be, if they were unscrupulous, maybe encouraging them to buy a home that is at the limit of their borrowing, where they might have said, no, instead, I want to spend \$100,000 less than my borrowing limit. Perhaps that's the case. Reasonable.

Now, whether or not that individual is a broker, one would argue there is a personal incentive for a real estate agent to negotiate the highest price possible of a house that they are selling or buying because their commission is based on that. Is that correct?

MR. CHIPPETT: (Inaudible.)

MS. COFFIN: Okay. So by separating this extra legislation and by not allowing the broker and the agent to be the same individual, we're not solving that problem. Correct?

MR. CHIPPETT: We're not solving the ability for people to do that but, obviously, the notion of the code of conduct and ethics on the real estate side, if there's a pattern of that behaviour or what have you, there's a way to deal with that. The issue is, how do you deal with the person possessing both of those licenses at that

point in time? That's where we still see there to be risk.

MS. COFFIN: Okay. I see that. I think we're perhaps – the code of conduct applies to an agent that is a broker, right?

MR. CHIPPETT: Correct.

MS. COFFIN: That code of conduct still addresses that same issue. It's not separating the broker from the agent. It's the personal integrity of the individual who holds both the broker and agent licenses and that are working together.

I can see this being an issue if the broker does not disclose that they are the agent or they're not working, but in terms of if you are an individual and you are looking for repeat business, it's your integrity and your ability to get the best deal and best respond to the individual's needs and financial constraints perhaps. That's what's going to build their integrity.

I hesitate in this, and this is why I'm asking so many questions. I want to clarify exactly what the issue is at hand and is this the appropriate way to deal with it, because what we're also doing here is we're constraining an individual's ability to make a living when we do this. So, we're saying you can only do this or you can do this.

Perhaps another little bit of clarification. Can an individual hold both a mortgage licence – and this might be here – be a broker and an agent, but a broker for one person and an agent for another? Is that okay?

MR. DELANEY: Yes, the recommendations that have come from NLR, or certainly the survey of the public, was that the issue was raised whether someone should hold both licenses, but I think there are arguments against that. So, the recommendation was simply to say: No, you can hold both licenses, but you can't act in both roles for a single transaction.

In regard to someone's ability to make a living, they can still act in both capacities for different transactions. It's just on that single transaction they can't play both roles.

MS. COFFIN: I'm exploring this a little bit more.

That individual can't do it, but what about a person who's a broker and an agent and then has a friend or a partner or a sibling or a family member who is an agent. There's a possibility for that information to be shared there as well. I know we're crossing a different professional line there as well, but we haven't resolved that problem.

So, I think the issue we're talking about here is protecting the consumers. I'm not quite sure if section 28 of this act is the way to do this. Remember, we're only talking about one individual at this point; this is my understanding that there's only one individual in the province that has these dual licenses. So are we being unnecessarily punitive for a situation that we perceive could be a problem but perhaps needs to be addressed in a slightly different way?

I'm exploring the options here and the potential outcomes; that's all that I'm doing.

MR. CHIPPETT: In the case of Mr. Whelan, obviously, he's identified as someone in that particular circumstance.

When we talk about mortgage brokers, the licenses are often held by corporate entities. So, as an example, we have 52 corporate mortgage brokers registered in the province. There would be any number of individuals under some of those licenses who would be able to act as mortgage brokers on behalf of the particular corporate entity that had the licence. So, we can't for sure say that it's one individual who's doing this.

We do know there is one corporation or one company that holds both the corporate mortgage broker licence and a real estate agency licence; but, obviously, there are 51 of those corporate entities that have any number of mortgage brokers under them that could be real estate agents as well.

CHAIR: MHA Petten.

MR. PETTEN: After listening to Ted Whelan and listening to the conversation here this morning, the question that jumped out at me

when he did his presentation was: Why are we here? How did we get here? Has this been a problem here? How did it end up on the survey? There are a lot of unanswered questions.

When he presented this dual agency, at first when it was presented by yourselves and NLAR, it was almost like it made – obviously there's a problem, but is there a problem? Usually you bring something in to prevent something from happening or stop the behaviour. Is this an ongoing issue?

According to Mr. Whelan, legislation is pretty strict on the mortgage broker side and now you're tightening up the legislation on the real estate side. He's saying this is his business model, this is how he's making a living, but now by doing this, he's going to be cut off at – he has to make a choice, which one, or do it separate. His model is set up that he just does both; he's above board and he's reputable. Is this a problem?

That's the question: Where did all this arrive from? Was there a specific question on the survey – which I don't think there was – that specifically talked about dual agency? I think it was kind of grey areas. I can't remember the exact questions. I don't have the survey in front of me now, but I don't know if you can explain further on that or clarify.

MR. CHIPPETT: I can speak to the survey results. There were certainly specific questions around this particular point. The exact question of whether or not you should be able to do both, there was an 83 per cent no answer to that question.

If you break it down, it was 67 per cent no from agents, 94 per cent no from salespersons and an 80 per cent no from the public. It was specifically identified in the questionnaire. Those were 90 responses and that was the breakdown. In terms of the history, I'm going to have to defer that to Michael or Renee.

MR. DELANEY: There's certainly not a history of issues that have been brought forward to the department. I think the issue here, I guess, is kind of twofold; one relates to the complexity insofar as each – whether you're buying a home or you're securing a mortgage, there's certainly

legislation that govern each transaction and the ultimate goal is to try to protect the public.

Of course it's challenging to make sure that the public understands exactly what they are signing up for, in effect. Legislation, whether it be federally or provincially, tries to balance the objectives of both, not to be overly restrictive, but also to provide that protection because we all know of situations where individuals really don't. They maybe don't have the financial acumen to know, to be wary of risks in either transaction.

So while each piece of legislation – from either the *Real Estate Trading Act* legislation, or the mortgage broker legislation – aims to protect individuals in that transaction, when you start factoring both in as one transaction it gets more complicated. And what I mean by that is, there's always a risk of fraudulent activity.

To your point, I don't know that there's a history of fraudulent cases, but I think even beyond blatant fraud – which we can certainly speak to – there's an inherent risk within each transaction that maybe the person who's dealing on behalf of the client gets a good deal in one perspective, maybe secures a lower purchase price on a house, but links that up with a mortgage that maybe is not as favourable for the – compared to what might be available in the market.

Ultimately, what the client sees is I bought a home and my mortgage payments are X amount and I can live with that, but without maybe understanding that while the transaction on the real estate side was good, the mortgage that they've secured may be more risky and may not be suitable over the long term.

It's very difficult for the public to weigh those risks. So you can certainly deal with it by disclosure – and I think that was something that was presented by Mr. Whelan. Again, the disclosure can work, and certainly it provides a level of protection for the individual who's giving the disclosure, but, ultimately, will the disclosure truly inform the client in terms of making that decision and understanding that each transaction is separate and maybe I need to be looking at the best available option for each?

Again, it's looking to try to – those lines are very blurred, and it's very challenging for the

individual to recognize that there might be an issue, or even for the regulator to recognize that there's potential non-compliance. Because, again, you're trying – you can't use real estate legislation to impose restrictions or issues on the mortgage broker side. So, the idea of restricting it on the transaction is both so that the client understands it could look at each transaction in and of itself, and from a regulatory side we can also look at whether there's been compliance in both regards.

CHAIR: MHA O'Driscoll.

MR. O'DRISCOLL: I just got named to this as a new MHA, and sitting back listening to your side of it is good and to NLAR. Then when we listened to Mr. Whelan, I said, well, what would stop somebody from listening to him? He's trying to take care of the customer on both sides. It seems like it's legit, what he's trying to do, represent the customer. We want to come back here and see why we wouldn't have this in there. That'd be my statement on that, to why we don't have it in there.

What is to stop us from representing the customer itself? He's getting both sides, getting good representation. He's taking care of them on the mortgage side and on the other side. Again, we just wanted to hear back, well, why wouldn't this be in there?

We appreciate the information you gave us, but I wasn't sure – and that's what we wanted to hear back. That would be my opinion on what we did the last time. Maybe you have answered it, but I'm just not sure. It seemed like he was pretty legit. And it might be more people there, but you know.

MR. CHIPPETT: I think we should state for the record that our commentary doesn't relate to Mr. Whelan specifically. Obviously, we have, you know – and then second to that, at the risk of repeating myself a little bit, there are some statements he makes where he acknowledges you could go through and be your mortgage broker, your real estate agent. I think he also mentions home inspection and so on. So the notion of separating, it's really when those – I think Michael described it pretty well – when those two functions or services come together at that point in time, there's a potential for conflict.

Certainly, we went with what we felt was the lesser restriction, which is on an individual transaction with the same person, rather than any notion that the two licenses couldn't be maintained at all. I recognize the Committee has raised some other ideas that might be considered, but the point about the fact that we can't do significant regulation of mortgage brokers through the *Real Estate Trading Act* is a big part of our response to the Committee today.

CHAIR: Thank you.

MHA Coffin.

MS. COFFIN: Okay, I'm reading 28 – and this is new information here. I did not realize there were – I think you said real estate agencies or corporations that hold mortgage brokerage licences. Is that correct? So there are agencies that hold brokerage licences. Is that what you had said earlier?

MR. CHIPPETT: There's one that has a corporate licence for mortgage brokerage services that also has a real estate agency licence. Then the other 51 entities, companies that are registered at mortgage brokers, could have any number of individuals under them who are providing brokerage services, and we would not necessarily know who those individuals were because they're not licensed.

MS. COFFIN: Okay. This seems more complicated than I think the first blush of this was. Because I would be concerned about rural areas, where there is a single mortgage broker that might have real estate agents in it and people have to leave their community to either get a mortgage or buy a house, which becomes complex.

I have to recognize a point that was raised by MHA O'Driscoll recently, where car dealerships offer financing, which is technically a loan brokerage and, at the same time, sell vehicles. So they certainly have that capacity. We haven't identified that as being a problem.

So I'm wondering now – I know there is a public – we've seen on this survey, and I haven't looked at the survey and the validity of the survey, the response rates or who was targeted for the survey. I haven't done anything like that,

and that can often skew your results depending on how the survey was executed. I haven't looked at those things at all, but while this is perceived to be a problem, we haven't seemed to clarify that there is an actual problem, or how do we even capture some of the issues underneath that?

This is where my hesitation comes from because we are curtailing people's ability to earn income when we put this restriction on. We have to be very concerned about that because we have really high unemployment rates right now and our economy is quite depressed. So we need to be very careful about how we are managing people's livelihoods, but we also want to be very careful about how we are managing people's money.

I want to maybe just get a little bit of a sense of: Why is it okay in, say, a vehicle sale versus perhaps not in the real estate?

MR. DELANEY: I guess there are a couple of questions there.

MS. COFFIN: Yes.

MR. DELANEY: I guess in terms of the particular issue around the vehicle sales, I think the key difference to me is the size of the transaction. I'm not going to make any comments about vehicle sales, but I think certainly there's been media coverage of the understanding – whether to move to the 72-week car payment plans that the public, again, doesn't always understand what they've signed up for and people have run into issues and things like that. Ultimately, it's certainly a much smaller transaction.

A real estate transaction, you're dealing with potentially hundreds of thousands of dollars versus – and, arguably, there are expensive cars, but certainly in tens of thousands of dollars. I think that, I would say, is in part why the regulatory requirements around real estate are more significant.

MS. DYER: When I look at this, the real estate and what we're trying to put through here, I look at it as a first line of offence. When you think of a car dealership, you go in and the salesperson sells you the car. When you're going for the

financing, it's a completely different person in a completely different office going through all the information and providing you with the financing and all the additional options, and making sure all the disclosure is correct. Even though it's the same dealership, you really are dealing with two separate people, in my understanding of what I've done in financing.

When you think about real estate, the regulations around when there is misconduct, what do we do about it? So, a transaction goes through on a real estate side, everything is above board. We have great legislation in place now that if there was misconduct, we can actually review the information, make appropriate findings and we can either fine or press charges, et cetera, if this legislation goes through.

The challenge is on the mortgage side. So the real estate agent becomes the mortgage broker as well. Okay, so there's misconduct we find out on the mortgage broker side. There was information that wasn't disclosed; they should have gone with a fixed. Based on the information that was provided, potentially there were two or three offers on the table. It was disclosed only one offer was provided to the individual and, of course, she accepted that offer. She finds out later on that potentially that mortgage broker had three offers on the table but only disclosed one. The one he disclosed was of most benefit to that particular individual, where the other two offers potentially would've been a better offer from an interest and product side for the consumer.

So, what happens? She comes in and she talks to me and she says I'm really disappointed. I'm locked in now; I can't get out of this product. I've signed all the agreements. Disclosure was there, I've signed off on anything.

The only thing I can tell her at this point in time, based on our legislation today is, you know what, you're going to have to take that person to court yourself. We don't have strong misconduct in our current legislation on the mortgage broker side. I can't touch him on the real estate side because it's not a real estate transaction; it's a mortgage broker transaction. Because of that, under that legislation, there isn't misconduct right now and so I really don't have a recourse for the potential consumer that is potentially out

thousands and thousands of dollars and is probably locked in for the next five years.

The challenge right now with the mortgage broker and how the licensing works is that you have a corporation that's licensed, or you can be an independent that's licensed. Under a corporation – similar to Mr. Whelan, he's licensed under a corporation, so you can walk into that corporation and put up your sign and say you're a mortgage broker.

Currently how the legislation works today, we don't have a lot of requirements around education or misconduct or what we can do from a regulator perspective. We're certainly working through and we have identified that we need to do some work on the mortgage legislation today but, currently, if something happens on the mortgage broker side, there's very little recourse for a consumer, other than taking them to court.

We all know when you get into these rural areas, it's overwhelming to have to take to someone to court, even Small Claims Court. I've done it myself. You have to really be vigilant and understand the system to be able to make the change. That's why we want to put the restriction to say, you know what, all of sudden the mortgage broker, who has all the financial information and now can be your real estate agent, has too much information.

Potentially, there will be conflicts and it's something that we're trying to say, hey, if you want to be the real estate agent on this transaction, great, let's get them the best house and sell. But if you, on the mortgage broker side – and it is a complex product and there are multiple ways of selling the product – I think it's best for that person to get unbiased advice on the mortgage side, because after you sign the papers there's not much I can do for you.

That's why we want to say on the one transaction only. We're not saying that there's any impediment for that person to not be able to do both services, but just not with the one individual and that one transaction. We want to provide the consumer – and I can tell you that I get complaints. After you lock in the – you sign the papers, it clearly shows disclosure, even though often, a lot of us don't read those. They're lengthy documents, they're in fine print

and they're hard to read. I feel for these people. After they lock in I can tell you we do get complaints and I feel bad, because there's not much I can do as a regulator to stop the transaction from going through after you signed.

MS. COFFIN: Excellent points. What I'm hearing is that we need to fix the *Mortgage Brokers Act* and we need to fix the disclosure on that.

This is a stopgap. Section 28 is a stopgap measure before we fix the *Mortgage Brokers Act*. That seems to me what ought to be next on the hit list of legislation to fix, so those two go hand in hand. Is that perhaps where we need to go?

MR. CHIPPETT: There's no question we need to look at the mortgage legislation. Obviously, SNL has a huge number of pieces of legislation, so there are other ones that are working through right now as well.

We do have very different requirements in our mortgage broker legislation than a lot of the jurisdictions across the country. There's no question that there needs to be work – I don't know all the details of it, but it's a regulatory bill for that particular profession or set of services, so I would envision a review similar to what we've gone through with the *Real Estate Trading Act*.

CHAIR: MHA Petten.

MR. PETTEN: Thank you.

Something comes to mind – and I understand the argument on both sides about the dual representation, but we have so many other requirements: You have home inspections, you have appraisals and you have market value. An appraiser will take the market value in a neighbourhood.

Overpricing a house is very hard to do, even though, yes, you can price a house and everything, but it has to fall within appraisals. Appraisers have their own regulations, they have their own policies in how they decide the value of a home.

I get the argument of the dual agency, what problems can arise, but I'm having trouble in my own mind balancing out. I don't know how easy it is to do what we're trying to prevent from happening, if you know what I'm trying to say. We're trying to stop something that's happening that I really don't know in our system, like when you go to buy a house – and I just went through this with my daughter so I'm refreshed now. It's very difficult because from a personal perspective, I questioned that they were paying too much for the house. I questioned the mortgage broker, I went through all of this on my own, believe it or not, recently.

It all panned out to be very legitimate. It was all above. The appraisers came in and they actually ended up getting a better deal than I thought they were getting based on all these other inspections and appraisals. I was questioning is there something not right happening here and everything was above board, so I don't know how easy it is to do what we're trying to prevent from happening. I don't know if that makes sense, is a sensible question. I don't know if anyone can provide any – that's where I am.

MR. DELANEY: Just maybe to take a slight step back, I don't necessarily view the proposed legislation as a stopgap, and I'll try to explain that in answering your question, Mr. Petten.

In essence, I don't think the issue – and, again, 98 per cent of transactions go through without a hitch and there's compliance. In the regulatory world, of course, we're more concerned with the 5 per cent, the 2 per cent, the 10 per cent, whatever it might be, that are potentially not compliant and the risk.

Certainly, in the financial world, typically that occurs with people who have a little less knowledge, who don't question the process and don't delve into the numbers; they take things at face value. We're a trusting society, that's a great thing. Ultimately, you would hope that the regulatory system – they believe that the regulatory system will protect them.

The specific issue that I kind of view this as dealing with is kind of a masked issue in the sense that it's not so much about the value of the home, a lot of it has to do with the compensation structure for these individuals. Ultimately, if

you're a mortgage broker, you have a client and you put their mortgage business with a particular company, you get a commission; you are paid, compensated for the service. Similarly, with real estate agents. They're compensated typically on – the value of the home is certainly is a big component of how their compensation works, but they're compensated for their work.

The potential issue becomes when both services are being provided at once. There will be those, even now, who would fully disclose all of the compensation structure and maybe allow the individual to think about, okay, is this the best deal for me, but, ultimately, there's a lot that goes on behind the scenes that the purchaser, the client is not necessarily aware of.

The risk that I guess we're trying to address is that there are situations when one – I guess an underlying issue where they're not getting the best possible service in one area is being masked by the overall transaction.

The easiest way I can think of it is that you look to purchase a home; you have your real estate agent that you deal with, who is also the mortgage broker. They negotiate a great price on the home, you feel like you've done really well. On the other side then they say, okay, great, I'll line you up with X mortgage company, maybe because that's who they have dealings with and they might get a higher commission versus necessarily providing you with the best possible rate.

Again, you would hope that they would look at both, but the public is not going to question as much whether or not both parts of the transaction are being impartial and they're getting the best service.

Maybe I'll go back to the car sales position where people often walk into the car dealership and the question that you're asked is: Well, how much do you want to pay per month? Again, not necessarily aware of the term, it's more: Okay, I want to pay \$400 a month. Well, great, we can get you in this for a 72-month term. That's not necessarily in the best – again, there's a risk there.

In the real estate world, it's a significant risk, because, again, if you have maybe a 50-year old

coming in to purchase a home and you're trying to put them into buy a home: Well, I can get you a great payments for the next 25, 30 years. Well, is that individual going to be in a position when they've retired in 30 years to still be able to make those mortgage payments, and if interest rates go up, will it still be in their best interest?

So, it's really just trying to differentiate and make sure that they're not being led towards a product in one particular area, that might not be in their best interest. I don't truly believe that it's just on the mortgage brokerage side. I think it's the fact that they control both. They control all the information and they can present in a way that might – ultimately, the person goes to them for advice, and they can present it in a way that certainly seems like good advice, but it's not necessarily in the individual's best interest on both sides.

I don't know if that explains it, but, again, it is a complicated issue and it's trying to just divest the two pieces. I would argue, almost regardless of the strength of both pieces of legislation, it becomes much more complicated to regulate the transaction when both pieces are intertwined in the decision.

CHAIR: MHA Loveless.

Just one moment, now, because it's not on there. MHA Loveless – the Chair recognizes MHA Loveless, please, who is sitting next to MHA Coffin.

MR. LOVELESS: (Inaudible.)

CHAIR: You won't be on record; we won't have you recorded. Maybe if you just want to go behind there.

Okay, here we are.

MR. LOVELESS: There we go.

First of all, I have to apologize because I wasn't here the last meeting to hear the presentation by Mr. Whelan – I believe the name has been referred to. I was attending a funeral in my district, but just listening to some of the comments – I was a real estate agent for eight years. I guess the conversation piece around broker versus agent and all that stuff, sometimes

in my mind I think an agent should be an agent and a broker should be a broker and do your job; but, I'm thinking about, as we're all talking about being a mortgage broker and being an agent, too, on one transaction.

I would have loved to have been a mortgage broker on a lot of transactions because I would've been equipped more with information and, therefore, in line representing my client to the best of my ability and to represent them. Because at the end of the day, the real estate industry is very competitive, no doubt about it. It's how I'm going to represent, say, if Alison is my customer, my client, I want her to be my client forever and ever, amen. So, it is, I guess, complex.

You mentioned control. I don't like that word because it makes it seem like we're doing something wrong here. The industry is a good industry, but I think, for me, I would weigh towards the agent being a mortgage broker is going to equip him or her to represent their client. At the end of the day, for me, I want to hold on to that client and do the best I can. So it's about equipping that agent.

I just wanted to add that to the discussion.

CHAIR: Thank you.

Any further comments over here? Any more questions from the Committee?

MHA Coffin.

MS. COFFIN: Thank you.

I'm tending towards protecting the individual and their livelihood. I hear very clearly what you're saying; you're hearing problems. There is some concern of manipulating the system, and, yes, these transactions are enormous.

Now, separating buying a home from buying a car, here's my caution. If one person feels they've been slighted and is out, let's pretend \$10,000 on the purchase of a home; very much a significant issue and I'm sure you would hear of that.

If, similarly, we have an individual going to buy a car and that individual is out by \$1,000. Well,

let's multiply that by 10. All of a sudden we have 10 people who are out \$1,000. We still have the same magnitude of problem, and it is all because of that same disclosure issue.

So I think the larger issue is clear disclosure between individuals, if they are providing both services, be it in real estate or be it in vehicle sales. Let's pretend I have a construction company and I want to go buy a big tractor and a backhoe. I imagine much the same situation is happening there.

I think the more rigorous consumer protection will come with more rigorous disclosure. I agree with you, I've read disclosure documents. They are convoluted, they are difficult and they are not easily understood by a layperson in a particular industry. Perhaps that's where the fundamental issue lies, is disclosure for consumers to ensure their protection.

Perhaps it's not a stopgap measure, but I think section 28 is an attempt to access that and prevent this from happening. I think perhaps we need to go a little bit further in the rigour of how we enforce that consumer protection or how we enable that consumer protection. I think that does go to a more rigorous disclosure function and it should go across all areas of consumer protection where they can be in a similar situation. So, whether it's vehicle sales or whether it's home sales or any other types of things, I think that's perhaps where we should go.

Now, that is not specific to this particular situation. I think that's something that we need to look at as government as a whole. I'm not quite sure how we can kind of move from where we are now to get to that place. I would certainly love to hear from everyone on those perspectives.

CHAIR: Okay.

Any further speakers?

MR. CHIPPETT: As we said, we're not opposed to the notion of disclosure generally. I think on the notion of disclosure requirements and the specifics around those, with so many sectors that are regulated and different pieces of legislation coming into place at different times

and being reviewed on different schedules, obviously, it presents some challenges. I'm sure, as we look at these other sectors that we're regulating, disclosures would often be a part of that discussion for sure.

CHAIR: Okay.

Any further questions from our Committee? No further comments over on this side.

Okay. On that note we can adjourn, we can conclude. We certainly thank you for coming back. The Committee will continue its work, so on and so forth.

Thank you.

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CHAIR: Okay, we're back.

Again, just for our listeners at home, we are reconvening now to hear from the members of the Newfoundland and Labrador Association of Realtors in response to the presentation that we just had and we'll start over here for members to introduce themselves.

MR. STIRLING: Bill Stirling, CEO of Newfoundland and Labrador Association of Realtors.

MR. HOLLETT: I'm Ed Hollett, Manager of Communications for the Newfoundland and Labrador Association of Realtors.

CHAIR: Do you have an opening? Go ahead.

The Chair recognizes Mr. Stirling.

MR. STIRLING: I just welcome the opportunity to be back and provide some more information or some clarification and answer some questions. It is nice to recognize MHA Loveless over there, a former member of ours. It's good to see you again.

We sat and watched the previous presentation and discussion, and I think there's maybe some clarity that we can provide as we go forward. First and foremost, I think it's important to say we don't have a problem with this issue in this

province. I haven't heard of an issue or a complaint related to this particular issue.

We did hear very clearly when we went around the province that there's a potential for conflict of interest, when somebody is representing both sides in a transaction; however, good legislation is designed to prevent unscrupulous behaviour from happening and to provide some enforcement tools, should that kind of behaviour happen. Certainly anything I'm saying today in response to Mr. Whelan is certainly not with any prejudice against Mr. Whelan. I'm sure he's very scrupulous and operates very professionally.

The challenge that we have – and I want to give you an example and I want to talk a little bit about how the industry works in relation to representation and agency. As a buyer's agent, I have my responsibility – if I'm a real estate agent and I'm working with a buyer, I have a fiduciary responsibility to share information with that buyer about property, about their ability to pay, what they're looking for. Any information I have has to be shared with the buyer; that's my responsibility. Similarly if I'm a listing agent, my fiduciary responsibility is to my seller. So, all information that I have has to be shared, it has to be truthful, it has to be honest, the full information back and forth.

Where we see a real potential for conflict, if I am going to go looking for a house and I go see Mr. Whelan as a mortgage broker or anybody else – as a mortgage broker – and they have all of my information, they know how much I earn, they know what I can afford, they know what I'm willing to spend, they know everything. But then I go shopping for a house with my agent who might be somebody different – it could be Mr. Loveless – and we find a house that is listed by Mr. Whelan. In one instance, his responsibility is to me as his mortgage client; on the other hand, his fiduciary responsibility as a real estate agent is to the person whose house he's selling.

He now knows all of my information. He knows what I'm qualified for, he knows what I'm willing to spend, he knows what I want to spend and he's in the position of having to share that information with his seller. That's not in my best interest. It's not necessarily in his best interest.

It's in the seller's best interest. There is a real conflict.

I don't know how we can avoid that kind of a conflict through disclosure because that is – a lot of the discussion we've heard is about working with someone to get them a mortgage and then go buy a house. So you're on both sides of it, or on the same side of the transaction.

The challenge is if the mortgage broker is the listing agent on a house but he's also providing mortgage services to somebody who's looking to buy. This, in the St. John's area, is not a problem. There are lots of agents, lots of competition both on the mortgage broker side and real estate side. When you get into rural parts of the province that kind of a conflict is much more likely to arise, right. It's a different perspective for the Committee to think about in terms of conflict of interest.

I think we may be able to deal with the buyer side, representing the buyer on both the mortgage and the real estate side through some increased disclosure. I would encourage the Committee to think about plain language disclosures as opposed to legalese. We've all signed mortgage documents, I think. Nobody ever reads them. They're written by lawyers for lawyers.

If we're going to have increased disclosure, absolutely in the clearest, plainest language we can, but I don't know how disclosure can deal with that other conflict, which is representing the seller on the real estate side but representing the buyer on the mortgage side. I think that puts somebody in a really odd spot. I encourage you to think about that.

Other than that, I'm here to answer any questions the Committee may have.

CHAIR: MHA Coffin.

MS. COFFIN: Because I was going to ask a question, of course. Okay.

You raise a very, very good point, and it's something that I hadn't thought about. When I look at section 28, I, of course, read it from the: I can't be the broker and represent the person buying the house. What we've proposed here –

so this will prevent an individual from being a broker and representing a seller, a person selling a home. Is that correct? It ought to represent both sides of that, yes?

MR. STIRLING: I think it's probably a question for the department, but I think the language in the draft is sufficiently vague that it would cover both sides of the transaction.

MS. COFFIN: My light is still on so ...

Okay, so a follow-up question to that would be: Can we make 28 more specific to say that one cannot be a broker and represent a seller? Can we somehow jig this so that it's more specific and does protect individuals who are both brokers and agents but also it does that extra piece of consumer protection in there? Is there a way in which we can modify that? I'm not sure if that goes to you.

Well, tell me your perspective and then perhaps we can see if we can engage Service NL in this conversation as well.

MR. STIRLING: I think that would be very complex to do in terms of wording in legislation. Again, I use that as an example of one specific conflict of interest. I think there's potential for others.

In our previous meeting, I know after when Mr. Whelan was in, MHA Coffin, you were specifically asking about potential for manipulation. I think there's certainly potential for manipulation. You might be looking at a \$350,000 house, but once you go in that \$450,000 house and you see the granite countertops, the propane fireplace and all of the bells and whistles, it's hard to go from that high end and then go back to what you're looking at. I think there is certainly potential for some manipulation in other ways.

To answer your question, I think it would be difficult to try and word something in the legislation that would specifically deal with a single conflict. The point of legislation is to provide tools and mechanisms for the superintendent to deal with unscrupulous behaviour when it happens. It might be something that can go in the code of conduct, I don't know.

We've recommended the blanket ban where you can't do both. Clearly, that's something that Service NL is not prepared to go to right now and, rightly so, we've got lots of members who've expressed some concern about that. If we can find some way to word a disclosure around it, maybe, but it's tangly. It really is tangly. To think through all of the possible scenarios where manipulation could happen is difficult.

CHAIR: MHA Loveless.

MR. LOVELESS: Just listening to you, Bill, in terms of, we're looking at this from a dual-agency point of view, from a broker and an agent. Forgive me for asking, but dual agency for agents representing the buyer and seller is still in effect? So if you're an agent you can represent the buyer and the seller, correct?

MR. STIRLING: With appropriate disclosure, yeah.

MR. LOVELESS: Right.

MR. STIRLING: Yeah.

MR. LOVELESS: Which I did on several occasions.

MR. STIRLING: Yeah.

MR. LOVELESS: We talk about conduct in terms of the broker and being an agent as well. For me, it all goes back to, okay, I'm going to represent you and I'm going to do it to the best of my ability. Now, there were challenges because if I'm representing him as a seller and you're the buyer, and I'm representing both sides, that can get tangly.

MR. STIRLING: Absolutely.

MR. LOVELESS: But for me, it depends on – I'm going to sit down and have a conversation with you, I'm going to sit down and have a conversation with you. What are you expecting from me as an agent?

There were times I walked away from the table because I felt like I could not represent, I felt that there was going to be a conflict. Therefore,

do you know what? You're best represented to get another agent.

It comes back to, I guess, the conduct, and I earned respect because of that. Therefore, they passed that word along to somebody else.

It is complex and there are situations you could present over and over and over and over where it can – and we get back to the word control and stuff. Whether you're a broker and an agent or whatever, you can control yourself and it's all about your conduct in terms of representing the buyer and the seller.

MR. STIRLING: Yeah, absolutely.

Absolutely, Mr. Loveless, I agree with you 100 per cent. Unfortunately, the legislation has to contemplate those who don't deal on their own personal conduct. As we currently have, our members are bound by our code of ethics, which requires honesty and professionalism and integrity, but not everybody is a member of ours, and the legislation has to contemplate for people who are not members of ours.

Earlier in the discussion, Mr. Chippett was talking about there's one brokerage that is also a mortgage broker corporate licence. That brokerage is not a member of ours. So, that company is not bound by any code of ethics on either side. There are very little enforcement tools that the superintendent would have, either in the real estate legislation or the mortgage broker legislation, should that company do something unscrupulous.

I guess further to a couple of the questions that I've heard, I'm aware of four people who are doing this mortgage broker and real estate agent business in this province; at least four that I know of. Not sure how active they currently are. As far as I'm aware, there is no similar prohibition across the country. I don't think there's any other province that has such a prohibition in their legislation.

Having said that, maybe we can be leaders, I don't know, but I think we could deal with disclosure, again, just on the buyer side. I don't know if we can do it on the seller side.

CHAIR: Any questions or comments from here? All good?

Any further comments on this side? All good?
Okay.

Well, on that note, we'll adjourn.

MR. STIRLING: All right, thank you very much.

CHAIR: Thank you very much.

On motion, the Committee adjourned.