

**PROCEEDINGS AT HEARING
OF
FEBRUARY 26, 2021**

COMMISSIONER AUSTIN F. CULLEN

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February 26, 2021

(Via Videoconference)

(PROCEEDINGS COMMENCED AT 9:30 A.M.)

THE REGISTRAR: Good morning. The hearing is resumed. Mr. Commissioner.

THE COMMISSIONER: Thank you, Madam Registrar. Yes, Ms. Rose.

MS. ROSE: Thank you, Mr. Commissioner. Today we have a witness appearing in relation to his role at the Real Estate Brokers Association. This is Mr. Stephen Ellis. And I understand he will be affirmed, Madam Registrar.

**STEPHEN ELLIS, a witness
for the commission,
affirmed.**

THE REGISTRAR: Please state your full name and spell your first name and last name for the record.

THE WITNESS: It's Stephen Ellis. S-t-e-p-h-e-n E-l-l-i-s.

THE REGISTRAR: Thank you.

THE COMMISSIONER: Yes, Ms. Rose.

MS. ROSE: Thank you.

MR. HEWITT: Mr. Commissioner, it's Hewitt, H-e-w-i-t-t. Just indicating that I'm here with Mr. Ellis, counsel for the Real Estate Brokers

1 Association. I don't imagine I have anything to
2 say, but I just wanted to let you know I'm in
3 the room.

4 THE COMMISSIONER: Thank you, Mr. Hewitt. It's
5 always a pleasure to see you.

6 MR. HEWITT: Likewise.

7 **EXAMINATION BY MS. ROSE:**

8 Q There we go. Madam Registrar, could we please
9 have Mr. Ellis's CV on the screen.

10 And perhaps while she's doing that I'll just
11 ask you, Mr. Ellis, you're a managing broker at
12 Century 21 Prudential Estates Ltd.?

13 A Correct.

14 Q And how long have you been a managing broker?

15 A Oh, I would say -- it's hard to remember how
16 long exactly but certainly close to 30 years.

17 Q And are you a real estate agent as well?

18 A I am.

19 Q And you are a managing broker, but you're here
20 as a representative of the Real Estate Brokers
21 Association of BC?

22 A Correct.

23 Q And you're a secretary of that association?

24 A I am.

25 Q And could you describe how it is that you were

1 chosen to be a representative of that
2 association here today.

3 A It was a discussion amongst our board of
4 directors, several members that I believe they
5 contacted the commission counsel to make
6 representation or to offer our representation to
7 the commission. A series of interviews were
8 conducted and we agreed to participate.

9 Q But the -- and if I use the word "REBA" you'll
10 know what I'm referring to?

11 A Yes, REBA is how we refer to ourselves. REBA of
12 BC.

13 Q Yeah, and that's just Real Estate Brokers
14 Association of BC. So REBA.

15 MS. ROSE: Madam Registrar, have you been able to
16 locate the witness's CV?

17 TECHNICAL COORDINATOR: Sorry, Ms. Rose, Madam
18 Registrar needs to restart her computer, so we
19 will share as soon as she can.

20 MS. ROSE: Thank you for letting us know.

21 Q And REBA is not a participant of the commission
22 in that it's not a member with standing at the
23 commission?

24 A No, we're not -- we didn't make application for
25 standing in the commission.

1 Q Okay. Could you please describe REBA's mandate
2 and activities.

3 A REBA is a group of managing brokers, brokerage
4 owners who are advocating on our own behalf.
5 We're all members of both the Canadian Real
6 Estate Association, the BC Real Estate
7 Association and the local real estate board. So
8 we are in fact members of all those
9 organizations, but we felt that the managing
10 brokers themselves needed to have more of a
11 voice in the industry. We're a small number of
12 individual licensees. I believe the real estate
13 council statistics indicate we're about
14 1,300 people in the province and we operate all
15 of the brokerages that are currently both
16 trading services, strata property management and
17 rental property management. So we're a small
18 number of people in relation to the number of
19 licensees, which are I believe 25,000. Those
20 are members who pay fees that are shared between
21 the Canadian Real Estate Association, the BC
22 Real Estate Association and the local boards.
23 We fund ourselves. We are members of those
24 organizations, but we fund ourselves and do
25 advocacy work, mentorship. We gather to discuss

1 topics. We've submitted position papers in
2 response to the superintendent of real estate's
3 retraining the role of managing brokers, that
4 sort of thing. So we advocate on our own behalf
5 as managing brokers and business operators.

6 Q You mentioned the term "brokerage owner." Could
7 you explain to me how that is distinction from
8 the role of a managing broker.

9 A There are multiple roles and understanding of
10 how a brokerage functions. You can be a
11 brokerage owner and not be a licensee. You can
12 be a trading services representative and a
13 brokerage owner and not a managing broker. You
14 can be a managing broker who is also a brokerage
15 owner or an employee of a brokerage. And as I
16 say, you could be a managing broker for multiple
17 disciplines, trading services, which is sales,
18 property management both strata property
19 management and rental property management. So
20 there are many combinations of business
21 operation ownership and management models. So
22 each individual brokerage has to be looked at
23 for its own independent hierarchy and structure.

24 Q So it's a bit of a choose your own adventure?

25 A However, it doesn't matter what your makeup or

1 how your ownership structure is arranged or your
2 management structure is arranged, you still are
3 subject to all the regulations for the operation
4 of the brokerage as mandated by the real estate
5 council as our regulator.

6 Q Right. And so that would mean that every
7 brokerage must have a managing broker?

8 A Every brokerage regardless of size must have a
9 managing broker.

10 Q And the brokerage owner would refer to sort of a
11 profit sharing of the brokerage?

12 A There's all sorts of different models for the
13 way brokerages operate these days. Some of them
14 are still the older style brokerage which is a
15 commission split structure where the brokerage,
16 the house keeps a percentage of the commission,
17 the realtor gets a percentage of the commission,
18 so the number of transactions that are
19 conducted, the brokerage would share in the
20 revenue from commission.

21 Other structures are independent contractor
22 realtors who pay the brokerage for services and
23 the brokerage doesn't necessarily earn revenue
24 directly from commission or indirectly from
25 commission as the realtors, the individual

1 representatives would pay for office space; they
2 might pay a transaction fee, conveyance
3 administration charges. So there are two very
4 distinct models and we basically say as long as
5 it fits in with the regulation of the Real
6 Estate Council of BC, if you can think it, you
7 can do it. So there are lots of disruptors out
8 there changing the model as we speak.

9 Q So those matters are issues of contract but not
10 governed by the regulation?

11 A Well, everything is governed by the regulation,
12 so however you structure your organization you
13 still must fit into the guardrails provided by
14 the *Real Estate Services Act* and the regulations
15 and rules mandated by the Real Estate Council of
16 BC as our regulator.

17 Q And when you mentioned the older version, the
18 split between a -- oh, we have your CV. I'll
19 just finish on this one question. When you have
20 a split between the real estate agent and the
21 brokerage, do you have a sense of what a typical
22 percentage split that might be?

23 A It varies. You know, some of the larger
24 commercial houses may be 50/50. As your
25 production increases, as you sell more real

1 estate, your commission split improves. When
2 you get over certain milestones, thresholds, you
3 may start to get a 60 percent split or a
4 70 percent split or 80 percent. You don't find
5 them much in a split house arrangement going
6 beyond 90 percent where the house takes
7 10 percent and the realtor takes 90 percent.
8 That would in that type of a split arrangement,
9 that would be probably maximum split arrangement
10 that now, you know, in other operations where
11 the realtor retains 100 percent of their
12 commission and the brokerage doesn't retain any
13 portion of that commission, all of their
14 remuneration for the brokerage is received from
15 fees from the -- fees paid by the individual
16 licensee for services.

17 Q Right. And do you have a sense of how much
18 those fees might be in a typical brokerage let's
19 say in Vancouver?

20 A Again that's all over the map. There are some
21 arrangements where you can pay a onetime annual
22 fee and nothing further. You might pay a
23 monthly fee. It could be anywhere from, you
24 know, \$50 to \$500. It's purely dependent on the
25 business model and how the brokerages are set

1 up. So there's quite a bit of movement in the
2 industry, people looking for a great deal for
3 service charges for real estate companies, and
4 it's quite competitive.

5 Q And in the circumstance where you have the real
6 estate agent acting as an independent contractor
7 and they are paying fees to the brokerage, are
8 they paying -- a portion of those fees going
9 towards the salary of the managing broker or is
10 that arranged separately?

11 A That again because of the different types of
12 brokerage ownership, not directly related. The
13 brokerage may be the owner. The managing broker
14 and the compliance officer, that could be all
15 one in the same individual. In a larger
16 brokerage you may have a paid managing broker
17 who is salaried working for the brokerage. In
18 some instances there could be a managing broker
19 who both manages the brokerage and also does
20 real estate sales or property management or some
21 combination thereof. So there is no one
22 standard. Everybody's got -- and, again,
23 somewhat dependent on size of the brokerage.
24 The larger brokerages have a more complicated
25 and structured management operation, where if

1 you were a one- or two-person brokerage up in,
2 let's say, the Interior of BC, you don't have
3 much option than to be the hands-on managing
4 broker, brokerage owner, salesperson. You're
5 doing it all. You're a one-stop shop.

6 Q Understood. Okay, I'd like to turn to your CV
7 now. Do you see that up in front of you,
8 Mr. Ellis?

9 A I see that, I guess.

10 Q When you say "I guess," do you need Madam
11 Registrar to zoom in at all?

12 A Well if you zoomed in a little bit. I'm ...
13 That's good.

14 Q Okay. Thank you, Madam Registrar.

15 So, Mr. Ellis, do you recognize this as
16 being the CV that you provided to the
17 commission?

18 A Yes, that is correct.

19 Q And so this indicates "42-plus years serving in
20 the organized real estate industry in executive
21 management and operations for local and
22 international real estate brokerages." That's
23 right?

24 A That's correct.

25 Q And you mentioned before that you had been a

1 overseers and deliverers of education in the
2 strata management industry for the Real Estate
3 Council of BC. I'm also a registered
4 condominium manager through an Ontario
5 organization that tried to establish itself in
6 British Columbia, but I believe that is not
7 really a fully functional operation now in
8 British Columbia. But it's an RCM designation,
9 registered condominium manager, which is
10 recognized in Ontario.

11 MS. ROSE: Okay. Madam Registrar, if you could
12 scroll down to the heading under "Designations
13 and Association Experience." And maybe maybe
14 just zoom in a little. Thank you.

15 Q At the bottom of this list here it indicates
16 that you were the former member of the RECBC
17 Complaints and Discipline Committee?

18 A Correct.

19 Q Do you recall approximately when that was?

20 A It's a number of years ago. It was pre
21 reorganization of the real estate council while
22 it was still part of the self-regulated mandate
23 that they had at the time, so I can't recall the
24 exact dates. But they had a committee that
25 vetted and reviewed complaints to the real

1 estate council for further review by the council
2 itself in discipline.

3 Q And if I suggested to you that the
4 reorganization from a self-regulatory
5 organization to one with government oversight
6 occurred in 2016, would you agree?

7 A Yes.

8 Q And the complaints and discipline committee that
9 you served on prior to 2016, was that in
10 relation to trading services or another category
11 of licensing?

12 A It was for all licensed categories. As I say,
13 there's essentially the three. There's the
14 trading services portion which is real estate
15 sales, and the strata management and then rental
16 management. So complaints were coming in from
17 across the board and we would review and vet
18 them and then have conversations with the
19 discipline committee meeting and then make
20 decisions at that time where to refer them,
21 whether they were going for a full hearing or
22 whether they were letters of warning or
23 cautions. But it was -- I would say the
24 majority of the complaints at that time were
25 through trading services and mostly the vetting

1 was to determine whether or not the licensees
2 were in breach of the *Real Estate Services Act*
3 of British Columbia and we weren't to get
4 outside of that lane.

5 So if it was outside of a breach of the *Real*
6 *Estate Services Act* or the rules and regulations
7 of the real estate council, we couldn't really
8 render any kind of a comment beyond whether it
9 was a violation of those regulations and the
10 legislation.

11 Q And about how long were you in that role?

12 A I believe I was in that for two terms, which
13 would have been approximately two years.

14 Q So a total of four years?

15 A No, I believe -- well, I think they were two
16 one-year terms. They rotate members of that
17 committee from time to time.

18 MS. ROSE: Understood. So Mr. Commissioner, I would
19 like to have this marked as the next exhibit.

20 And, Madam Registrar, is this exhibit 662?

21 THE REGISTRAR: That's correct.

22 THE COMMISSIONER: All right. Very well, 662. Thank
23 you.

24 **EXHIBIT 662: Curriculum Vitae of Stephen Ellis**

25 MS. ROSE: Thank you, Madam Registrar. I have no

1 further need of this document on the screen.

2 Q So I will be asking you a couple of questions
3 about the role of managing brokers, but I do
4 want to advise the Commissioner that this is
5 already in evidence in our overview report at
6 exhibit 603. And the portion relating to
7 managing brokers begins at page 24.

8 THE COMMISSIONER: Thank you.

9 MS. ROSE:

10 Q So, Mr. Ellis, could you describe the difference
11 between a managing broker and a compliance
12 officer?

13 A A managing broker and a compliance officer are
14 completely two different things. Managing
15 broker is in place to ensure the brokerage runs
16 in accordance with the rules and regulations
17 according to the mandate of the Real Estate
18 Council of British Columbia, so we're very
19 strictly regulated and controlled by the roles
20 and duties and responsibilities of both the
21 brokerage and the managing broker. The
22 compliance officer is to meet our proceeds
23 *Proceeds of Crime (Money Laundering) and*
24 *Terrorist Financing Act* obligations. Every
25 business as a reporting entity according to

1 FINTRAC, every brokerage must have an appointed
2 compliance officer, usually appointed by the
3 business owner, and that can be a managing
4 broker, it can be an independent individual, it
5 can be the brokerage owner, but one must be
6 appointed. So compliance officer may not in
7 fact be the managing broker, but in many cases
8 it is.

9 Q So the duties of a managing broker and a
10 compliance officer are very different, but often
11 the duties are exercised by the same individual?

12 A Correct.

13 Q And from a practical perspective can you speak
14 to either your sense in the industry or your own
15 personal experience of how much of your role as
16 a managing broker/compliance officer is
17 dedicated to the FINTRAC obligations that you
18 have?

19 A Right now it's significant. Compliance
20 officers, especially those of us who have gone
21 through examinations previously, we learn a lot
22 through those examinations and we're told to get
23 on the email list for FINTRAC because there are
24 a lot of ministerial directives and guideline
25 updates and changes. So we're constantly being

1 in a position of looking at and reviewing and
2 changing our compliance programs based on the
3 new directives and guidelines that were being
4 provided through that means. But unless you
5 have been through that process, it's sometimes
6 not that easy to understand that that's a good
7 method of delivery by FINTRAC for upcoming
8 changes, such as the ones, for instance, that
9 are occurring in June of 2021. So they're
10 dribbling out little bits of information now,
11 getting us all prepared for a new program and
12 new requirements. So the managing brokers are
13 sort of -- apart from the fact that we've now
14 seen some changes with education, it was
15 basically left up to the compliance officers to
16 go in there and figure out how to get a
17 compliance program and regime set up for their
18 own brokerages.

19 Q I neglected to ask you, are you a compliance
20 officer for Century 21?

21 A I am a compliance officer for Century 21.

22 Q Okay. And so you described this method of
23 delivery for FINTRAC guidance and other
24 directives. Could you just expand on that. Is
25 it an email list? Is it a website? How does

1 that work?

2 A It is an email and it directs you to a website.
3 So when you go on the FINTRAC website, it's
4 generic to all reporting entities across Canada.
5 They do have sector segmentation so that you can
6 get in and see what specific regulations and
7 directives apply to your particular sector. So
8 there's a sector for real estate. However, most
9 other recording, reporting compliance is
10 generalized to the entire of business in Canada.
11 So if you are deemed a reporting entity we all
12 apply the same conduct and observation of the
13 FINTRAC guidelines with the exception of any of
14 those sector specialty directives.

15 Q So the website might contain things like
16 emerging typologies of crime that generate money
17 laundering that applies to all sectors and it
18 might also include real estate specific
19 information for you?

20 A I would qualify that and say that the
21 information is there for you to read and
22 interpret. They don't -- it's not handed to you
23 quite as simply as, you know, these are new
24 trends that we have discovered. We will get
25 on -- through that email process we will get

1 notification of law enforcement agencies that
2 have conducted criminal investigations that have
3 resulted in charges and that FINTRAC in some way
4 participated, but they don't get into
5 specifically how. They just say that with
6 thanks to FINTRAC or other reporting or law
7 enforcement agencies. But they don't get into
8 the nitty-gritty and the specifics of exactly
9 what was done or how it was done. So we can't
10 extrapolate a lot of information from these
11 emails other than they usually produce bylaw
12 enforcement agencies and then run through
13 FINTRAC for distribution.

14 Q So the typology or the case or scenario that was
15 experienced by law enforcement would be
16 communicated, but FINTRAC's role in that case or
17 scenario would not be articulated?

18 A It would not be descriptive of how FINTRAC
19 participated in that.

20 Q And so do you have any views on how that process
21 could be made more helpful to real estate agents
22 and compliance officers like yourself?

23 A I think under the interpretive requirement, I
24 mean, we look at and we read it and we observe,
25 but at this particular point in time, it's very

1 hard to find any factual evidence of money
2 laundering in real estate, where it occurs, how
3 it occurs, in fact if it did occur. There's
4 lots of suspicion, speculation, assumption, but
5 we don't have any facts. So when we ask for a
6 specific instance where a real estate
7 representative has been complicit in a money
8 laundering purchase of real estate, at this
9 particular point in time we're not aware of any
10 of that evidence being presented to us. We've
11 certainly asked for it, you know, give us
12 examples, show us specifically how, why, and
13 where, and that has not been demonstrated to us
14 at all at this point.

15 Q And how would that information assist you in
16 your work as a compliance officer?

17 A Well, as a role of a compliance officer, we're
18 responsible for the entire compliance regime.
19 So a major portion of our requirements are to
20 identify our clients, to record the information.
21 We record receipt of funds. We try to source
22 the receipt of funds information.
23 Predominantly, I would say mostly it's a deposit
24 on the purchase of real estate. So we have
25 recording requirements and that's just one part

1 of it. And then there's the other part of it
2 which is the suspicious transaction reporting
3 portion of the compliance program. So we have a
4 recording and reporting requirement that is
5 subject to examination by a FINTRAC examiner.
6 They will come in and look at our records. They
7 will look at our transaction records. They will
8 look at all the document we have. On one site
9 we'll have the real estate transaction
10 documentation, on the other side they'll have
11 the compliance documentation, and they will
12 examine all of that to make sure that everything
13 is in place, everything is recorded, everything
14 is there. And that's one distinct, complete and
15 separate function.

16 On the other side is -- and from what we can
17 gather from reading recent reports and
18 information, the suspicious transaction
19 reporting requirement seems to be somewhat
20 misunderstood in a lot of areas mostly because
21 we're provided red flag indicators of potential
22 money laundering, but there's no guide as to how
23 that information should be applied by a realtor
24 when they're dealing with a client. There's a
25 grey area of exactly what do we do in

1 determining if through one of those red flags
2 being displayed what do we do next, where do we
3 go. So there isn't a lot of prescriptive
4 information on how you would apply, how you
5 track, how you record other than there is a
6 reporting requirement. So it's a bit abstract
7 from that perspective.

8 So if you take a look at the 27 red flags I
9 would say there's probably ten of them that
10 don't apply. There might be a large number of
11 them that do apply, but there's plausible,
12 reasonable explanation for why did that
13 occurrence is part of a transaction. And so
14 they're just indicators. They're not showing
15 proof. They're just indicators. So it's left
16 up to a judgment call of the individual realtor
17 at that point who's dealing with the client to
18 interpret those red flag indicators and apply
19 them to see whether or not a Suspicious
20 Transaction Report should be generated and
21 submitted.

22 So if there was more descriptive information
23 on exactly what it is that we should be looking
24 at and what we should be recording, it would
25 assist certainly in meeting our obligations for

1 STR obligations.

2 Q Understood. And I do have some more questions
3 for you regarding the suspicious transaction
4 reporting process but I first wanted to ask you
5 a few background questions before we get there.
6 Firstly, you answered many of my questions about
7 compensation, but I have a couple more. I'm
8 sorry, I can't recall if I already asked you
9 this, but in the occasion where a brokerage
10 brokerage is staking a split of the commissions
11 from a real estate agent, has that in your
12 experience, has that percentage which you
13 testified could be between 50 and 90 percent the
14 split, has that percentage changed over time?
15 And I'm speaking sort of on average in the
16 industry has there been a tendency --

17 A I would say the split arrangement is starting to
18 disappear from the industry. I mean, there are
19 still some large major real estate brokerage
20 operations that retain the split arrangement,
21 but I would say they're the older, more
22 well-known, established brokerages that would
23 maintain a split arrangement. Most of the newer
24 upstart brokerages don't have that split
25 arrangement, but I don't think it's changed a

1 lot over the years. I think we've just seen
2 various different models of real estate
3 operation and their id no one size fits all in
4 our industry right now. You're basically open
5 to run your business how you feel you can make
6 money at it. So if you're on a split
7 arrangement, you might not need to have as many
8 realtors working for you. If you're on a fee
9 basis with realtors and they're earning
10 100 percent commission, there's more incentive
11 to possibly have 200 realtors working for your
12 brokerage because you're charging your services
13 to more people. And you're not basing it on the
14 commission earned by each of those people. So
15 it's a wide cross-section and combination, and
16 it can be different types. You can have a
17 brokerage that will offer a split arrangement to
18 some of its brokers and the other deal
19 100 percent commission and a fee structure to
20 another group of its realtors. So within the
21 same brokerage you can have different
22 compensation styles.

23 Q And typically is it the case that managing
24 brokers are paid a salary for their duties as
25 managing brokers or as compliance officers?

1 A My experience and our brokerage association's
2 experience is that yes, there's probably you're
3 either a brokerage owner and the compliance
4 officer or you're a paid managing broker
5 compliance officer within a larger brokerage.
6 So the smaller brokerages you're not likely
7 going to have a paid person. They're going to
8 be the ocean of the brokerage. But in the much
9 larger organizations you will likely have a paid
10 managing broker and a compliance officer, and
11 you know, again subject to the size they still
12 may be required to go earn an income from
13 selling real estate as well.

14 Q And so in some cases where a managing broker is
15 also an owner of the brokerage, they might not
16 be paid any additional amounts for their role as
17 managing broker?

18 A You know, again, that's up to the ownership.
19 You know, in some way they're going to be
20 compensated. They're doing the job. I mean,
21 you don't have a choice as to whether you do the
22 job. You have to have a managing broker and you
23 have to have a compliance officer. So whether
24 they are paid or not, if you own a brokerage,
25 you must discharge your obligations by having

1 those people in place. The compensation
2 structure can be many combinations.

3 Q And so in the case of the brokerage owner who is
4 acting as managing broker, they would have an
5 incentive to perform the job adequately in order
6 to keep the brokerage running because having a
7 managing broker is a requirement under RESA?

8 A Yes, it is a requirement. The ownership of a
9 brokerage and the role of a managing broker
10 generates tremendous vicarious liabilities in
11 the supervision of the licensees under your
12 licence. So every licensee, trading services
13 licensee, must operate under the supervision and
14 direction of a managing broker. Regardless of
15 whether you're a personal real estate
16 corporation, independent contractor or an
17 employee of the brokerage, they all work under
18 the direction and supervision of the managing
19 broker.

20 Q And is there any limit on how many licensees a
21 managing broker can supervise?

22 A Not currently.

23 Q Okay. I understand that -- or I should say
24 would you agree with me that most brokerages in
25 the province are quite small?

1 A From our understanding with Real Estate Council
2 of BC statistics, yes, most brokerages are quite
3 small. Again if you take a look at 1,300
4 managing brokers in the province and you take
5 away all of the managing brokers that are only
6 managing brokers for strata management companies
7 and you take away possibly those brokerages that
8 are just rental property management companies
9 and you have a much smaller pool of managing
10 brokers who are specifically in the conduct of
11 trading services, that 1,300 diminishes
12 significantly. So again it's is very small
13 number of people operating and running all of
14 the brokerages and businesses in the province of
15 British Columbia. And the metropolitan areas
16 are going to have much larger brokerages and
17 that I think would be not so common through the
18 rest of the province. You know, you might get
19 large areas. Larger population centres in
20 Kelowna would have a large real estate brokerage
21 set up for many, many companies. But you might
22 not in Vanderhoof find a large number of real
23 estate brokerages. You might not have that many
24 licensees period.

25 Q And do you have a sense of the large brokerages

1 in Vancouver, for example, how many licensees
2 there might be for one managing broker at the
3 sort of upper end?

4 A No, I think statistically through the real
5 estate counsel they have told us that larger
6 brokerages actually have fewer complaints. And
7 there's been this debate discussion through
8 reframing the role of managing broker that the
9 superintendent's office has been working on.
10 That topic has been raised about limiting the
11 number of licensees per managing broker, but we
12 find that the larger brokerages have a fewer
13 number of problems and a fewer number of
14 complaints, that they've much more sophisticated
15 systems and policies and procedures in place.
16 You might find the smaller brokerage is the one
17 where they might be more lax and there might be
18 more difficulties because, again, they're not as
19 sophisticated in their operations.

20 So I know that it's under discussion, but I
21 don't think the superintendent at this point is
22 going to be recommending to the government that
23 that be the case.

24 Q Sorry, that what be the case?

25 A That they would limit the number of licensees

1 per managing broker.

2 Q And with the larger brokerages, the managing
3 broker may also have an associate broker or
4 multiple associate brokers assisting them?

5 A Yes, yes. They may. It's not -- it's not again
6 a hard and fast rule, but the difference between
7 a managing broker and an associate broker is
8 that they both have the experience and the
9 training but one chooses to restrict their
10 licence to an associate broker rather than
11 managing broker. So the associate broker could
12 have responsibilities delegated to them by the
13 managing broker because they are in fact
14 qualified to discharge those responsibilities,
15 but they likely wouldn't have the same vicarious
16 liability that the managing broker maintains as
17 the sort of the lead of the organization.

18 Q And when you're describing some of the
19 challenges with smaller brokerages perhaps not
20 having the same sophisticated systems or
21 procedures in place, can you describe -- I
22 understand that there's some brokerages that
23 multiple brokerages might be operated by one
24 managing broker. Could you describe that a
25 little bit.

1 A Well, that's again governed by regulations. You
2 are restricted to the number of brokerages you
3 can operate and manage. They can be branch
4 offices, they can be brokerages, but they can
5 only be affiliated through an affiliate
6 designation as defined by the *Company Act*, so
7 there actually has to be an arm's length
8 agreement and connection between the companies.
9 And again that has been a topic of discussion
10 because as we the managing brokers age out and
11 start retiring there aren't a lot of people keen
12 to jump in to take on those responsibilities and
13 the -- you know, we're soon to face a difficult
14 situation. If every brokerage needs a managing
15 broker and there aren't many people wanting to
16 obtain the managing brokers designation to
17 operate these businesses, we're going down the
18 road to a tremendous shortage in the industry of
19 managing brokers. And if you take a look at the
20 majority of the managing brokers in the province
21 right now, the vast number are over the age of
22 55, many of them over the age of 65. So we can
23 take a look at the demographics for the managing
24 broker community under 55, it's not healthy for
25 the industry generally speaking.

1 Q And do you have a sense of why there has not
2 been more applications to become managing
3 brokers by the younger population of real estate
4 agents?

5 A Probably the liability issues. They don't
6 necessarily want to assume all of the
7 responsibility. We have so much in the way of
8 regulation in our brokerages. It's a tremendous
9 amount of legislation. We have to have to be --
10 we have to have a working knowledge of a lot of
11 legislation, a lot of areas that impact our
12 practice. There has been some conversation that
13 the managing broker training course that's
14 currently put on through Sauder School of
15 Business at UBC, supervised by the Real Estate
16 Council of BC, they're thinking it should be
17 revamped to make it a little bit more helpful
18 for the training of managing brokers. There's a
19 discussion of a mentorship program for managing
20 brokers. And there's also been a discussion
21 regarding extending the time of practice
22 required in the business before you can make
23 application to become a managing broker.

24 Q Sorry, you said extending the time?

25 A Yes, right now you must be a licensee for

1 two years before you can apply to take the
2 managing brokers training course. And there has
3 been some discussion about extending that from
4 two years beyond, to three years, to five years,
5 and that is under current discussion with the
6 Office of the Superintendent of Real Estate.

7 Q And is it fair to say that in most cases a real
8 estate agent in conducting trading services
9 would earn more than a managing broker who is
10 not involved in trading services?

11 A Well, it's a bit speculative. I can't say for
12 certain that that would be the case, but in many
13 instances a very productive, very good realtor
14 could certainly well out-earn a managing broker
15 or a brokerage owner.

16 Q And in urban centres such as Kelowna or
17 Vancouver which may have a more active real
18 estate market, is it common that real estate
19 agents engaged in trading services would
20 out-earn their managing broker?

21 A In some of them, yes. Again it depends on the
22 size of the brokerage. I mean, a very large
23 successful brokerage, the owner and managing
24 broker could be doing quite well financially.
25 However, you know, if it's a smaller brokerage

1 and you have got a great producer, they could be
2 earning substantial dollars well in excess of
3 the what the managing broker would be earning.
4 But again, you know, when we look at
5 25,000 licensed individuals in the province of
6 BC, all 25,000 are not earning tremendous
7 incomes. We would say that it would be a very
8 small percentage of those 25,000 that are
9 earning tremendous incomes. I think there's a
10 far greater majority of those people that are
11 earning livable wages as an income from
12 commission and there are a tremendous number of
13 licensees that are holding their licenses and
14 are inactive and not working at all. There are
15 businesses in British Columbia that are designed
16 just to hold licenses and restrict the licensee
17 from doing any trading transactions at all. So
18 they would have to refer all business out to
19 another licensee, but because no one wants to
20 take the course again and rewrite that exam,
21 they'll park their licence somewhere for a fee
22 and just maintain it and they'll still have to
23 take their regular real estate licensing course
24 information. They will still need to take their
25 professional development program education

1 through the real estate boards so they still
2 have to try to stay current, but if they're
3 inactive and they can put their licence
4 somewhere, park it with a very small fee to have
5 it hung on the wall of that particular
6 brokerage.

7 Q So you said that there are relatively few real
8 estate agents who are earning a tremendous
9 income. What would you characterize as being a
10 tremendous income?

11 A You know, the sky's the limit. I mean, if you
12 have got a large operation as a realtor, you
13 might have many assistants licensed and
14 unlicensed. You might have a big marketing
15 operation. You might be part of a team
16 organization. So there's a lot of people out
17 there that can earn some pretty good incomes,
18 but it's a very small percentage. It might be
19 2 percent. Maybe 5 percent that are upper
20 echelon. But again at that level, your expenses
21 are enormous as well. So it's something you
22 evaluate on an individual case basis. Because,
23 you know, the world's your oyster. You can work
24 as hard as you want and as long as the market
25 can sustain you and keep you active, you can

1 keep earning. And in the current hot market the
2 way it is right now, everyone is having a bit of
3 a tough time because of the short supply of
4 available real estate and very high demand and a
5 lot of frustrated realtors who can't even get
6 the buyers in to have a look at places for sale
7 right now. So the market of supply and demand
8 it biting us very hard right now.

9 Q Sorry, I just wanted to go back to this idea of
10 the upper echelon which you said might be
11 perhaps 2 percent of the highest earners of real
12 estate agents and trading services in the
13 province. Do you have a sense of what a
14 ballpark income that might be? What would be
15 the sort of range of income you might inspect
16 for that upper echelon?

17 A Again, I don't have any data or fact on that
18 but, you know, they can certainly get into in
19 the high six figures.

20 Q Okay. And then for those who are earning a sort
21 of liveable wage do you have a sense of what
22 proportion of licensees engaged in trading
23 service that might be?

24 A It would be -- it would sort of be I might guess
25 a middle 30 percent of the licensees.

1 Q And do you have a sense of what the range of
2 income might be there?

3 A I think we can say between -- again it depends
4 on whether they're active or not. We've got
5 everything out there in the marketplace. We've
6 got people that are doing real estate part-time.
7 We've got people that are full-time agents.
8 We've got people that have very complicated,
9 very busy structures of real estate team group
10 type things. So we're saying somewhere between
11 60- to \$100,000 would be an average income.
12 Certainly there are lots of people doing better
13 than that, but to get to the next levels you
14 have got to be a pretty sophisticated realtor
15 with a lot of skill sets and very a well
16 organized operation to be able to reach those
17 numbers. But there are people doing it.

18 Q And I just want to clarify, you mentioned the
19 30 percent who are earning the liveable wage
20 are -- and, you know, I understand that you're
21 not a -- you don't have stats at hand. We're
22 speaking in estimates here.

23 A Right.

24 Q But you mentioned that there's sort of maybe
25 30 percent that are in the range of 60 to

1 \$100,000 and then we have the upper 2 percent
2 which is perhaps earning in the six figures, the
3 high six figures. Is there a proportion of real
4 estate agents that earn between 100,000 and the
5 upper six figures there? Do you have a sense of
6 what that might be?

7 A That fluctuates. You know, some people have a
8 great year and the next year they don't have a
9 great year. And so one year they may do really
10 well. Sometimes it's very difficult for the
11 realtors that are in that upper earning area to
12 maintain that consistency to do it year in year
13 out. They may have a great year and burn
14 themselves out and say, I'm going to take a
15 break for a while. It's hard work. It's not
16 easy to keep that pace and that level of
17 activity. So that would be the range of people
18 that are coming and going up and down. They
19 have good years, they have bad years. I
20 remember back I think my mother said in 1966 she
21 didn't earn a penny for an entire year. It was
22 a bad year. So that happens to people.

23 Q Well, it sounds like she rebounded from that?

24 A She did all right.

25 Q And I just wanted to ask you about managing

1 brokers. Now, you described the multitude of
2 different arrangements that a managing broker
3 might have with respect to their compensation,
4 and again I'm asking for estimates. I know you
5 don't have precise figures at hand, but I'm
6 wondering if you know or have a sense of
7 approximately how many, what percentage of
8 managing brokers are owners of the brokerage?

9 A Well, again you're right, I don't have the
10 numbers, but I would say there's a lot of
11 managing brokers out there that own their
12 brokerages. I would say there's probably more
13 that own their brokerages than don't. But I
14 wouldn't have any actual statistics to provide
15 you on that, but I would say the majority are
16 probably owned by the managing broker.

17 Q So probably more than half?

18 A Probably more than half.

19 Q And those that are not owners, they're typically
20 receiving a salary?

21 A Well, I mean, some of the people -- well, again,
22 some of the people that are not managing brokers
23 could be licensees that own the brokerage, so
24 they are actually out there selling, but they
25 have somebody else taking on the regulatory and

1 management responsibility of the brokerage and
2 there's a good number of those as well. But
3 again there's combinations of different makeups
4 of an operation.

5 Q Are there managing brokers that are neither
6 owners nor engaged in trading services on their
7 own behalf?

8 A I don't quite understand. Managing brokers that
9 are?

10 Q Managing brokers, are there managing brokers
11 that are not owners and that are also not
12 engaged in trading services as a real estate
13 agent, that their only role is a managing
14 broker?

15 A Yes, there are some brokerages that pay a
16 managing broker to be a non-selling managing
17 broker, so that is one of the models that
18 brokerages have. They don't have their managing
19 broker compete with the realtors in any way,
20 shape or form. So, yes, there are instances of
21 that out in the marketplace definitely.

22 Q And thank you for correcting me on my
23 terminology. So a non-selling managing broker.
24 Do you have a sense of what proportion of
25 managing brokers are non-selling managing

1 brokers and that are also not owners?

2 A Not necessarily would I have any statistical
3 information, but it would be more likely the
4 larger brokerages because the role of a managing
5 broker in a larger brokerage can be
6 all-encompassing, all-consuming, and you
7 encompassing and you really wouldn't have any
8 opportunity or time to go there and do any
9 particular trading services activities, so --
10 and you know, it's becoming more and more
11 challenging for us year by year with constant
12 changes of regulation. Everybody is changing
13 regulations these days. It seems to be the --
14 we have the lunar year of the ox; I think this
15 year in real estate is the year of the managing
16 broker because we're getting it from all sides.
17 So lots of changes to regulations that we have
18 to keep up with.

19 Q Right. And these non-selling and non-owner
20 managing brokers -- and I may have sort of asked
21 you this but I'm not sure if I understood your
22 answer -- again, you don't have a clear sense on
23 what proportion of the market of managing
24 brokers this represents, but could you say that
25 it's somewhere in the range of a quarter of the

1 1,300 managing brokers out there or less than
2 that or more than that?

3 A I couldn't even guess at this stage because
4 again the information we get on managing brokers
5 is through the Real Estate Council of BC. They
6 keep statistical information with the
7 demographic breakdowns, so they provide that to
8 our organization from time to time and we get to
9 see how many people are in a certain age
10 category, what brokerage. But they don't go
11 into specifics about how the brokerage is made
12 up or what part of that being an active managing
13 broker or an inactive managing broker. We may
14 have a managing broker who is the brokerage
15 owner ready to retire and the succession plan is
16 for a family member to pick up the managing
17 broker and take over, so there's a fair amount
18 of that happening in the industry as well. You
19 know, it's hard to say what is activity of the
20 managing broker. All we know is that the people
21 that are licensed and qualified to act as
22 managing brokers is a finite number, and I'm
23 sure that Real Estate Council of BC could
24 probably produce statistics that could dial in a
25 little closer on those demographics to

1 differentiate some of them, but we don't have
2 that access right now.

3 Q Understood. And keeping on this line of the
4 non-selling, non-owner managing broker, do you
5 have a sense of what income that type of role
6 would generate and are you able to say whether
7 that would likely be over six figures or under
8 six figures or give us an estimate there?

9 A That would be up to the individual size of a
10 brokerage and their management structure and
11 makeup of fees and charges. There are many
12 times I take a look at what is out there in the
13 marketplace and see what is being charged to
14 realtors, and I sometimes wonder whether that
15 business model is sustainable. Because
16 sometimes it just as a business owner and a
17 business operator, your numbers still have to
18 work at the end of the day and we do see
19 brokerages come and go. And that's why when
20 every brokerage starts up you usually get a
21 visit from the Real Estate Council of BC to make
22 sure that first of all you're properly set up
23 and you're compliant. So they will do a spot
24 audit to make sure that a new brokerage is
25 performing. And we're always subject to a spot

1 audit. If there's some inkling that something
2 might not be happening correctly in a brokerage
3 they will immediately send in investigators and
4 auditors to do an impromptu spot audit, and of
5 course we were annual reporting requirements for
6 the real estate council. So an accountant's
7 report has to be prepared and submitted to the
8 real estate council on an annual basis and any
9 anomalies in that accountant's report will then
10 be subject to review by the council and could
11 generate another audit of the real estate
12 council. So they kind of watch what we're
13 doing. If they get any inkling that something
14 is not quite right, they'll jump in there and do
15 an investigation. But, I mean, it's ... We're
16 under watch and under review continually.

17 Q M'mm-hmm. But my question was about the
18 compensation that a non-selling, non-owner
19 managing broker might take in in an annual
20 basis. Do you have a sense of the range of
21 that?

22 A I couldn't hazard a guess. It is individual to
23 each brokerage. The size of your brokerage, the
24 location of your brokerage, the makeup, the
25 number of licensees you may have. It

1 wouldn't -- I wouldn't even hazard a guess to
2 say what it would be.

3 Q And could you say whether it's likely more or
4 less than \$100,000 a year?

5 A Well, if I wasn't earning \$100,000 a year as the
6 owner of a business, I would question my sanity.
7 But it's a lot of work and it's a lot of effort
8 to be putting out for no real return, so you're
9 either going to have to love it as a hobby or
10 you're going to have to make it a business
11 enterprise. So we would hope that the owners of
12 brokerages are adequately compensated to stay in
13 business. But I couldn't tell you what the
14 number is.

15 Q Okay. And again referring to the non-owner,
16 non-selling managing broker, you're unable to
17 say whether that would be more or less than
18 \$100,000 in annual income?

19 A No. I can't say it's more or less. I mean, a
20 very small brokerage in a location that is not a
21 metropolitan area, they might be making just a
22 liveable wage. In a big modern metropolitan
23 area, they could be doing exceptionally well.
24 So, you know, to say that there's -- if we
25 listed the Real Estate Council of BC statistics

1 saying most brokerages are approximately four
2 licensees, I can't imagine you're generating
3 huge incomes as a non-selling managing broker
4 owner in a very small organization. If you own
5 a brokerage that has 20 locations and you're the
6 non-selling managing broker, obviously you're
7 going to have a better income opportunity from
8 that type of a business model. And there's in
9 between.

10 Q Right.

11 A So I don't think there's a predominance on any
12 one particular type of model.

13 Q I just -- I hear you saying that you're
14 referring to a non-selling managing broker
15 owner. And I apologize. I was probably not
16 very clear in my question, but I just want to
17 give you the opportunity to respond specifically
18 with respect to a non-selling, non-owner
19 managing broker?

20 A A non-selling, non-managing broker, they would
21 be salary and the range again is very much
22 dependent. You may be in a situation where your
23 compensation is both salary tied to production
24 for the brokerage. You may not be tied to
25 production; it may be just a straight salary.

1 Again it depends on whether or not you're
2 working in a full-time capacity as a managing
3 broker. You might be there in a part-time
4 capacity. But you know, I think we see ranges
5 in salary for managing brokers, if somebody
6 wanted to go on a higher managing broker and
7 come in and start looking after a brokerage, the
8 salary ranges would probably be between \$5 to
9 10,000 a month.

10 Q Okay. Thank you. In your view is there a
11 significant discrepancy in the earnings of a
12 managing broker and a real estate agent that
13 they might supervise and is there any issue with
14 there being a power imbalance due to that
15 discrepancy?

16 A No, the managing broker always has the power.
17 If you don't like what the agent is doing, the
18 agent is not compliant, the agent is not
19 following if you've made your corrections,
20 you've made your attempts to change behaviour,
21 the ultimate solution is for the managing broker
22 to sign the back of the licence, submit to the
23 Real Estate Council of BC with an explanation of
24 why you've turned that licensee's licence in and
25 that ends the relationship. So the managing

1 broker always has the power because that
2 individual works under your licence and exposes
3 you to that vicarious liability, and most
4 managing brokers don't take it very kindly that
5 somebody is misbehaving under their watch.

6 Q Does that dynamic change at all when a managing
7 broker is or is not an owner of the brokerage?

8 A No.

9 Q Okay. Those are my questions about
10 compensation. I wanted to turn to some of the
11 challenges. You mentioned that, for example,
12 small and perhaps rural brokerages may not have
13 the same level of systems in place. Are there
14 any other particular challenges of supervision
15 in a small brokerage?

16 A Well, in a small brokerage you're going to have
17 more face-to-face contact with the individuals
18 that work there because you're very small, so
19 you're going to be meeting and seeing people,
20 you know, not necessarily in COVID times, but
21 you're going to be quite possibly seeing those
22 individuals more frequently. But you're not
23 going to have sophisticated systems. You're
24 going to have more simplified policies and
25 procedures. Technology and software and things

1 like that are really helping brokerages
2 these days manage transaction files and
3 accounting processes and ... But as far as
4 setting up systems for managing broker
5 compliance with the *Real Estate Services Act* and
6 the rules and regulations and compliance officer
7 requirements, we still have to follow the same
8 rules, we still have to follow the same
9 procedures. You might be just doing it more
10 hands-on as opposed to having more software,
11 more systems, more resources to spend more time
12 in the much larger brokerage.

13 Q And what might be some of the challenges of
14 supervision in a larger brokerage such as an
15 urban brokerage?

16 A The larger brokerages, you know, certainly we've
17 learned through COVID that we can make regular
18 contact and communication with our salespeople
19 through videoconferencing, which has become the
20 standard these days for holding sales meetings
21 with your licensed staff. So many managing
22 brokers will set up for weekly sales meetings
23 where you'll go through a series of items on an
24 agenda that may include market statistics and
25 information, recent disciplinary decisions,

1 reasons, review those. You could be reviewing
2 the latest information that comes out of
3 FINTRAC, new requirements for completion of
4 forms. You may be giving them hints and tips on
5 how they can streamline or better do what they
6 do. So we're finding that there are different
7 ways to pass our information along to our people
8 rather than have them coming into the office.
9 It would be hard for a brokerage that has
10 200 licensees to have them all in the office at
11 the same time. Brick and mortar real estate
12 brokerages are starting to disappear. The cost
13 of that overhead for brick and mortar, and it's
14 not necessarily required that people be in your
15 office face to face with you anymore.

16 Q And I think -- sorry?

17 A No, it is -- it can be a challenge to get all of
18 that information out to people, but we still are
19 capable of doing it and, you know, we're doing
20 our utmost best under challenging circumstances,
21 especially with the pandemic.

22 Q And are you familiar with the independent
23 advisory group report that was commissioned by
24 the Real Estate Council of BC in response to
25 some of the concerns in the public about the

1 self-regulatory nature of the industry?

2 A Yes, I'm well aware of the IAG report.

3 Q And I'm happy to take you to the section of the
4 report if you like that is in exhibit 618,
5 Mr. Commissioner, but I just want to ask you
6 about a particular comment that the report made
7 regarding a shift as you describe, a shift from
8 a central hub of a brokerage where there is a
9 lot of overhead, as you described, to one in
10 which licensees have direct relationships with
11 their client and may function at independent
12 contractors. And again, I'm happy to take you
13 to the section of the report if you're
14 unfamiliar with it, but the report proposed that
15 these changes to the industry allow for more
16 efficient business but make it more difficult
17 and complex for managing brokers to supervise
18 the conduct of their licensees. Are you aware
19 of those comments?

20 A I am aware of those comments. I don't
21 necessarily agree with them because we have --
22 the IAG report was the genesis for the Perrin
23 report and the Perrin report has already caused
24 the OSRE and the RECBC to make and implement
25 many changes. So they are well aware of some

1 challenges that we have and they are trying to
2 address it with regulation and new direction to
3 managing brokers, but again from the IAG report,
4 which was a number of years ago -- I think it's
5 2016, was it? Or --

6 Q That's my understanding.

7 A Yeah. So there's been a lot of water pass under
8 the bridge since that IAG report and many of the
9 recommendations are either totally implemented
10 or well on their way to being implemented. And
11 again, from the Perrin report we're -- rather
12 than going through FICOM now we'll now be
13 rolling everything together through the BCFSa,
14 so there are a lot of changes underway that
15 we're well aware of.

16 Q And so first of all, perhaps you could expand on
17 the way in which you disagree with these
18 comments. Is it that you think that the
19 comments are outdated and they're no longer
20 applicable, or is there another aspect to your
21 disagreement with the comments?

22 A Well, the comments from the IAG report, they
23 identified some areas of concern, and I think
24 the supervision aspect created a lot of deep,
25 dark holes that people went down and they were

1 trying to look for specific issues and problems.
2 There was a generalization that having people
3 not coming into your office every day meeting
4 with them face for face made it harder to
5 supervise. Well, we found better and newer ways
6 to communicate with them. Everybody has
7 cellphones, everyone has computers. We transmit
8 tremendous amounts of information to our
9 licensees on a regular basis. So we found ways
10 to communicate with them. I don't know if you
11 actually have to stand over someone to
12 adequately demonstrate that you've supervised.
13 The real estate council has changed their
14 opinion of that as well. As long as the
15 managing broker is in active supervision, you're
16 actively engaged with your people, they find
17 that's satisfactory supervision. You don't have
18 to physically have them in front of you in your
19 office. And that is a bit of an old brick and
20 mortar method of the way things operated, but it
21 doesn't exist right now.

22 Q And I just want to expand on that a little. You
23 mentioned that with technology there are all
24 sorts of ways to communicate with the licensees
25 that a managing broker supervises. Can you sort

1 of elaborate on how technology or other
2 mechanisms allow you to supervise as distinct
3 from simply communicating with the licensees?

4 A The example is just how much professional
5 development and communication is rolled up in
6 the real estate boards by BC Real Estate
7 Association by the Real Estate Council of BC.
8 They hold tremendous numbers of seminars to keep
9 people awake. They do it in modules so you can
10 do a module and you have to answer a series of
11 questions before you can unlock the next module.
12 So it's an electronic invigilator process to
13 make sure you're reading and understanding the
14 information. So there are tremendous resources
15 out there might right now for us to direct our
16 staff to say okay, here is where you go to get
17 new information. Some of it is required as a
18 licensing requirement. You must every two years
19 take the mandated three courses from the real
20 estate council with the real estate board. So
21 we have professional development program. We
22 have to take 18 hours of professional accredited
23 professional development in a two-year cycle,
24 six of which can be self-directed, but it must
25 be auditable, and it must be at least one hour

1 in length and it has to be reviewed to make sure
2 that it's appropriate for business learning. So
3 we have all of this learning and I think a lot
4 of people are starting to prefer it. So we've
5 done surveys through the industry and a lot of
6 people like the current methods of delivery and
7 learning and understanding through these
8 electronic methods. And, you know, the managing
9 brokers and brokerages they're able to now very
10 effectively communicate with groups of people.
11 And, you know, apart from the fact that the
12 pandemic has kind of got everybody a bit tired
13 of being on Zoom so much, maybe when the
14 pandemic goes away, people will find it a treat
15 to be on a Zoom call, but right now, it's like
16 no, not another Zoom call. But again we're able
17 to supervise our staff remotely. There's a
18 brokerage in British Columbia that has realtors
19 all over the province from one managing broker
20 location, so they're making it work somehow and
21 it seems to be compliant with the rules of the
22 Real Estate Council of BC. So again if you stay
23 within the guardrails and if you can think it,
24 you can probably do it.

25 Q I appreciate your optimism about a Zoom call

1 being a treat in the future.

2 So you've mentioned that there's a lot of
3 education on licensees about their obligations
4 and there's a lot of opportunity for
5 communication and engagement of the licensees by
6 the managing broker. And you're familiar
7 with -- there's also a duty of licensees to
8 report any misconduct to the managing broker?

9 A Yes, the licensees are required to report
10 misconduct. The licensees can also report
11 misconduct directly, which is why the Real
12 Estate Council of BC set up an anonymous tip
13 line based on the -- based on the complaints and
14 the knowledge that people registering the
15 complaints must have, we suspect they are
16 probably licensees anonymously reporting. But
17 the real estate council has a very full plate of
18 investigating complaints, especially now with
19 the anonymous tip line. The real estate boards
20 also maintain a complaints discipline process.
21 However, they are not publishing for the public
22 the results of those disciplinary decisions.
23 The Real Estate Council of BC is publicly
24 displaying the results of their disciplinary
25 decisions, so a realtor can be searched on the

1 Real Estate Council of BC website, and if they
2 have been subjected to a disciplinary
3 proceeding, their name will show up and the
4 details of the disciplinary case can be
5 searched.

6 So there's a fairly robust reporting
7 discipline process. Probably gets more
8 pronounced in a very competitive environment.
9 When somebody upset you and you didn't like the
10 way they conducted yourselves, you're more
11 likely to register a complaint. But that's
12 certainly a culture of compliance that the
13 boards and the associations are trying to
14 develop. And, you know, again the anonymous tip
15 line certainly has been effective.

16 Q The local boards' complaint process is typically
17 member to member complaints; is that right?

18 A They have -- again it's a process where there
19 are two types of complaints. There's the
20 realtors' code of ethics which is established by
21 the Canadian Real Estate Association which is
22 then filtered down to the provincial real estate
23 association, in our case the BCREA and then
24 through the Real Estate Board. So that code of
25 ethics is to be observed at all levels.

1 The real estate boards themselves have
2 something called rules of cooperation and
3 there's a whole long list of rules that you must
4 be in compliance with, in the conduct of your
5 business, and if you violate the terms of those
6 rules or of the code of ethics, a complaint can
7 be registered and then you're brought before a
8 disciplinary committee for a review. And, you
9 know, there's some pretty tough sanctions on
10 some realtors through the real estate boards.
11 We've seen education requirements and penalties
12 anywhere from 15- to \$30,000 for a violation of
13 real estate board rules and ethics. They take
14 it pretty seriously. It's just that they're not
15 publishing that right now for public
16 consumption.

17 Q The local real estate boards are not in the
18 business of enforcing compliance with the *Real*
19 *Estate Services Act*?

20 A No.

21 Q And so their concern with respect to discipline
22 is breaches of the CREA ethics code?

23 A Yeah. The realtor code of ethics and the rules
24 of cooperation. Yeah, they stay in that lane
25 and the real estate council stays in their lane.

1 Now, if there was some egregious issue through
2 the Real Estate Board, they may report that to
3 the Real Estate Council of BC because at all
4 times any conduct unbecoming could be a cause
5 for discipline through the Real Estate Council
6 of BC. So just because the board has dealt with
7 it doesn't necessarily mean that you can't be
8 brought to the real estate council for any
9 conduct unbecoming. So it would be the same in
10 applicable enforcement if a real estate broker
11 was found to be ignoring their FINTRAC
12 requirements, there may be a case made that
13 their conduct is unbecoming because to operate a
14 real estate brokerage you must be operating it
15 in conformance and compliance with all
16 applicable legislation laws in Canada. So we've
17 got federal, we've got provincial, and it just
18 keeps trickling down right to board levels and
19 association groups. So everybody has got their
20 rules and regulations and there's -- but
21 everyone tries to stay in their own lane right
22 now. So nobody is actually crossing into each
23 other's territory at this stage.

24 Q Is there any prohibition on engaging or
25 facilitating money laundering in the CREA rules

1 of cooperation or realtor code?

2 A Not specifically, no.

3 Q Is that --

4 A It would be more of a conduct issue. Again,
5 you're supposed to be conducting yourself
6 ethically, and, you know, we go through quite a
7 bit of vetting to get a real estate licence,
8 including fingerprinting. So, you know, you
9 don't just apply for a licence and get one. You
10 have to go through a fairly stringent vetting
11 process to be licensed.

12 Q And so just going back, there is a duty on
13 licensees to report to their managing broker; is
14 that correct?

15 A Generally, yes. We would like to be in the
16 know, but sometimes they'll report it outside of
17 us and report it directly to someone. They have
18 that opportunity. The real estate boards always
19 suggest that the managing broker try to resolve
20 an issue first before it goes through the
21 complaint process, so managing broker to
22 managing broker if it's a problem, between a
23 couple of realtors fighting over some issue,
24 very often they report to the managing broker
25 and the two managing brokers for the two parties

1 will get together and try and amicably resolve
2 the dispute. If it doesn't find a resolution
3 through conversation, then one of the two
4 parties will submit a complaint to the real
5 estate board.

6 Q But, sorry, specifically with respect to a
7 breach of the *Real Estate Services Act* there is
8 a statutory duty on licensees to report
9 misconduct to their managing broker?

10 A And to the real estate council directly. Not
11 just to the managing broker. They can report
12 directly to the Real Estate Council of BC. They
13 don't have to go through the managing broker.
14 For instance, if they complained about the
15 managing broker they wouldn't be going to the
16 managing broker to say, you know, I've got a
17 complaint about you; I want you to register a
18 complaint about yourself. They still have the
19 ability to go directly to the Real Estate
20 Council of BC to register a complaint. There's
21 no prohibition on that. You know, we like them
22 if there is an issue to let us know what's going
23 on and we can assist them, help them, direct
24 them, but no, they have an obligation to report
25 misconduct directly.

1 Q So in your view it's optional, it's at the
2 licensee's option whether they report to their
3 managing broker or to their real estate council
4 directly?

5 A The way we're currently operating, yes.

6 Q Okay. As it stands, I don't believe there's any
7 duty on managing brokers to report to the real
8 estate council; is that right?

9 A No, we report on a regular basis. I mean, if we
10 have a realtor who's subject to, you know,
11 discovery unethical conduct or behaviour, we can
12 still report them to the real estate council.
13 In many instances if we do find somebody after
14 trying to correct the behaviour, if they still
15 refuse to cooperate, our simple solution to that
16 is we can't have them working for a brokerage
17 because we're responsible to make sure that
18 they're in compliance; if they refuse to comply,
19 then we turn their licence in and they can no
20 longer practice. And then the real estate
21 council goes through an investigative process
22 and if they're deemed to be rehabilitated and
23 cleared, they may repley for licensing at another
24 brokerage. But again, you know, there's a
25 regular reporting of licensees to the real

1 estate council and most frequently is if you
2 find someone who's guilty of misbehaviour or
3 unethical conduct, you just terminate them,
4 terminate them from the brokerage.

5 Q So I do understand that there's regular
6 reporting by managing brokers to the real estate
7 council, and I understand that as a business
8 practice and in terms of your vicarious
9 liability responsibilities that it may be the
10 case that you would terminate a licensee, and as
11 part of that termination indicate to the council
12 your reasons for doing so. But there's no
13 statutory duty on managing brokers to report
14 misconduct to the Real Estate Council of BC; is
15 that right?

16 A I don't -- I can't characterize that as being
17 right or wrong. I mean, we have an obligation
18 that we witness or see or know of misconduct
19 that we are required under our current
20 regulations to report that. So I'm not sure I
21 understand exactly -- you know, I mean, we don't
22 have a regular reporting, require something,
23 report every month the conduct of our brokerage,
24 but if we run across the situation of misconduct
25 there is an obligation to report. Again, the

1 managing broker, if an individual licensee was
2 found to breach the legislation or the rules and
3 regulations, and it was investigated and found
4 that the managing broker should have been aware
5 of it but wasn't aware of it, they'll sanction
6 the managing broker as well. So there will be
7 penalties applied to that managing broker if
8 they didn't know it and should have known. So
9 there's lots of evidence of managing brokers
10 being jointly disciplined with the licensee.
11 Because the managing broker is in technical
12 charge of the supervision of that brokerage and
13 the licensees' activities. So get in trouble
14 and your managing broker should have known it
15 and didn't, you're going to get the same --
16 well, you're going to get the same discipline
17 penalty that is vetted out to that individual
18 realtor.

19 Q And so I do understand that your evidence is
20 that because of the potential sanctions that
21 would lie for a managing broker if they failed
22 to adequately supervise or respond to evidence
23 of misconduct, I understand that you're saying
24 that would be prudent. You mentioned that there
25 is an obligation to report, and I'm not trying

1 to give you a pop quiz for statutory provisions,
2 but are you aware of where that obligation
3 emanates from?

4 A Well, I would believe that it comes from the
5 Real Estate Council of BC and their rules and
6 regulations.

7 Q Okay.

8 A I mean, we are very heavily regulated, so
9 there's not a lot of interpretation in the
10 guidance that we're provided by the real estate
11 council. It's pretty black and white. So we
12 read it and as a matter of fact we just did a
13 seminar yesterday with the real estate council
14 and they're rolling out their new knowledge base
15 for managing brokers and realtors so that we
16 know how to get the information when we look for
17 it. So it's a significant body of work, the
18 rules and regulations. It's not a little manual
19 that we carry around with us. It's a
20 significant amount of information that they
21 found has been a problem, that they've got to
22 make it more simply worded, plain language,
23 easier to search, and that has been identified
24 as a bit of an issue. But it's all on paper.
25 It's there. So we know what we should be doing

1 and if not legally at least ethically we have an
2 obligation.

3 Q Okay. So if there was currently no statutory,
4 no legal duty on managing brokers to report, do
5 you think that that is something that ought to
6 be enshrined in legislation? Is that something
7 that ought to be a legal requirement on managing
8 brokers to report to the Real Estate Council of
9 BC any misconduct that they see?

10 A You know, I'm not in the practice of writing
11 policy for government so if it was found to be
12 something that is needed, it would be a
13 government directive to the superintendent's
14 office, the superintendent would make it so,
15 deliver the new rule or recommendation to the
16 Real Estate Council of BC and then they would
17 implement it and we would all have to step into
18 line, but I'm not sure that we don't already
19 have a statutory obligation to report.

20 Q Okay. And so the in your view the combination
21 of extensive education for licensees, the
22 regular engagement by way of technology and
23 other means that the managing brokers have to
24 engage with their licensees, and the obligations
25 on licensees to report to a managing broker and

1 in your view the obligation on managing brokers
2 to report to the real estate council, those
3 mechanisms all combine to provide for managing
4 brokers to adequately supervise their licensees?

5 A It's a work in progress. It's getting better
6 and right now it seems to be sufficient to
7 satisfy the Real Estate Council of BC. We don't
8 see any particular issue with a broad scale
9 overview saying what is happening now is
10 insufficient. There are again occasional
11 instances where the real estate council will
12 discipline a broker or brokerage for misconduct,
13 staying within the guidelines, but, you know,
14 it's getting better. The Real Estate Council of
15 BC has just launched a new initiative for
16 managing brokers to improve our training to give
17 us better guidance because, as I say, this is
18 the year of the managing broker so everyone
19 wants to make us better individuals, better
20 human beings, I suppose. So we're -- they're
21 engaging with us. They're putting resources in
22 front of us and showing us that they understand
23 that there's been some lack of information and
24 some possibly failure on the part of the
25 regulators to get the message out, to get the

1 information out to us in a understandable and
2 meaningful way. Again, when you take a look at
3 the vast amount of legislation that we come into
4 contact with every day of our business lives,
5 and it's constantly evolving and changing
6 legislation, so you know, we've got federal
7 through government in the province, you know,
8 with our regulatory and it's constantly
9 changing, constantly evolving. There's no
10 saying well, we've got all that put to bed and
11 there's no further amendments or changes
12 required. Every day it's another email or
13 another change, another notification, and you
14 have to stay up to date. And that is the
15 challenge, is staying current with the flood of
16 information that comes to us.

17 Q I just want to reiterate this question. The
18 tools that you mentioned that a managing broker
19 has, which are education, regular communication,
20 the duties to report, in your view those tools
21 are sufficient to ensure compliance by
22 licensees?

23 A Generally yes. Can it be improved, yes, they're
24 working on it.

25 Q And do you have any suggestions for what might

1 be useful for managing brokers to ensure
2 compliance?

3 A Well, we made our wishes and suggestions
4 reasonably clear in responding to the reframe of
5 the role of managing brokers through the OSRE
6 discussion paper and I think, you know,
7 universally through industry, not just our group
8 but others, we need more resources, more
9 information that is more descriptive of how to
10 do it, not what we should be doing, but okay, we
11 know what we should be doing but how do we in
12 fact achieve the goal of getting it done? Give
13 us some tips and guidelines and some additional
14 training. So in a vacuum of knowledge you get
15 information and it's hard to put it into
16 practical application. So we're getting the
17 information, but it's very abstract many times.
18 It's very hard to interpret and put into a real
19 world application. You know, that's what most
20 managing brokers are asking for, show us, give
21 us more demonstrative guidelines.

22 Q And you mentioned a submission paper from REBA
23 to OSRE with respect to the reframing the role
24 of managing broker consultation. Do you have a
25 copy of that submission?

1 A We have it. It's actually published on our
2 website. We have copies of that, yes. It's
3 very much in line, every organization, all the
4 real estate boards, BCREA, they all provided
5 submissions to the office of the superintendent.
6 So much like any organization you've got to
7 reach a consensus on the group opinion and I
8 can't say everyone was happy with everybody's
9 suggestions but, you know, in a democratic
10 situation you're representing a group of
11 individuals and the majority of the consensus
12 wins out, but we managed to get together and
13 come to some agreement and make a representation
14 to the office of the superintendent and it is
15 available, it is published.

16 Q And I have visited your website and I believe
17 that unfortunately the link for your submission
18 actually takes you to the discussion paper
19 promulgated by OSRE and not actually the
20 submission. So I'd just ask would you kindly
21 produce a copy of that to the commission.

22 A Yes, we can. Our administrator has been redoing
23 our website, so there is some -- we've been
24 working on that the last couple of weeks to try
25 to get the reference material sorted out. So

1 yeah, we can get a copy to you.

2 MS. ROSE: That would be great. Commissioner, I
3 think this might be an appropriate time for our
4 regular 15-minute break if that suits you.

5 THE COMMISSIONER: Yes. That's fine, Ms. Rose.
6 We'll take 15 minutes.

7 THE REGISTRAR: This hearing is adjourned for a
8 15-minute recess until 11:24 a.m. Please mute
9 your mic and turn off your video.

10 **(WITNESS STOOD DOWN)**

11 **(PROCEEDINGS ADJOURNED AT 11:09 A.M.)**

12 **(PROCEEDINGS RECONVENED AT 11:24 A.M.)**

13 **STEPHEN ELLIS, a witness**
14 **for the commission,**
15 **recalled.**

16 THE REGISTRAR: Thank you for waiting. The hearing
17 is resumed, Mr. Commissioner.

18 THE COMMISSIONER: Thank you, Madam Registrar. Yes,
19 Ms. Rose.

20 MS. ROSE: Thank you, Mr. Commissioner.

21 **EXAMINATION BY MS. ROSE (continuing):**

22 Q I do note, Mr. Ellis, we're a little short on
23 time today so I'm going to speed through a
24 couple of topics, if you'll bear with me. So I
25 wanted to turn now to the anti-money laundering

1 obligations of compliance officers for real
2 estate brokerage. And if I say "AML" you'll
3 understand that I mean anti-money laundering?

4 A Correct.

5 Q Okay. So the obligations of a compliance
6 officer include five main components. Are you
7 familiar with those five?

8 A Generally, yes.

9 Q Perhaps we could assist you.

10 MS. ROSE: And, Madam Registrar, if we could pull up
11 the Real Estate Council of BC course which is at
12 exhibit 617 I believe. I wanted to turn to
13 slide 79, please.

14 THE REGISTRAR: Is it page 79?

15 MS. ROSE: This is the one, yes.

16 Q These are the five elements of a compliance
17 program as required by the *Proceeds of Crime*
18 *(Money Laundering) and Terrorist Financing Act*;
19 is that right, Mr. Ellis?

20 A That's correct.

21 Q And so could you just briefly describe your role
22 as a compliance officer in instituting that and
23 monitoring this program?

24 A The brokerage owner, generally speaking, would
25 appoint the compliance officer because it's the

1 business entity that has to appoint a compliance
2 officer. In many instances, the compliance
3 officer a managing broker. Now, the compliance
4 officer is then charged with the responsibility
5 to develop the policies and procedures. Again
6 that's interpretive from the information that is
7 supplied by FINTRAC, so you can either create
8 your own policy and procedures, you can hire
9 someone to do that that is familiar with the
10 process, or many of the brokers we've been using
11 the Canadian Real Estate Association's policies
12 and procedures format. And the risk assessment,
13 again this is an explanation that we would
14 obtain through the website from FINTRAC however
15 we have found that from compliance examinations,
16 so that is how most of this information is being
17 delivered on what's appropriate, the
18 examinations have revealed that the examiners
19 prefer to have a more descriptive narrative risk
20 assessment for a real estate brokerage to
21 identify all the channels of delivery and
22 applying the various risks for each of those
23 channels and service delivery. That has been a
24 controversial point of the examinations because
25 there is a CREA form that many brokerages have

1 used that the examiners will not accept. So
2 where some of the brokerages have failed in
3 their examinations has been on the concept that
4 they have used a CREA form which is not
5 acceptable and we have to definitely provide in
6 accordance with the guidelines a more narrative
7 risk assessment. So that is normally in place.
8 A training program once every two years, we are
9 required to provide a training program to all of
10 the people that are responsible for reporting
11 under AML guidelines. So there's some
12 prescriptive information. There's stuff that we
13 get from FINTRAC that we use as part of a
14 training program and we sit people down for a
15 couple of hours in a boardroom and we deliver
16 the applicable training, updating on any of the
17 changes to guidelines. And the review of
18 compliance program is well, it's been there in
19 place for a while. That's going to be one of
20 the more difficult ones for smaller brokerages
21 to observe just simply because there aren't many
22 people out there that are knowledgeable and
23 capable of doing compliance program reviews. So
24 if you were to go and hire a professional who is
25 fully knowledgeable and aware of a compliance

1 program, that person would have to be
2 independent to audit the compliance program and
3 review it every two years. So we're well aware
4 of what those compliance programs require us to
5 do, and I would say for the most part we are
6 compliant and certainly with the talk amongst
7 our members in the organization a number of
8 people have gone through compliance examinations
9 by FINTRAC and for the most part successfully
10 navigated those choppy waters.

11 Q With respect to the training program
12 specifically, that's the activity that you have
13 described earlier this morning of going on the
14 FINTRAC website and reading the emails that are
15 sent out and educating yourself and determining
16 when a further update might be needed for your
17 licensees?

18 A Yes, FINTRAC does provide videos, updated
19 publications. Maybe some of them aren't as
20 updated as they need to be. Some of them are a
21 bit old. But we use those as part, we use
22 frequently asked questions, a portion of the
23 FINTRAC information supplied to us primarily by
24 the Canadian Real Estate Association, so they
25 have both a manual and an accompanying

1 frequently asked questions portion that we
2 include in the training programs. However,
3 that's being somewhat supplanted now by the Real
4 Estate Council of BC training programs because
5 they also have to be held in a two-year
6 re-licensing cycle, so every two years under the
7 current memorandum of understanding between the
8 Real Estate Council of BC and FINTRAC they will
9 be delivering mandatory FINTRAC education in
10 that two-year licensing cycle.

11 Q In order to educate your licensees and develop a
12 training program, you yourself have to be
13 familiar with the guidance that is issued by
14 FINTRAC as a compliance officer?

15 A The recommendation is yes, the compliance
16 officer should be regularly updating their
17 information, reviewing the directives and the
18 information coming from FINTRAC and, again, they
19 should be knowledgeable and aware of it.

20 Q And have you taken the RECBC anti-money
21 laundering course?

22 A I took the first money laundering course at
23 Sauder School of Business in 2017. I
24 subsequently took the RECBC money laundering
25 course for my own personal re-licensing cycle

1 and I have also taken the nine-week BCREA money
2 laundering compliance course.

3 Q And do you have any views on the sufficiency or
4 the adequacy of these courses in informing
5 licensees and managing brokers of their FINTRAC
6 track obligation?

7 A I think the education programs, if you're
8 already a compliance officer and you already are
9 updated on the information that you're required
10 to have as a compliance officer, some of the
11 course information might be a bit repetitive and
12 might be a bit simplistic, but those programs
13 and courses are good for others beside the
14 compliance officer. So the compliance officer
15 already has a good understanding and knowledge
16 of the FINTRAC compliance program. However,
17 it's a work in progress. We did the first
18 version of the nine-week program and it did
19 generate some suggestions and I understand that
20 it's under review by BCREA now. The RECBC one I
21 understand it is also being reviewed and may be
22 tweaked and changed. However, the course that I
23 took in 2017 from Sauder School at UBC was not
24 dissimilar to the one that RECBC is currently
25 delivering to licensees now.

1 MS. ROSE: Madam Registrar, if we could please move
2 to slide 81. So two pages down. If we could
3 zoom in on slide 3 "Risk Assessment." Thank
4 you. Mr. Ellis, does this description of the
5 risk assessment obligations of a compliance
6 officer accord with your understanding?

7 A Yes.

8 Q And it's the obligation of the compliance
9 officer to create the risk assessment program?

10 A It is.

11 Q And have you been involved with the creation of
12 a risk assessment program for your brokerage?

13 A I have.

14 MS. ROSE: I'm done with this exhibit. Thank you,
15 Madam Registrar.

16 Q Are you aware that FINTRAC has considered there
17 to be non-compliance with the requirement of a
18 risk assessment program?

19 A From information that I've read, I haven't
20 seen any -- I haven't had statistical
21 information to show me how, but I know that from
22 my own membership any of those people that have
23 had an examination that have had any difficulty
24 at all with the examination it has been pretty
25 much singularly involving the risk assessment

1 programs. Again, we now -- the risk assessment
2 program that I was instructed to prepare by the
3 examiner is what we now have in place, so it
4 required a bit of explanation to determine
5 exactly what they wanted and how they wanted it
6 to be done, but I think that was -- that's been
7 a bit of a misunderstanding on the risk
8 assessment and how it should be accomplished.
9 So that is something that has been acknowledged
10 and recognized through the BCREA. My
11 understanding is that they are going to be
12 working on a program to deliver to managing
13 brokers and compliance officers with regard to
14 risk assessment and may in fact come up with a
15 format, some type of form that could be used by
16 brokers to be more descriptive and compliant
17 with risk assessment. So that's again a work in
18 progress from what we understand.

19 Q Okay. You mentioned that you have not seen any
20 statistics on compliance deficiencies with
21 respect to risk assessment?

22 A Nothing that I'm keeping a file on. I may have
23 seen information from some reports, but it's not
24 something that is in my delivery box. So I'm
25 not -- you know, it's not being sent to me for

1 review.

2 Q Have you participated in any conferences or
3 presentations from FINTRAC?

4 A I have been to all of the BCREA managing broker
5 conferences where FINTRAC -- or I believe at one
6 of them they had Deloitte and I don't know if
7 they had a representative. I know that we've
8 had FINTRAC representatives make representation
9 to us directly along with law enforcement.

10 Q And do you recall attending any presentations
11 through the Real Estate Board of Greater
12 Vancouver?

13 A Yes. I attended one presentation where FINTRAC
14 examiners were present so there were FINTRAC
15 representatives and I believe there were members
16 of the RCMP in attendance as well.

17 Q Okay. And do you recall if the issue of
18 compliance with *PCMLTFA* requirements was
19 discussed?

20 A In very general terms the compliance
21 requirements. I think the evolution of the
22 compliance has taken a while. There has
23 certainly been more serious attention made to
24 AML activity in both the delivery of information
25 and in the examination for compliance, so I know

1 that the round of examinations that were
2 conducted a couple of years ago really got a lot
3 of brokerages sitting up and take notice because
4 they were going around and doing both in-office
5 examinations as well as remote examinations
6 where you submit your information and they
7 review it remotely. So it's definitely taking
8 much more prominence and we're starting to get
9 more people offering to deliver education and to
10 create that cultural compliance that everyone is
11 trying to achieve.

12 Q But so you're aware that there are at least from
13 FINTRAC's standpoint, there are significant
14 compliance deficiencies with respect to the risk
15 assessment program requirement?

16 A I don't know if there's sufficient -- or
17 there's -- let's just say that I'm not aware of
18 specifically what is deficient in the risk
19 assessment, but we understand based on our own
20 experience and our membership's own experience
21 that we've all had a similar deficiency with our
22 risk assessments being non-compliant due to the
23 misunderstanding of using the wrong format or
24 form. But in those situations where there have
25 been deficiencies discovered, they've been

1 corrected and that has satisfied the examiners.

2 Q Do you agree that real estate is vulnerable to
3 money laundering?

4 A You know, I don't -- because we've never -- and
5 we've asked, to see any actual specific evidence
6 of money laundering in real estate, it's yet to
7 have been produced for us to see. We certainly
8 read the reports in the media; we read the
9 reports that allude to the fact that it is
10 occurring. But again, from our perspective as
11 the people operating brokerages it's not
12 something that we see ourselves and we've been
13 unable to have anyone provide us any proof of
14 actual money laundering in real estate. So
15 there's a lot of information skirting around the
16 edges, but we've asked for demonstrated evidence
17 that it has occurred or, you know, show us how
18 it occurred; give us that information so that we
19 can see it. If we don't see it, we don't know
20 how to prevent it. It's ... We're hearing
21 about it about it, but we're not seeing it.

22 Q And so when you're describing sort of the proof,
23 what type of things or what type of information
24 are you describing when you refer to proof?
25 What types of things would be helpful for you to

1 see?

2 A Well, an instance where a licensee was complicit
3 in a transaction of money laundering in real
4 estate. We haven't seen anything like that
5 produced for our review. And it's not because
6 we haven't asked for it. We've certainly in
7 presentations with FINTRAC directly we've asked
8 them, is there any evidence or proof that you
9 can show us to assist us in learning and
10 understanding and they say that either they
11 don't have it or for some reason it can't be
12 provided to us.

13 Q So you'll agree with me that FINTRAC has
14 provided sort of indicators or red flags of
15 potential risk of money laundering in the real
16 estate industry and they may have provided, as
17 we described earlier, some typologies of money
18 laundering activity that are not limited to just
19 real estate, but in your view is it that these
20 are not specific enough or they're not real
21 world examples, or ...

22 A Well, I think the indicators leave it solely up
23 to the judgment of the individual viewing the
24 red flag. It's interpretive. Again it's not
25 specific, it's not that out of 27 indicators

1 that if your client achieves demonstration of
2 five of the indicators then you must submit a
3 form. It's very much the opinion of the
4 individual who is interpreting the information
5 and dealing with the client. So many of the
6 indicators are -- would be part of a normal real
7 estate transaction especially now in a very
8 heated real estate market where, you know, if
9 somebody is trying to buy a property without an
10 inspection, well, right now if you put a subject
11 to inspection, that may not qualify you as being
12 the successful bidder on a piece of real estate.
13 There might be 19 other people behind you that
14 are saying we're putting in our offer, no
15 subject to inspection. Even if you put in a
16 subject to financing. We understand recently
17 there's been instances of people putting in
18 subject to financing and not winning a bid on a
19 piece of real estate where somebody who decided
20 that they weren't putting a subject to financing
21 in a contract tries to close the transaction
22 only to find out that because they did put the
23 subject clause in there the bank is refusing to
24 finance. When they send the appraiser in they
25 say well, you're paying too much money, we're

1 not going to qualify you for that mortgage at
2 that price. But because -- now they're in
3 trouble because they didn't make it subject to
4 suitable financing. So people are going out and
5 doing unwise things like that and of course
6 being continually advised to seek independent
7 legal counsel when they do put these rather
8 sketchy deals together, but because of the hyper
9 superheated market right now with a short supply
10 and a high demand, you could have 20 people
11 bidding to buy a single piece of property. And
12 so every time you put a subject or a condition
13 in to the seller, that might not look like the
14 best offer. No subjects, highest price, as far
15 as the seller is concerned that's a pretty good
16 deal for them. But if you start putting
17 subjects and conditions into a real estate
18 transaction there's always the chance that they
19 won't remove those subjects and it won't
20 complete. So right now if I were to look at
21 some of the red flag indicators for money
22 laundering, that wouldn't be -- those indicators
23 wouldn't be abnormal under our current market
24 conditions. People are out there, doesn't
25 necessarily mean that they're laundering money,

1 but what it means is that they're taking chances
2 and risks in trying to acquire a home. And
3 there's some red flags that we don't really see
4 in real estate. It's not part of a normal
5 transaction process. So yes, there's 27 of
6 them, but a very small number of them would
7 really be sufficient to give us those senses.

8 So again when we look at the 27 indicators,
9 and we're asked how do we evaluate it, we're
10 told use gut instinct. That's the direction we
11 get: use your gut instinct. So if you suspect
12 there's something odd or untoward you should
13 report it. Which is not very scientific. I
14 mean, unfortunately for realtors they have
15 limited skill sets. They didn't obtain
16 criminology degrees and learn about criminal
17 investigative processes, so when they are trying
18 to evaluate a red flag indicator they're looking
19 at it as a real estate transaction, not
20 necessarily as a money laundering transaction.

21 Q And the difficulty there might be that
22 particularly in a hot market such as the Lower
23 Mainland when they're looking at it as a
24 realtor, it seems to them that many of -- the
25 presence of many of the indicators as set out by

1 FINTRAC is actually normal or commonplace in the
2 industry in that market?

3 A Many of them are. They're -- you know, they're
4 not advisable to not include some of the subject
5 clauses or conditions in your contract, but you
6 know, the only way to be competitive with 19
7 other bids is to take those risks, you know.
8 But they would be showing up as red flag
9 indicators according to the directives from
10 FINTRAC.

11 Q So in your view would it be appropriate for a
12 real estate agent to report a transaction that
13 includes many of these indicators when those
14 indicators are also commonplace in the hot real
15 estate market?

16 A Well, again, you need to use your common sense
17 judgment, your gut instinct. I mean, there are
18 situations where you might find that the money
19 for a deposit is coming from an awkward source.
20 You know, we do have members of our organization
21 that in fact have submitted Suspicious
22 Transaction Reports particularly in source of
23 for deposits, or, you know, if there's some --
24 we talk about last-minute changes. We don't
25 often see third parties acting on behalf of a

1 buyer. Again, one of the situations that we've
2 run into from time to time is we have disclosure
3 requirements. Before we even start talking to
4 an individual about real estate, we have to
5 disclose an agency relationship, represented or
6 unrepresented. We have to provide them privacy
7 notices that before you even start talking we
8 would say, don't talk to us until you
9 acknowledge that we've given you all these
10 disclosures, and then if someone doesn't want to
11 engage with us and they say well, you're asking
12 too many questions, then we don't deal with
13 them, they go away. But we haven't collected
14 any information off of them at that point, but
15 that would require an STR to be submitted
16 because if somebody attempted a real estate
17 transaction and felt uncomfortable in answering
18 our questions, and we said no, we don't do
19 business like that and we walk away from that
20 individual, unfortunately if we don't have
21 information from them, then, you know, it's
22 difficult for us to do this, the probable cause
23 Suspicious Transaction Report. But there are
24 instances where realtors don't like the
25 engagement they have and they won't go further

1 down that road. But for us to start dealing
2 with an individual we have a lot of regulatory
3 disclosures that must be met before we even have
4 that conversation with the individual. So if
5 we're looking -- if we're looking at red flag
6 indicators with any type of dealing with an
7 individual, you know, we would like -- we would
8 love to engage with FINTRAC more on saying, you
9 know, be more instructive, give us more
10 information about what it is that we should be
11 doing, and don't leave it up to just a gut
12 instinct or, you know, spidey senses as they
13 call it. It's not very firm in -- if they're
14 giving guidance it's very loose and it's just
15 one of many possibilities. But whenever there's
16 something not right it's going to generate a
17 Suspicious Transaction Report.

18 Q So we have this list of as you said
19 27 indicators or red flags, many of them in a
20 market like the Lower Mainland would be
21 commonplace in transactions and so might not
22 lead the real estate to have suspicion. So in
23 your view it would be helpful if it wasn't this
24 combination of suspicion as well as these
25 indicators; it would be helpful if there was

1 just a certain number of indicators that were
2 met and therefore that report had to be filed?

3 A Well, I mean, again, if you're leaving in
4 something open to opinion and interpretation,
5 many of our regulations are not interpretive
6 regulations; they're solid factual regulations.
7 These are the regulations, you follow them. The
8 indicators are more of suggestions what to look
9 for, not necessarily descriptive or
10 prescriptive. They're these are what you should
11 be looking for. And for us it's not necessarily
12 helpful because, you know, again a lot of the
13 indicators are would not be abnormal in our
14 current market. And when you have 20 people
15 bidding on a single property, are you going to
16 be able to weed out one of them being a money
17 laundering, especially if they're not successful
18 in winning the bid? So how does that work for
19 the individual realtor in making assessments?
20 So again, more information being more
21 descriptive, being more helpful, maybe better
22 training on the acknowledgement and recognition
23 of the attempt at money laundering. But again,
24 when you look at it, it's not firm and hard.
25 It's not a rule yet.

1 Q And is part of that difficulty with the standard
2 for reporting which you'll agree with me the
3 standard for reporting is reasonable grounds for
4 suspicion?

5 A Reasonable grounds. I mean, we've been told
6 that we have to be careful. There is some
7 substance to the report. We can't just send
8 them in willy-nilly. We actually have to have
9 something to put in the report. So the
10 Suspicious Transaction Report means you have to
11 indicate how and why you suspect that there
12 might be a suspicion for money laundering. So
13 again, it's the level of determination. If
14 there are no grounds and it happens to be just
15 one of the indicators, is that sufficient to
16 cross the threshold for requiring a submission
17 of a Suspicious Transaction Report? In and of
18 itself, maybe not. There might be other
19 factors that may come to play that we may not be
20 aware of in making that determination, but
21 again, it's opinion. It's interpretive of what
22 we're being told to look for.

23 Q You mentioned some of the privacy concerns, that
24 real estate agents are obliged to comply with
25 certain privacy restrictions. You're aware that

1 there's no provincial regulatory requirement on
2 real estate agents to inquire into a client's
3 nature of business, source of funds for the
4 transaction except with respect to the deposit,
5 or inquire into the financial ability to pay for
6 a particular transaction?

7 A Well, it's not part of the Real Estate Council
8 of BC rules and regulations, so ... It is a
9 requirement under FINTRAC. We do have to keep
10 and maintain those records for client
11 identification, so we do ask for information,
12 proof of identification, employment. FINTRAC
13 has now released another directive that they
14 want employment to be more descriptive, so if
15 you're a manager, they want to know a manager of
16 what. If you're retired, retired from what. So
17 they now have given directive and guidance just
18 very recently within days that they want to see
19 more description on the employment of the
20 individual. And with a receipt of records, a
21 receipt of funds record, we're now required to
22 ask the individual producing the deposit cheque
23 the source of the funds from which the money was
24 drawn to create a bank draft or an official
25 cheque from a credit union. So we now have an

1 amended form that requires additional
2 information to be reported, and if the
3 individual doesn't provide that information, we
4 have a reasonable measures section to indicate
5 what reasonable measures were taken to inquire,
6 and then at that point if we're not getting
7 sufficient explanation where we think something
8 is untoward, then that would trigger an STR.
9 But that's a fairly new form.

10 Q And that's limited to deposits, not to the
11 remainder of the transaction?

12 A No, we -- you know, the real estate agent, sort
13 of the most involvement they might have in
14 financing a real estate purchase is maybe
15 referring them to a bank, a lender, somebody
16 they know at a bank, a mortgage broker. But the
17 financial arrangements for the completion of the
18 sale and purchase of real estate doesn't involve
19 the -- doesn't normally involve the licensee.
20 That is all handled by the financial
21 institution. They have the ability to qualify
22 the individual by getting employment records, by
23 getting tax statements, making deep, dark
24 inquiries into that person's life, and that's
25 not necessarily something that we are required

1 to do by our regulation. You may run across it
2 and obtain that information through conversation
3 and discussion but -- and certainly the
4 financial institutions receive and record much
5 more information than a realtor would, likewise
6 with the lawyer. The law firms exchange the
7 moneys, discharge mortgages, and once the
8 property is conveyed, then the real estate
9 brokerage gets instruction to release the
10 deposit by paying the commissions owed and the
11 balance goes to the seller's lawyer for
12 disbursement. So, you know, and again our
13 involvement with the deposit, deposits are a
14 very serious thing in our real estate
15 transaction process because you can't give them
16 willy-nilly. A deposit comes to us. We put it
17 in trust as a stakeholder. That money sits
18 there until either both parties agree to
19 discharge and release it or we get instructions
20 from the appropriate lawyer to release the funds
21 to them at the completion of the transaction.
22 So if somebody is going to put \$50,000 into a
23 deposit thinking well, I'm just going to walk
24 away and I'm just going to ask for my deposit
25 back, well that doesn't happen unless the seller

1 agrees to release that deposit.

2 So you have to have the buyer and the seller
3 mutually agree to release that deposit. As the
4 stakeholder in the real estate transaction,
5 there's brokerages out there that sit on
6 deposits for years because the parties can't
7 agree to release it. Send letters to the
8 lawyers for the parties and they don't want to
9 deal with it, and the only way to get that money
10 out of our trust fund is to pay it into court
11 and let the supreme court deal with the
12 resolution of the issue of deposit. So we take
13 the receipt and handling of deposits very, very
14 seriously. But that's the only part of the
15 financial transaction that the brokerage would
16 be involved in.

17 Q And so because you're not involved in the
18 remainder of the transaction, you'd be limited
19 to a certain subset of the indicators that are
20 set out by FINTRAC, indicators like, you know,
21 the client's interest in speedy transaction,
22 their interest in specific location of property,
23 their interest in a property absent any concern
24 about the price of the property. Those sorts of
25 things?

1 A Again, some of those are very easily
2 explainable by, you know, some investor owners
3 only like to go after foreclosure properties
4 because they think they're going to get a real
5 deal on them. A lot of those are not subject to
6 financing. You go before a judge and you
7 present your best offer and if it's a court
8 ordered sale, the transaction is processed
9 through the court. A lot of those are fast. A
10 lot of those are not necessarily financed.
11 Sometimes location doesn't matter. It's
12 somebody that has to get a piece of real estate.
13 So we do see from time to time there are various
14 reasons for those types of transactions
15 occurring. It's not unknown. It does happen
16 and it happens for reasons. And explainable
17 reasons and with no indication of money
18 laundering necessarily. So again, the
19 indicators have explanations to them, not in and
20 of themselves but they would be indicators of
21 money laundering.

22 Q And so where you have a presence of these
23 indicators but they're able to be explained by
24 the client, then you would not have reasonable
25 grounds to suspect there's a possibility of

1 money laundering?

2 A Well, not necessarily. I mean, again, it's a
3 judgment call. You look at the indicators, you
4 look at the factors, you look at the individual.
5 I mean, there are people that have done
6 exceptionally well in the real estate industry
7 over the last number of years considering
8 probably where the price started and what they
9 sold it for and we have created many, many very
10 wealthy people out of the real estate industry
11 for individuals who found that just the fact
12 that simply investing, buying and selling real
13 estate has been enough of a source of income.
14 That's taking advantage of the market, not
15 necessarily laundering money, because you can
16 get in with just a deposit. So, I mean, there
17 are lots of different investment reasons that
18 people can very easily justify what they're
19 doing. Not part of money laundering.

20 Q And are there in your view, are there concerns
21 within the industry regarding brokers and agents
22 requesting client information such as financial
23 ability to pay for the property but they are
24 seeking -- that might be perceived to be
25 irrelevant for the purpose of a real estate

1 transaction?

2 A Well, that's a slippery slope because again, if
3 you're asking questions that are irrelevant to
4 the transaction of real estate, why are you
5 asking those questions? Because if you're not
6 the financial institution and you're not
7 questioning them on their ability to obtain and
8 support a mortgage, you know, you might come
9 across that information through a conversation
10 with the client, but I think there's a level of
11 questioning that you could get into from, you
12 know, do you have a pet, to are you laundering
13 money? And in between those two bookend
14 questions are a whole lot of other questioning
15 that could occur. What is appropriate
16 questioning of a client in a real estate
17 transaction is what we feel if you start
18 stepping outside of that. And again in all of
19 the information and training we take on FINTRAC,
20 you don't want to get into a line of question
21 that may spook somebody. Because again, you
22 know, you've got to remember, if you're in fact
23 dealing with somebody who is of criminal intent
24 or possibly dangerous, do you want to go down
25 the road of actually getting to the point of

1 trying to find out if they're laundering money
2 by asking them questions that would lead to
3 that?

4 Law enforcement has to be careful when they
5 go up to somebody who's got bags full of cash.
6 You know, are they immediately going to put
7 themselves at risk with someone that they might
8 find unpredictable? So, I mean, again, we've
9 got to have measures here. We've got to use
10 common sense. We've got to have measures. The
11 line of questioning that we have with our
12 clients must be appropriate to the business that
13 we're transacting. Not get too far out of our
14 lane and start going down a line of questioning
15 that might be awkward or might point to
16 something that is not relevant.

17 Q Are you aware of whether there continues to be
18 deficiencies according to FINTRAC with respect
19 to suspicious transaction reporting? I know
20 I've asked you with question with respect to
21 risk assessment programs, but now I'm asking
22 with respect to the reporting levels.

23 A You know, we've read through various reports
24 that that is indicated, that the levels of
25 reporting are quite low in the real estate

1 sector. I can't speak to that because I don't
2 know what the metric is. I don't understand the
3 measurement. So low compared to what? What
4 should it be? Is there a level that we would
5 anticipate based on the number of transactions,
6 based on the evidence of it actually occurring?
7 Again, we look at alleged suspicion, reported,
8 you know, again there's nothing factually
9 presented to us other than a statement that the
10 level is lower than would be expected. So I
11 don't understand the metric and our group, our
12 association doesn't quite understand that
13 either. So low in comparison to what?

14 Q Are you aware of approximately how many reports
15 FINTRAC has received from the real estate
16 industry on an annual basis?

17 A No, no. We don't -- at least we're not being
18 proactively fed that information as a sector.
19 So if there are sector-specific reporting that
20 FINTRAC would like to provide us, I'm sure the
21 information would be useful and welcome if it
22 was being provided to us. But again for those
23 of us that spend quite a bit of time in the
24 FINTRAC website, that's a -- that's a place that
25 you can spend quite a bit of time on.

1 Q And I take your point that, you know, it's a
2 detailed website, but are you aware that the
3 website does include report volume data by
4 sector?

5 A I would have to spend some more time digging
6 through the FINTRAC website. I have enough
7 difficulty getting just to my real estate sector
8 requirements, to get that and pull it out of the
9 website. So it's not the easiest place to get
10 information.

11 Q And so you haven't seen a comparison between the
12 real estate sector to other industry sectors in
13 terms of their suspicious transaction reporting
14 levels?

15 A No, I haven't. I haven't spent any time
16 reviewing that. All I've heard is the facts
17 through various reports that have been presented
18 before the commission that there's -- it's
19 suspected that the level of reporting is low. I
20 don't know if it's demonstrated that it is in
21 fact low.

22 Q And how would it be -- or what would be needed
23 in your view in order to demonstrate that the
24 reporting is low?

25 A Well, evidence that there has been instances

1 where it was not reported and found that it
2 should have been reported and if we can trace
3 that back and say there was absolute evidence of
4 money laundering and if you had gone back to the
5 Suspicious Transaction Report at the outset and
6 followed that trail, we'd like to be able to see
7 how that works. Because as far as we know from
8 FINTRAC, the submission of an STR does not in
9 and of itself generate an investigation, nor
10 does it prevent the transaction purchase of real
11 estate from completing. So the whole
12 transaction still goes through, the Suspicious
13 Transaction Report is submitted, and from what
14 we understand it goes into a data bank, the
15 information, and it's used as a source for
16 investigation and basically it's just another
17 one of the dots that they try to connect in a
18 bigger picture. So, you know, the demonstrated
19 evidence of the lack of a submission to where
20 there was evidence of money laundering in real
21 estate, if we could see that and track that,
22 that would be instructive and helpful.

23 Q And that would help real estate agents be alive
24 to the utility of reporting?

25 A Repeat that.

1 Q Sorry, that would help real estate agents
2 understand the utility or the usefulness of
3 submitting these Suspicious Transaction Reports?

4 A Well, all information, again what we as an
5 industry are trying to do is to create that
6 culture of compliance to provide rational and
7 reasonable explanation to achieve that goal of a
8 culture of compliance. So if they understand
9 what they're doing and why they're doing it and
10 how they do it, it's again the who, what, where,
11 when, why and how. If you have all of those
12 answers, you're much easier to achieve
13 compliance. But if you have to spend too much
14 time finding answers to those questions, it
15 makes it a bit obscure and abstract. I think
16 it's hard to demonstrate that to people.

17 MS. ROSE: Madam Registrar, could we please have
18 exhibit 629 at page 20 on the screen.

19 Q Is there anything else that might assist real
20 estate agents in understanding their compliance
21 obligations or understanding the need to report
22 suspicious transactions? I'm wondering if, you
23 know, additional education or are there other
24 tools that you would recommend for that purpose?

25 A Well, nothing apart from what BCREA is working

1 on and the RECBC is working on. I mean, they
2 both have from my understanding memorandums of
3 understanding to cooperate and to assist in the
4 delivery of education and awareness. I think,
5 you know, as a work in progress, we've got a
6 good start. We've got some mandatory programs
7 that are requirements for licensing. We've got
8 some optional programs. If we can get more
9 licensees taking more courses, achieving a
10 greater awareness and understanding, I think,
11 you know, it would be -- I don't know if it
12 would change some of the statistics that we're
13 being told about, but it would certainly give us
14 a better dynamic to understand what we could be
15 doing better. Or what we're not doing
16 correctly. I don't think anybody is trying to
17 avoid their obligations. I think there might be
18 some difficulty in clearly understanding because
19 some of it is viewed through an opaque lens with
20 us. So if it was clear, instructive and it was
21 specific to our sector. Because you've got to
22 remember, too, that as a reporting entity as a
23 business operator, it applies to everybody. And
24 there's only a few things that are specific to
25 the real estate sector in AML compliance. So I

1 think, you know, we've got a decent roadmap
2 ahead of us and we just have to keep staying the
3 course and trying our best to improve it.

4 MS. ROSE: I'm sorry, Madam Registrar, I think I'm
5 one page behind. I think it's one page down
6 that I'm looking for. Yes. If we could zoom in
7 on the paragraph that -- sorry, just up a bit.
8 The paragraph that starts with the word -- yes,
9 right here.

10 Q So, Mr. Ellis, I'm showing you a compliance
11 report from FINTRAC to the Minister of Finance.
12 Have you seen this document before?

13 A Maybe I've seen some snippets from it. I don't
14 think I've read the whole report.

15 Q Okay. To be clear, this is a report that is
16 submitted by FINTRAC to the Minister of Finance.
17 It's not one that would be disseminated to real
18 estate agents, in fairness. So on this
19 paragraph that begins with the word "FINTRAC"
20 the last sentence of this paragraph says that:

21 "Finally, although this did not occur
22 frequently, FINTRAC uncovered certain
23 instances of unreported STRs."

24 Do you see that there?

25 A Yes, I see that.

1 Q So is your view that if FINTRAC were providing
2 this sort of information to the industry, they
3 would be likely to garner more compliance?

4 A Well, again, it's getting an understanding of
5 the metric of underreporting STRs. I mean, in
6 this report it's talking about although they did
7 not occur frequently FINTRAC uncovered certain
8 instances of unreported STRs, which would be
9 consistent with our industry understanding that
10 we do submit STRs, but we're being told by
11 others that we're underreported.

12 So if in this report FINTRAC is suggesting
13 that they didn't find it occurring frequently,
14 they did find instances of it, it would be
15 instructive and helpful for us to know how many
16 instances relative to the number of
17 transactions. And if we had some metrics that
18 can be analyzed, we can determine whether or not
19 we've got to step things up, is there something
20 that we're missing. Again leaving the
21 determination up to individual licensees to
22 leave the determination of the indicators to the
23 judgment call of a licensee, will it be more
24 helpful in generating more STRs? Time will tell
25 if these people are given sufficient information

1 on which to base their judgments.

2 Q And so am I right in saying your view is that it
3 would be helpful if more information was
4 provided by FINTRAC in terms of precisely how
5 deficient and in what way the reporting is
6 deficient so that industry members could make
7 their own evaluation of whether they need to
8 report more?

9 A It would be helpful, but again, this is a
10 federal paper and provincially each real estate
11 organization in each province operates somewhat
12 differently from others. We've taken more of a
13 lead in British Columbia with FINTRAC because
14 our regulators are involved in FINTRAC
15 training and our associations are involved in
16 FINTRAC training. I can't speak for the other
17 parts of the country and the other real estate
18 organizations and other government regulators
19 for what they're doing in their part of the
20 industry, but this would be a very high-level
21 view of STR reporting and may not be very
22 specific to what is happening in
23 British Columbia. So if we had British Columbia
24 statistics then we could have a look at it, it
25 might be more instructive.

1 Q Why is it the case that you require statistics
2 that are so specific in order to improve the
3 reporting levels? Why is it not sufficient that
4 FINTRAC has advised you that that's the case?

5 A Because of the fact that we are determined to be
6 a high risk geographic area. We're close to an
7 international US border. We have a major
8 international airport. We have a lot of traffic
9 coming through our area. So FINTRAC considers
10 that we are a high-risk geographic area. Which
11 is fine. We can understand that, but we want to
12 be able to translate this information to see
13 what it is that we should be looking for. And
14 again, I mean, I'll accept the fact that someone
15 has an opinion that we're underreporting, but
16 again I question that because that's not what
17 we're seeing ourselves, the managing broker
18 community. We're not seeing that as part of an
19 issue with us. If we talk to our members, many
20 of the members do submit Suspicious Transaction
21 Reports. It's not a commonplace thing. It's
22 not something that we see as a significant
23 problem within our industry, but it does happen
24 that reports do get submitted when something
25 looks a little wonky and, you know, it can't be

1 adequately explained. It will generate an STR.

2 Q Is the data that you're suggesting would be
3 helpful to receive from FINTRAC or the further
4 details, is it the case that you would like to
5 see that further information in order to
6 persuade licensees that they ought to be
7 bringing more transactions to your attention, or
8 is it more that from your view as a managing
9 broker that that information would be helpful
10 for you to determine when you need to report, or
11 where would that information be helpful to you?

12 A All of the above. I mean, the more information
13 we have in providing instruction and guidance to
14 the people under our supervision, the better.
15 So if we're providing them again abstract
16 information saying well, you must report, and
17 don't give them explanation of why we believe
18 it's important for them to report, there's no
19 metric. That's nothing to base that on.
20 They're just say well, you just have to do it.
21 You know, and that's what we're doing now.
22 We're saying here is your obligation and your
23 requirement. You know, we're running the
24 compliance program out of our office. The
25 people that are working under our licence are

1 obliged to follow our policies and procedures
2 and we rely on them to follow those policies and
3 procedures. So again, like the real estate
4 council, they don't go out looking for problems.
5 They react to complaints and issues that are
6 brought to their attention.

7 For us to know that someone is not
8 complying, it has to be brought to our attention
9 they're not complying. So we don't go out
10 looking for the problem. We have various audit
11 processes that we apply in making sure all of
12 our transaction paperwork is complete. And we
13 have big sticks to make sure that those people,
14 the realtors have the documentation, they're
15 including withholding commission cheques until
16 the records are complete and all the
17 documentation is in the file. Sometimes it's
18 hard to chase them around to get them to provide
19 the paperwork, but unless our file is complete
20 and signed off by a managing broker that's an
21 incomplete file.

22 MS. ROSE: Madam Registrar, I'm finished with that
23 document, thank you.

24 Q So you mentioned that you're not chasing down
25 the problem but rather you're relying on the

1 real estate licensees to bring it to your
2 attention and you've already described the very
3 comprehensive education that licensees undertake
4 and the communication efforts that you undertake
5 to engage them and inform them of indicators and
6 such. Managing brokers are not usually the ones
7 conducting the client relationship except of
8 course where that managing broker or compliance
9 officer is acting as an agent and not acting as
10 a managing broker; is that fair?

11 A We don't meet with the client directly as
12 managing brokers. We are required to make sure
13 that the documentation is properly completed and
14 registered through our office. There are
15 occasions when we may take a look at the name.
16 Google is a very useful thing. When you take a
17 look at someone's name and you type it into
18 Google, occasionally you do come up with
19 information. But, you know, if there was any
20 kind of a suspicion, it's not uncommon if I'm
21 looking at a FINTRAC identification document
22 when somebody says well, I don't know what the
23 person's exact job is, well, it's not hard for
24 me to type that person's name in and find out
25 that they're somehow employed somewhere and I

1 can say well, I found it, why can't you? So I
2 mean, we do have a bit of an audit process. We
3 do check to make sure that there is an honest
4 effort to get the appropriate documentation.
5 So, you know, we're doing a pretty decent job of
6 making sure that the required document that we
7 must retain is in our files. Because at any
8 time it's subject to examination. None of that
9 paperwork or documentation is reported anywhere.
10 It doesn't go anywhere. It doesn't go to
11 FINTRAC. It's just to be retained and
12 maintained in our files.

13 Q And aside from preparing the documentation, the
14 compliance officer isn't going out and meeting
15 with clients or conducting open houses, and I
16 appreciate there's not much open houses with
17 COVID, but they're not conducting that client
18 relationship, they're not asking the client
19 questions, engaging in conversations with the
20 client?

21 A Not normally. It does happen from time to time
22 where a managing broker will get involved in a
23 transaction, but it's not frequent.

24 Q And so some of the indicators that we've
25 discussed from FINTRAC, and taking your comment

1 that many of those indicators are inapplicable
2 to real estate agents because they don't see
3 transfer of funds for the most part, and so
4 we're left with the indicators about the client
5 like speed of transaction or like interest in a
6 particular property, those sorts of things,
7 would those be visible to the compliance
8 officer?

9 A Well, I wouldn't say they're not applicable. I
10 mean, obviously indicators are indicators. What
11 is -- I think what is the evaluation of that
12 indicator in the real world setting is I think
13 where we've got the issue. The managing broker
14 likely wouldn't know much about the line of
15 questioning that the realtor undertook with the
16 client and what information they may or may not
17 have been provided. But again, we don't
18 maintain the client relationship. We maintain
19 the records on the client based on what we're
20 provided by the licensee.

21 Q Would it be helpful if the responsibility for
22 making Suspicious Transaction Reports was
23 transferred from the compliance officer to the
24 agent that does have visibility into those
25 indicators?

1 A Well, we've just heard of that suggestion. It
2 hasn't been discussed by our organization. I'm
3 sure everyone might have differing views. It
4 would depend on what information was presented,
5 how it would be rolled out, how it would be
6 administered, whether or not there was still a
7 continuing role for us as managing brokers to
8 maintain paperwork. So until I had more
9 information and we presented it to our group of
10 people, I don't know if we would have a strong
11 opinion on it at this stage of the game, but
12 certainly it's something we would look at and
13 discuss, again with additional information.

14 Q And so when you say you're not familiar with it.
15 Have you heard of the Maloney report?

16 A I have read portions of the Maloney report.

17 Q And you're aware that that report makes a
18 recommendation that the responsibility for
19 PCMLTFA suspicious transaction reporting be
20 transferred from managing brokers to real estate
21 agents?

22 A Again, we have heard there is a suggestion out
23 there that that may be a consideration.
24 However, that would be a federal responsibility,
25 not involving a provincial authority from what

1 we understand unless the federal government
2 delegated some FINTRAC reporting and supervision
3 authority to a provincial entity.

4 Q And the Maloney report was issued in March of
5 2019. Is that your understanding?

6 A Yeah. I've had various copies of it printed and
7 picked up and looked at when something is
8 referenced in the Maloney report. However,
9 again, that was -- that had a lot of -- that had
10 a lot of content and I think that was a lot of
11 opinion and direction for the government's
12 viewing. I don't know if that was going to be
13 something that our industry would take as an
14 indication of what should be or -- you know,
15 again, we're constantly being provided changes
16 in regulations and changes of government
17 direction. That's a paper report that I
18 understand is being used for probably the
19 genesis of this commission.

20 Q You're right in that, I believe. Are you aware
21 that the recommendations of the Maloney report
22 in part are part of the reason that the Office
23 of the Superintendent of Real Estate undertook a
24 consultation on the role of a managing broker in
25 BC?

1 A Yes, we know that -- we know that there are a
2 lot of discussions and considerations regarding
3 the role of the managing broker, whether we will
4 of exist in the future, whether there will be
5 some sort of a modification of our role, or
6 expansion of our role. These were all discussed
7 and, you know, I think the superintendent has
8 backed off a number of those models that they
9 produced as suggestion, but the models were
10 produced for a discussion purposes only, and
11 from what I understand some of it was based on
12 suggestions made through the Maloney report.

13 Q And REBA has made a submission on the managing
14 broker consultation as you testified earlier;
15 right?

16 A Yeah, we did submit to the office to the
17 superintendent. We got to read a lot of those
18 submissions as well from BCREA, from Real Estate
19 Board of Greater Vancouver. Individual real
20 estate companies, we got to see some of those
21 that came from the individual brokerages, some
22 of the larger brokerages, they all made
23 submissions, so we weren't far off on our
24 overall universal opinions of the models that
25 were presented to us.

1 Q But the issue of transferring responsibility for
2 reporting suspicious transactions from a
3 managing broker to a real estate agent, that's
4 not consideration that your association has
5 considered?

6 A No, nothing in the consultation with the real
7 estate superintendent was involving money
8 laundering or nothing that we saw. There were
9 various models about having different
10 operational models for enhancing current
11 managing brokers role, bringing in an
12 independent third party compliance officer,
13 eliminating managing brokers entirely and having
14 individual realtors go out and operate as their
15 own business entities. I think it was one other
16 model in there that -- and/or a combination of
17 some of them. So we think that the compliance
18 model might not work in our province considering
19 that there's only, say, the average brokerage is
20 four people, would you go out and hire an
21 independent compliance officer for a brokerage
22 of four people, economically it probably
23 wouldn't have made sense. Cutting all the
24 realtors loose, well, we have enough trouble
25 with a few brokerages managing trust funds. You

1 can imagine 25,000 realtors trying to manage
2 their trust funds. We don't think that is --
3 that would require a paradigm shift in the way
4 the regulator would be able to handle
5 25,000 people. But I think the agreement was to
6 try to continue with the existing model with an
7 enhancement and further training and education.
8 So I think everyone kind of agreed that that
9 seemed to be the most logical thing to occur
10 under the circumstances. So is it perfect?
11 Possibly not.

12 Q And that brings me to my final set of questions,
13 which is what do you think either what could
14 FINTRAC be doing or what could RECBC be doing or
15 BCREA or perhaps even just managing brokers be
16 doing to encourage more compliance with *PCMLTFA*
17 or to encourage more cooperation within the
18 industry to better understanding those
19 obligations?

20 A Well, I could use one word, streamline. We're
21 caught up in so much information that is -- none
22 of it is very streamlined. It requires a lot of
23 concentration, and, you know, we've got people
24 trying to operate businesses at the same time as
25 being sort of subregulators. So realtors kind

1 of call us the rules guys. You've got to follow
2 the rules that the managing broker establishes,
3 and rules, most people don't like to be
4 encumbered by rules, but we're the rules guys.
5 You know, we put them on the ground and we
6 enforce them. They're interested in going out
7 and selling real estate. They don't
8 necessarily -- they're not necessarily the
9 people ... You know, I suppose that their
10 priority would not be on the rules. They're
11 going to follow them to get from A to B and
12 we're going to push them and make sure that they
13 do follow them, and that's our supervisory role.
14 We're going to make sure that they understand
15 and that they're following the rules and that's
16 our part of the process. We're the ones that
17 establish it. So we answer to the Real Estate
18 Council of BC.

19 MS. ROSE: Okay. Thank you, Mr. Ellis,
20 Mr. Commissioner, those are my questions for
21 this witness.

22 THE COMMISSIONER: Thank you, Ms. Rose. I'll now
23 call on Ms. Hughes on behalf of the province,
24 who has been allocated ten minutes.

25 MS. HUGHES: Thank you, Mr. Commissioner. I have my

1 video turned on, but I don't see it showing up.

2 THE COMMISSIONER: No, nor do I.

3 MS. HUGHES: Well, it may not be too much of an
4 issue. I don't have many questions for this
5 witness, but perhaps we could just defer my
6 questions to follow the next counsel and I will
7 address the video issue. I'm seeing that
8 spinning of the wheel over my video icon, so it
9 appears to be a technological issue on my side.

10 THE COMMISSIONER: All right. Let's do that. I'll
11 turn, then, to Ms. Shelley for Canada.

12 MS. SHELLEY: Thank you, Mr. Commissioner.

13 **EXAMINATION BY MS. SHELLEY:**

14 Q Mr. Ellis, can you hear me clearly?

15 A I can hear you.

16 Q So first I just wanted to clarify something you
17 said during the discussion of how best to
18 explain to individuals within the real estate
19 industry why it is necessary and important that
20 they report suspicion transactions to FINTRAC.
21 Did I understand you correctly as saying that
22 FINTRAC should be able to demonstrate that a
23 transaction for which a Suspicious Transaction
24 Report was not filed ultimately led to money
25 laundering?

1 A We've actually asked for that in previous
2 seminars and discussions with FINTRAC
3 representatives if they have any evidence that
4 they could provide and show us because we're
5 interested to know in fact is it happening, how
6 is it happening and as an instructive measure.
7 So we've asked for that information.

8 Q And specifically this information would be
9 information of a money laundering that was not
10 reported?

11 A Well, I think what we're looking to demonstrate
12 is that there was money laundering that could be
13 traced back to someone in the real estate
14 industry that should have reported and didn't
15 report it. So it would be instructive to know
16 what should have been noticed at the time and
17 how that report should have been submitted.

18 Q So I'm moving on to a different topic in your
19 testimony. You also described the -- I believe
20 you used the word "superheated" Vancouver real
21 estate market, and I don't think many would
22 disagree with you there. So you would agree
23 that it's quite a unique market in Canada?

24 A Vancouver is a unique -- a unique circumstance.
25 Toronto is going through its similar hot market.

1 Most of the larger metropolitan areas right now
2 are experiencing significant increases in
3 activity and competition with the lack of supply
4 and high demand.

5 Q And Vancouver is changing quickly? The
6 Vancouver real estate market is changing
7 quickly?

8 A It has been. It has been for a while. I
9 believe our economists through the BCREA have
10 been tracking numbers and we know that from the
11 information that we receive, the data from our
12 real estate boards on sales activity, that in
13 some instances we're starting to see monthly
14 double-digit increases in pricing in the market
15 and we're seeing levels of transactions that are
16 at industry highs, record industry highs. So I
17 don't know if it's an anomaly. A lot of people
18 are saying it can't sustain at this level, but
19 with mortgage moneys being available and rates
20 being so low, people seem to be able to qualify
21 and, you know, I can't speak to their judgment,
22 but they're certainly involved in the market
23 very, very actively right now.

24 Q And these are changes that are happening on you
25 said a month -- you're indicating a monthly

1 basis, and so they are changes that are being
2 observed by real estate professionals on the
3 ground?

4 A Yes. We -- most real estate professionals
5 obtain market statistics on a monthly basis, so
6 we do know certain segments of the market, what
7 their pricing levels are, what their levels of
8 activity, as much as how many days they're on
9 the market before they sell. So we have a lot
10 of statistical information provided to us, so
11 that's something that is continually being
12 reviewed.

13 Q And similarly the people who were -- the clients
14 who are buying properties, volume of sales, who
15 is buying properties, those sorts of
16 characteristics of the real estate market would
17 also be something that real estate professionals
18 on the ground know and learn about on a regular
19 basis?

20 A Yes, again from our economists they're showing
21 that most of the people buying real estate right
22 now are local purchases. We have very little
23 foreign involvement in purchasing right now
24 because of the closed borders and the lack of
25 international travel, so a lot of the

1 statistical information is showing that it is
2 predominantly local buyers that are involved in
3 the market right now.

4 Q And so you would agree that individuals who are
5 working in the market every day are best
6 positioned to observe these trends and
7 understand the market they work within?

8 A We would often see many anomalies, so, you know,
9 if we have a property that's listed for sale and
10 it sells for well under market, that goes like
11 wildfire through the industry. Like, what
12 happened there? Or right now with the bidding
13 wars that are occurring, many, many properties
14 are selling well over listed price. So again
15 the market is quite dynamic right now.

16 Q Yes. So, Mr. Ellis, earlier in your testimony
17 you mentioned that there are some guidance and
18 materials available on FINTRAC's website. You
19 described spending quite some time there, I
20 believe?

21 A I do spend quite a bit of time on the FINTRAC
22 website.

23 Q And just to be clear, you're not saying that the
24 FINTRAC guidance for the real estate sector is
25 unhelpful, you're just saying you would just

1 like to see it expanded?

2 A Well, I think it would be -- I think we could
3 deliver the information in a different manner
4 that makes it easier for the realtors to
5 understand, and I believe that, you know, we're
6 seeing that happening through the BC Real Estate
7 Association. They're repackaging a lot of that
8 information and providing it so that it becomes
9 easier to understand for the practitioners, and
10 also the Real Estate Council of BC as it's d
11 with FINTRAC on its delivery obligations or for
12 education. It's coming out in a different
13 manner. I don't think it's -- it might just be
14 a little easier for us to absorb that
15 information because, again, we go through quite
16 a few generalities on the FINTRAC website before
17 we reach our sector components.

18 Q And you would agree with me that due to the
19 nature of money laundering and the relative
20 expertise of people working within the real
21 estate industry that there will always be some
22 level of independent judgment required on the
23 part of the compliance officers and the real
24 estate individuals in identifying suspicious
25 transactions?

1 canvassed and we have no further question for
2 the witness.

3 THE COMMISSIONER: Thank you, Mr. Weafer. And
4 Mr. Rauch-Davis for Transparency International
5 Coalition, who has been allocated five minutes.

6 MR. RAUCH-DAVIS: Thank you, Mr. Commissioner.

7 **EXAMINATION BY MR. RAUCH-DAVIS:**

8 Q Mr. Ellis, can you hear me okay?

9 A I can.

10 Q Okay. Excellent. So I take it as managing
11 broker you're responsible for ensuring on a
12 broad level the brokers you oversee are abiding
13 by the *PCMLTFA* obligations; right?

14 A Not as a managing broker but as the compliance
15 officer for the brokerage.

16 Q Pardon me, the compliance officer. Right. And
17 I think your evidence this morning was that
18 those *PCMLTFA* obligations are engaged by the
19 detrimental to the profession language contained
20 within the act as well as the real estate
21 council regulations and things to that effect.
22 Is that your understanding?

23 A Well, the anti-money laundering obligations are
24 through the FINTRAC federal regulation. The
25 Real Estate Council of BC doesn't have any

1 particular current obligations with regard to
2 money laundering, just simply their memorandum
3 of understanding that they will be passing on to
4 the [indiscernible].

5 Q I just mean as compliance officer your
6 obligations arise through those bodies, through
7 RECBC and the *Real Estate Services Act*. Right?

8 A No, my obligation as a compliance officer is
9 through the *PCM* -- well, I have two roles. The
10 managing broker is a role designated through the
11 Real Estate Council of British Columbia and the
12 Office of the Superintendent of Real Estate and
13 separately the compliance officer is a federally
14 overseen program of my compliance with FINTRAC.

15 Q I see. My confusion there. So as changes to
16 the FINTRAC reporting obligations -- or as
17 FINTRAC reporting obligations change, is it your
18 experience that FINTRAC reaches out and provides
19 sufficient guidance to compliance officers on
20 those changes?

21 A There isn't -- the only time that there's any
22 contact with the compliance officers, if you're
23 called upon to produce documentation for
24 examinations. So we understand that COVID may
25 have clipped their wings a bit, but they are

1 going around still doing brokerage examinations,
2 and normally that's when we get most of our
3 hands-on, face-for-face guidance from FINTRAC.

4 Q I see. And is that in -- is it a fair
5 characterization to say that that's more of a
6 reactive approach rather than a proactive
7 approach to kind of ensuring the obligations
8 under the *PCMLTFA* are met?

9 A There's a combination. I mean, they're
10 certainly getting a lot of information out to us
11 right now trying to be proactive, and I don't
12 know if people are on the emailing list for
13 FINTRAC. It's almost daily we're getting
14 directives from FINTRAC regarding obligations.
15 But there is some reactive response because when
16 they do come in and find out that we might be
17 deficient in some area of recording information
18 or producing risk assessment, we'll get checked
19 up.

20 Q Right. So are you aware that the regulations,
21 the *PCMLTFA* regulations are changing this
22 summer, specifically that real estate licensees
23 have new know your client obligations with
24 respect to beneficial ownership?

25 A Yes, I am aware, June 2021, and for a guy who

1 has just redone his compliance procedures manual
2 I will be doing it again in June of 2021.

3 Q Right. And these changes will require real
4 estate agents to verify the beneficial ownership
5 information of the corporate clientele, I think
6 they have a 25 percent threshold; is that right?

7 A Yes, that's what we understand. We haven't seen
8 the -- we've heard about but we haven't seen how
9 they are going to be implementing the program.
10 So we suspect that it will be in addition to one
11 of their current forms, and of course we're
12 hoping that *LOTA* will be able to assist us with
13 a public registry, but, again, we'll see how
14 those two systems integrate.

15 Q Right. So you're hopeful that *LOTA* will of
16 assistance in confirming some of the beneficial
17 ownership requirements under *PCMLTFA*?

18 A Well, it's pretty new and we haven't done a deep
19 dive on it, but we're crossing our fingers
20 hoping that it will become a useful tool for us.

21 Q Right. And I take it some of the hesitation on
22 the utility of *LOTA* stems from the fact that, as
23 you said, it's new and you don't really know
24 what the quality of information is going to be
25 like as of this moment.

1 A No, we haven't -- right now a lot of the law
2 firms are going through the registration process
3 for corporate registry of beneficial ownership,
4 so I don't know how far along that reporting has
5 gone, but we understand it's underway. We're
6 about to have some training from the real estate
7 side on how to integrate the information and
8 data from *LOTA*.

9 Q Right. Because under the *PCMLTFA* I think the
10 language is you have to take reasonable steps
11 and reasonable measures to confirm the accuracy
12 of the beneficial owner information; right?

13 A Yeah, I haven't seen that -- all of that
14 information yet. I'm -- closer to June I'll be
15 diving in that one.

16 Q And do you recall has FINTRAC reached out and
17 provided any guidance on how to confirm that
18 type of identification?

19 A Not that I've seen, not proactively. If it is
20 there it would be in the website.

21 MR. RAUCH-DAVIS: Okay. Thank you. Those are my
22 questions for this witness.

23 THE COMMISSIONER: Thank you, Mr. Rauch-Davis.
24 Ms. Hughes? I take it we still have some
25 technical difficulty. So what I'm going to

1 suggest is that we stand down briefly and then
2 check back in with Ms. Hughes to see whether or
3 not she has been able to reconnect with us. So
4 we'll take five minutes or longer if that
5 becomes necessary, but we'll stand down for at
6 least five minutes.

7 THE REGISTRAR: This hearing is stood down for
8 five minutes until 12:57. Please mute your mic
9 and turn off your video.

10 **(WITNESS STOOD DOWN)**

11 **(PROCEEDINGS ADJOURNED AT 12:52 P.M.)**

12 **(PROCEEDINGS RECONVENED AT 1:00 P.M.)**

13 THE REGISTRAR: Thank you for waiting. The hearing
14 is now resumed, Mr. Commissioner.

15 THE COMMISSIONER: Thank you, Madam Registrar. Yes,
16 Ms. Hughes, I see you're now visible.

17 MS. HUGHES: Thank you. My apologies,
18 Mr. Commissioner.

19 THE COMMISSIONER: No need to apologize. I don't
20 think that is anything anyone has any control
21 over.

22 MS. HUGHES: No, I don't think so. In any event, I
23 don't have too many questions, so I should be
24 brief.

25 **EXAMINATION BY MS. HUGHES:**

1 Q Mr. Ellis, you mentioned when you were answering
2 questions by commission counsel that you feel
3 that in some instances realtors or licensees are
4 being asked to collect irrelevant client
5 information, and indeed in your will-say
6 statement you indicate the same thing, that
7 they're being asked to collect irrelevant client
8 information for FINTRAC reporting purposes. You
9 recall that being in your will-say statement?

10 A I don't know if I was suggesting it was -- that
11 we were collecting irrelevant information. I
12 think we had to be careful that we were
13 collecting information that is relevant to the
14 business that we're conducting as the real
15 estate practitioner. So, you know, if we are
16 required to require -- if we're required obtain
17 additional information for FINTRAC purposes,
18 it's not clearly stated that we should be doing
19 so. I'm just stating that from the real estate
20 transaction purpose we collect information
21 that's relevant to what we do for the real
22 estate transaction, not specifically for
23 FINTRAC.

24 Q I see. So if your witness statement suggests
25 that information required by FINTRAC is viewed

1 by licensees as being irrelevant, that's a
2 mistake?

3 A Well, I -- no, I don't think I -- I don't think
4 that --

5 MR. HEWITT: Sorry, Mr. Commissioner, I know I have
6 limited ability to intervene, but if this is a
7 questioning on a will-say perhaps something
8 could be put to the witness. I don't know that
9 the contradiction exists.

10 MS. HUGHES: Certainly. Madam Registrar, I'm just
11 referring to the witness's will-say statement.
12 And I may have misunderstood the oral evidence
13 that the witness gave in the will-say statement.
14 It refers to a irrelevant information being
15 collected and I had understood -- and that was
16 what I was trying to clarify in my question was
17 perhaps whether if information is required to be
18 collected by FINTRAC, then, I take it,
19 Mr. Ellis, you would agree that would be
20 relevant information.

21 A Well, I mean, there's two parts of what we're
22 doing here. So we have a real estate
23 transaction requirement to collect information
24 for the purposes of the transaction, and then we
25 have requirements to collect information for the

1 Registrar has it available.

2 THE REGISTRAR: Yes, I just want to you confirm that
3 is what you want.

4 MR. HEWITT: If you can just put the words to him,
5 that's fine.

6 MS. HUGHES: Certainly. That would be easier.

7 Q In the will-say statement it says that you will
8 describe concerns within the industry regarding
9 brokers and agents requesting client information
10 that they consider to be irrelevant to a real
11 estate transaction and uncertainty over what
12 requirements may exist in that respect. And
13 that sentence comes in the context of a
14 paragraph where you're describing the role of
15 managing brokers and compliance officers in the
16 *PCMLTFA* obligation to ensure client
17 identification and verification. So perhaps I
18 may ask you this question --

19 MS. ROSE: I'm sorry, Ms. Hughes. I hesitate to
20 interrupt. I just want to make sure to the
21 Commissioner that this is a document that has
22 been drafted by commission counsel and not by
23 this witness.

24 THE COMMISSIONER: All right. Well, I think it can
25 be put to the witness to see whether it

1 refreshes his memory as to whether or not that's
2 what he said. Thank you. That's helpful to
3 know.

4 MS. HUGHES: Certainly. Thank you, Ms. Rose. And
5 perhaps this question might be an easier way of
6 going about it.

7 Q What I really would like to know is what
8 information -- and if that was something that
9 you up were going to provide evidence about,
10 what information are you referring to there that
11 you consider to be irrelevant?

12 A Well, again that statement was prepared by
13 commission council. We have had conversations
14 about that to make sure that we weren't
15 misrepresented and I think we've had subsequent
16 amendments to that. But again, when we're
17 involved in a real estate transaction you would
18 ask questions of your client relevant to the
19 transaction. You wouldn't be going outside of
20 it. If we're now going into a line of
21 questioning to determine if there's money
22 laundering activity, some of that questioning
23 may not be relative to the transaction of real
24 estate and may cause some red flag indicators
25 for the client that now we're asking a bunch of

1 questions that have nothing to do with the
2 business that they're engaged with, and we have
3 to be considered and rational about asking
4 questions and obtaining information that may be
5 taking us far outside of what it is that we're
6 actually trying to do. So right now there's no
7 requirement under the AML legislation to retain,
8 receive or ask any specific questions. So
9 relevance doesn't matter. We're not required
10 under AML legislation requirements to ask any
11 specific questions. So, you know, again what
12 we're being asked to do is get a gut feeling for
13 what may be money laundering on the basis of
14 indicators, but again the broad range of
15 questioning that we might ask a client is, do
16 you have a pet, to are you laundering money, and
17 in between that there's a lot of conversations
18 you can have with a client. Would you really if
19 you're dealing with a transaction with a piece
20 of real estate, would you start asking questions
21 that are outside of the transaction? So you
22 know, we're not necessarily going to ask them if
23 they tell us that they have the capability to
24 finance the transaction or to pay for the
25 purchase of the property, at the end that's

1 going to go to the lawyers. They're going to
2 sort that out with the lawyers. Our concern
3 with their financing is that can you complete
4 the transaction; can you actually come up with
5 the money when you're required. We're not
6 necessarily required to know how they're doing
7 that. We can possibly know. We can possibly
8 say gee, well, how are we going to do that? But
9 in the context of money laundering as an
10 indicator we have to be careful, I think, and
11 we've been told by FINTRAC, you have to be
12 careful what you're questioning. A Suspicious
13 Transaction Report, we're told, should be
14 submitted without the client knowledge. You
15 don't ever give a client any indication
16 whatsoever that you're going to be submitting a
17 Suspicious Transaction Report on them. So our
18 concern is that if you lead into a line of
19 questioning for the purposes of gathering
20 information to include a Suspicious Transaction
21 Report, is that a wise thing to do when the
22 counsel is don't give your client an indication
23 that you're going to be reporting them. And how
24 do you do that? Well, you do that through your
25 indicators of questioning. So I think in the

1 context of relevance, we've got to understand
2 what relevant means. We're in a real estate
3 transaction where you get a buyer and a seller
4 together to complete the purchase of a home.
5 That's the sole purpose for why we're doing it.

6 So I hope that sort of explains. And in
7 Ms. Rose's suggestion that we -- that counsel
8 prepare -- we've gone through a bit of an
9 explanation. I think that's how she reflected
10 in that statement that you were reading from.
11 So we were talking about two different things
12 here. So --

13 Q All right. So perhaps I'll ask it this way
14 then, and thank you for that lengthy
15 explanation. That does provide some helpful
16 context. I think you identified one instance
17 where information might be irrelevant, and it's
18 the same one you identified earlier which is the
19 buyer's abilities to sustain the mortgage. I
20 take it that you'll agree with me, though, that
21 to the extent that FINTRAC is asking -- so where
22 either a managing broker or compliance officer
23 has an obligation under the *PCMLTFA* to collect
24 client identification and verification
25 information, that information would be relevant.

1 Is that right?

2 A Yes, it's not just relevant, it's a requirement.

3 We must do that. So yeah, that is relevant.

4 Q Exactly. And so if there's a FINTRAC

5 requirement to collect certain information

6 regardless of whether or not the realtor or the

7 managing broker feels that information is

8 relevant to the real estate transaction, they're

9 still required to collect that information;

10 correct?

11 A We are required to collect that information.

12 Q And then dealing again with suspicious

13 transaction reporting, I just wanted to make

14 sure I understand clearly. In your evidence are

15 you saying that there's a difference in terms of

16 the FINTRAC STR reporting obligations of

17 compliance managers or managing brokers versus

18 salespeople or the licensee?

19 A No. No difference.

20 Q Okay. And so you'll agree that both a

21 licensee -- and by that I mean a realtor or a

22 salesperson I think is the wording FINTRAC uses,

23 they have the same obligation to report as a

24 compliance officer or a managing broker;

25 correct?

1 A Our understanding is as far as STRs I guess they
2 have the same obligations.

3 Q You guess or you know that to be the case?

4 A I believe that to be so. That it's not a
5 requirement for the compliance officer to submit
6 the STR, although in our compliance regime we do
7 suggest that the realtors come and speak with
8 the compliance officer to review the matter and
9 make a determination on the submission of the
10 STR. Who actually submits the STR really it's
11 up to the individual who has the suspicion of a
12 money laundering activity. However, because we
13 have run and maintain and operate a compliance
14 program in the brokerage, to just completely
15 ignore us at the present time. Now, if the
16 federal government makes a decision that they
17 want to change that, that's not our call. We'll
18 comply with whatever we're told to comply with,
19 but our current understanding right now is that
20 anyone involved with that client can submit an
21 STR.

22 Q And it's not just "can submit," it's a
23 requirement to submit. Isn't that right?

24 A As far as we know, yes. If they're aware of it,
25 it is a requirement to report it.

1 Q That's right. And a salesperson or a licensee
2 they can't discharge that requirement simply by
3 reporting to their compliance manager or their
4 managing broker?

5 A They can't?

6 Q They cannot. Reporting from a salesperson to
7 the managing broker or the compliance officer
8 does not discharge their duty under the
9 legislation to report to FINTRAC?

10 A Not necessarily. I mean, if there is an actual
11 suspicion of money laundering just handing it to
12 the managing broker doesn't satisfy that
13 obligation. But again the way it's been
14 normally and traditionally occurring is that the
15 individual will speak with the compliance
16 officer for -- you know, they're the ones that
17 have the information. The individual realtor
18 may not be up to date and up to speed with how
19 they do it, where to get the forms to do it. So
20 they're likely going to go to the compliance
21 officer and say look, there's something that is
22 untoward here; what should we do; how should I
23 do it; where do I go; where do I get the STR
24 form? Most realtors don't know where to get
25 that information.

1 Q And certainly the experience will be different.
2 As you indicated earlier in your testimony,
3 there are a high number of very small brokerages
4 where there might not be that kind of formal
5 process in place; is that fair?

6 A Again each individual brokerage will have its
7 own compliance obligations and measures and
8 policies in place. I mean, we have a robust one
9 with the real estate -- the Canadian Real Estate
10 Association compliance manual. We go through it
11 in detail. It's quite a large document. Some
12 people may have very limited small compliance
13 manuals so they're going to be administering
14 differently, but the obligation for reporting
15 the STR does not change regardless of the size
16 of the brokerage or the policy or regime that's
17 implemented by the compliance manager.

18 Q That's right. And at base, as you said, that
19 obligation lies with the licensee or the
20 salesperson?

21 A Yeah, it resides with the individual who is
22 dealing with the client. Because the managing
23 broker doesn't deal with the client. They're a
24 good resource for the licensee, but it's not the
25 compliance manager's obligation. It is the

1 realtor's obligation to report the suspicious
2 activity. How they physically do it might be
3 different.

4 MS. HUGHES: Okay. Thank you, Mr. Ellis. Those are
5 all my questions.

6 THE COMMISSIONER: Thank you. Anything arising from
7 that, Mr. Rauch-Davis?

8 MR. RAUCH-DAVIS: No. Thank you, Mr. Commissioner.

9 THE COMMISSIONER: Ms. Shelley?

10 MS. SHELLEY: Nothing, thank you, Mr. Commissioner.

11 THE COMMISSIONER: And Ms. Rose?

12 MS. ROSE: Yes, thank you, Mr. Commissioner. I just
13 wanted to ask one question arising from
14 Ms. Hughes' cross-examination.

15 **EXAMINATION BY MS. ROSE (continuing):**

16 Q Mr. Ellis, in -- well, I suppose it's more than
17 one question. I apologize. Mr. Ellis, in
18 submitting Suspicious Transaction Reports do you
19 have to have an account with FINTRAC, an online
20 account?

21 A I believe they've made changes that they
22 have made it easier. I haven't been involved in
23 having to submit a transaction or even look into
24 the matter. We have a different -- we don't
25 normally run into that. We have a different

1 operation in our individual brokerage, but I
2 haven't had any recent experience, but I
3 understand that the form has changed. They've
4 made it less complicated to complete, so I know
5 there have been some changes. So there is a
6 recent directive from FINTRAC regarding the STR
7 reporting. I would have to review it again.
8 But I know it was produced not that long ago.

9 MS. ROSE: Okay. That it my only question for the
10 witness, Mr. Commissioner. I would perhaps
11 suggest, Mr. Commissioner, you may want to
12 inquire with Mr. Hewitt if he has any questions
13 arising from matters today.

14 THE COMMISSIONER: Yes. Mr. Hewitt.

15 MR. HEWITT: No, Mr. Commissioner. Thanks very much.
16 I have nothing to add in terms of questions.
17 And I just want to say on behalf of my client,
18 obviously, thank you for the opportunity to be
19 here today.

20 THE COMMISSIONER: Thank you, Mr. Hewitt. And thank
21 you, Mr. Ellis. We appreciate the time you have
22 taken to share with us your experiences and
23 insights in the real estate business. Thank
24 you. You're excused from further testimony.

25 THE WITNESS: Thank you. You're most welcome.

1 THE COMMISSIONER: We will adjourn now until
2 Monday morning at 9:30, Ms. Rose?

3 MS. ROSE: That's right, Mr. Commissioner. Thank
4 you.

5 THE COMMISSIONER: Thank you.

6 THE REGISTRAR: The hearing is now adjourned until
7 March 1st, 2021, at 9:30 a.m. Thank you.

8 **(WITNESS EXCUSED)**

9 **(PROCEEDINGS ADJOURNED AT 1:17 P.M. TO MARCH 1, 2021)**

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