

**PROCEEDINGS AT HEARING
OF
MARCH 5, 2021**

COMMISSIONER AUSTIN F. CULLEN

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March 5, 2021
(Via Videoconference)

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

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

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

MS. ROSE: Thank you, Mr. Commissioner.

Mr. Commissioner, today we have two witnesses from the Society of Notaries Public of BC, and I understand that Mr. Mayr will be sworn and Ms. Morin will be affirmed.

JOHN MAYR, a witness
called for the
commission, sworn.

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

THE WITNESS: John Mayr, J-o-h-n, last name is M-a-y-r.

THE REGISTRAR: Thank you.

MARNY MORIN, a witness
called for the
commission, affirmed.

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

1 THE WITNESS: Marny Morin, M-a-r-n-y M-o-r-i-n.

2 THE REGISTRAR: Thank you.

3 THE COMMISSIONER: Yes, Ms. Rose.

4 MS. ROSE: Thank you, Madam Registrar.

5 Mr. Commissioner, I first propose to walk
6 through these witnesses' background, and for
7 that purpose I would ask Madam Registrar if she
8 could please pull the CV of Mr. John Mayr.

9 **EXAMINATION BY MS. ROSE:**

10 Q Mr. Mayr, do you recognize this document as the
11 CV or résumé that you've provided to the
12 commission?

13 A (JM) I do.

14 Q You have held various roles in regulatory
15 organizations in BC?

16 A (JM) Yes, I have.

17 Q And that started in the health care industry and
18 then moved on to the BC College of Social
19 Workers?

20 A (JM) Correct, yes.

21 Q You are now the CEO of the Society of Notaries
22 Public of BC?

23 A (JM) Yes.

24 Q And you've been in that role since 2017?

25 A (JM) That's correct.

1 MS. ROSE: Thank you. Mr. Commissioner if we would
2 have this document marked as exhibit 680, I
3 believe.

4 THE COMMISSIONER: Very well.

5 THE REGISTRAR: Yes. Exhibit 680.

6 **EXHIBIT 680: Résumé of John Mayr**

7 MS. ROSE: Thank you. And, Madam Registrar, if we
8 could please have the CV of Ms. Morin now.

9 Q Ms. Morin, do you recognize this document as the
10 CV that you've provided to the commission?

11 A (MM) Yes, I do.

12 Q And you were initially commissioned as a notary
13 public in June of 1989?

14 A (MM) Correct. Yes.

15 Q You helped develop the notary education program
16 with UBC in 1993 to 1995?

17 A (MM) That's correct, yes.

18 Q And after engaging in private practice for
19 29 years in 2008 you assisted in the development
20 of the SFU or Simon Fraser University masters
21 course, which is now a requirement to become a
22 notary in BC?

23 A (MM) Yes, that's correct.

24 Q And you joined the Society of Notaries in 2017?

25 A (MM) I became the secretary of the Society in

1 2017. I've worked for the Society of Notaries
2 in various capacities since about 1993.

3 Q And what are your duties with the Society right
4 now?

5 A (MM) Varied. I'm the secretary of the Society
6 and that position flows from the *Notaries Act*
7 and is an appointment by the board annually, but
8 my other duty is as the Director of programs and
9 services for members and students of the
10 Society, and I also recently have been asked to
11 be the program manager for the captive insurance
12 company for the insurance program for notaries.

13 MS. ROSE: Thank you. Mr. Commissioner if we could
14 have this marked as exhibit 681.

15 THE COMMISSIONER: Yes, very well. Thank you.

16 THE REGISTRAR: Exhibit 681.

17 **EXHIBIT 681: Résumé of Marny Morin**

18 MS. ROSE: Thank you, Madam Registrar. I have no
19 further need of this document.

20 Q And as we proceed today I will do my best to
21 direct questions to the appropriate witness, but
22 if I've made a mistake in that regard and either
23 of you is better placed to answer the question,
24 I'd just invite you to let me know, please.

25 So I believe this is a question for

1 Mr. Mayr. How many staff does the Society of
2 Notaries have in total?

3 A (JM) The Society has a staff compliment of 10.

4 Q And could you just give us a little bit of a
5 breakdown of what those 10 individuals do?

6 A (JM) Sure. We have three that would be
7 notaries, including general counsel. There is
8 myself as CEO and executive director. We have a
9 chief financial officer with one assistant, and
10 the remainder are all administrative positions
11 that deal with either student applicant
12 inquiries or member inquiries.

13 MS. ROSE: Madam Registrar, could we please have the
14 Society of Notaries BC organizational chart.

15 Q And, Mr. Mayr, does that chart reflect what
16 you've just described in terms of the occupation
17 of your staff?

18 A (JM) Yes, it does.

19 Q Okay. And with respect to investigation staff,
20 could you explain how many investigation staff
21 you have and what their background and training
22 is.

23 A (JM) Yep, absolutely. I am the lead
24 investigator for the Society, so I receive all
25 complaints, do the preliminary investigation and

1 inquiry into the complaint. Depending on the
2 nature of the complaint, I can rely on three
3 others, and they would be the notary publics in
4 the office on staff. Once a preliminary inquiry
5 is done, the matter is presented to the
6 discipline committee, and they will either
7 direct further investigation, consider the
8 material that has been collected, and then
9 determine how the complaint advances.

10 Q And you described a disciplinary committee. How
11 many members does that committee have?

12 A (JM) The committee itself has five members.
13 They are all notaries public. There is one
14 public member. We've -- the Society itself has
15 just added public members to the board. We're
16 one of the very few that the board resourcing
17 office doesn't appoint public members to. And
18 for the most part they would all be notaries in
19 practice.

20 MS. ROSE: Okay. And I understand -- first I should
21 say, Mr. Commissioner, if we could have this
22 organizational chart marked as exhibit 682,
23 please?

24 THE COMMISSIONER: I think it's -- yes, 682. Thank
25 you.

1 THE REGISTRAR: Exhibit 682.

2 **EXHIBIT 682: SNPBC Organizational Chart 2021**

3 MS. ROSE:

4 Q And, Mr. Mayr, do any of your staff have money
5 laundering training?

6 A (JM) All the notaries on staff have money
7 laundering training.

8 Q And what type of training is that?

9 A (JM) The Society works with a third-party
10 company to provide customized training for
11 members and staff that deal with complaints.
12 The notary staff have also taken that program.

13 Q Okay. And I intend to ask you a few questions
14 about that a bit later on today.

15 A (JM) M'mm-hmm.

16 Q Does anyone in the Society have ACAMS training?

17 A (JM) Not specific training. Although Marny
18 Morin has attended many of their conferences and
19 educational events, but not the certification.

20 Q And, Ms. Morin, perhaps you could speak directly
21 to that.

22 A (MM) Actually, that's not correct. I haven't
23 attended ACAMS training. I've attended training
24 and conferences and webinars and seminars and so
25 on through the third party provider that

1 Mr. Mayr spoke of. I haven't taken any
2 particular ACAMS training myself because we use
3 a different provider.

4 Q Okay. Understood.

5 A (JM) My apologies.

6 MS. ROSE: I have no further need of this chart,
7 Madam Registrar. Thank you.

8 And, Mr. Mayr, you were just describing the
9 complaints process.

10 Perhaps, Madam Registrar, if we could please
11 have the 2017 to 2020 complaints summary
12 document on the screen, please.

13 Q And, Mr. Mayr, where do your complaints come
14 from?

15 A (JM) Complaints arise mostly from members of the
16 public, but we do also receive complaints from
17 lawyers, real estate agents and of course other
18 notaries complaining about another notary.

19 Q Okay. And this document, do you recognize this
20 document on the screen here?

21 A (JM) Yes. Yep. That is one of our documents.

22 Q Could you perhaps just explain to me what that
23 is.

24 A (JM) Yes. We've gone back through our
25 complaints to 2017 and categorized the

1 complaints in the broad categories that you see
2 there. So complaints about conveyance service,
3 mortgage, notarizations, a broad category of
4 "other" and then personal planning. And you can
5 see that the number of complaints has remained
6 fairly static over the period of the report.

7 Q And is this an activity that you perform
8 actively or was this done recently, the
9 historical view?

10 A (JM) The -- we do consider complaints
11 historically. This chart was produced just for
12 the commission.

13 Q And I see it's split into -- there's
14 conveyancing and then there's also mortgage.
15 And I take it a conveyance would be the transfer
16 of title from one person to another and the
17 mortgage would be a registration of mortgage on
18 title. Do I have that right?

19 A (JM) Yes.

20 Q And sorry, I hear you hesitating a bit. Please
21 feel free to add nuance to the statement if I
22 don't have it quite right.

23 A (JM) The -- it's a little bit more -- especially
24 the complaints around mortgages, just as to
25 registering it on title. The complaints would

1 be everything from failing to remove a mortgage
2 from title, the mortgage discharge centre, or
3 failing to communicate around some of the
4 concerns that a client may have to do with a
5 mortgage.

6 MS. ROSE: Okay. Mr. Commissioner, I propose we have
7 this marked as exhibit 683, please.

8 THE COMMISSIONER: 683, yes. Thank you.

9 THE REGISTRAR: Exhibit 683.

10 **EXHIBIT 683: SNPBC 2017-2020 Complaints Summary**

11 MS. ROSE: All right. Madam Registrar, I have no
12 further need of this document. Thank you.

13 Q So, Mr. Mayr, I understand that in addition to
14 investigating complaints the Society also
15 conducts audits.

16 A (JM) Yes. We have a number of public protection
17 programs where trust audits is one of those very
18 important programs.

19 Q And so could you perhaps just explain what such
20 an audit would entail.

21 A (JM) Sure. We use an independent third party to
22 actually conduct the physical audit, so what the
23 process involves is the Society collecting
24 information about every notary's trust accounts
25 throughout the year and then annually. We also

1 have a process where any error that is made in a
2 trust account, so if it's overdrawn, and most
3 often there's two reasons for that. One would
4 be that a financial institution has charged a
5 service charge to a trust account or a member
6 has distributed funds from a different financial
7 institution than the funds were deposited to.

8 Whenever one of those errors occurs, by our
9 rules the members must report that to the
10 Society, and we keep track of all of the trust
11 error reports. Annually we meet with our
12 independent team and they will look at both the
13 self-audit report and all the trust error
14 reports. And then based on that information,
15 they will require the member to provide complete
16 files, all trust records for a particular set of
17 files.

18 Q What standard annual reporting requirements are
19 there on notaries with respect to their trust
20 accounts, if any?

21 A (JM) Notaries are required to reconcile their
22 trust accounts every month. And that is part of
23 the audit process, our trust audit process. It
24 is an offence under our rules for them not to do
25 so.

1 Q Okay. And in addition to audits, I understand
2 that you undertake or the Society, I should say,
3 undertakes practice inspections. Could you tell
4 us about that.

5 A (JM) Yes. Our practice inspection program
6 compliments our trust audit program where we
7 have, again, a team of notaries, as they're most
8 familiar with the practice, who engage with an
9 individual who's scheduled for a practice
10 inspection to conduct a comprehensive review.
11 And it looks at everything from the physical
12 space, employment arrangements, partnership
13 arrangements, detailed examination of each
14 different kind of file. So, you know, that
15 would include conveyance files, refinance files,
16 personal planning files and notarizations.

17 Prior to COVID, we were doing approximately
18 25 percent of our membership annually, and that
19 number applies to the trust audits as well, so
20 we're in the range of approximately a hundred a
21 year, although for fiscal 2020 our practice
22 inspections have been less, and that's just been
23 the Society really trying to respond to the
24 health pandemic and create a safe, secure system
25 for notaries to provide documents to practice

1 inspectors without us doing onsite visits.

2 Q And you mentioned with respect to the audits you
3 have a third-party contractor performing those.
4 Currently which contractor is that?

5 A (JM) We use one of the accounting firms and --

6 Q I'm sorry, Mr. Mayr, I'm just picking up a
7 little bit of background noise on your feed, I
8 think. Would it be possible for you to shut
9 your door?

10 A (JM) Yes.

11 Q And if you're comfortable doing that now, we
12 could do that. Otherwise I could suggest that
13 we stand down for a couple minutes?

14 A (JM) Yeah. No, just give me one minute.

15 Q Sorry about that. Thank you very much.

16 And with respect to practice inspections,
17 who carries these out for -- on behalf of the
18 Society?

19 A (JM) We have a team of notaries that we engage
20 annually. Many of them are -- well, I think all
21 of them are senior notaries who are
22 transitioning out of practice either into
23 retirement or looking to provide some service
24 back to the profession.

25 Q And what sort of -- do they have any particular

1 training in respect of these practice
2 inspections, or is it predominantly experienced
3 based?

4 A (JM) It's a bit of both. We certainly have
5 training for practice inspectors and we meet
6 with them annually. There is a specific form
7 that we've developed so there's consistency in
8 the application, and all of the completed
9 practice inspections and forms are reviewed
10 internally, you know, looking for any area where
11 a member may not meet a standard, but more
12 than -- we don't have a lot where people just
13 don't meet the standard; we're really looking at
14 improving practice and giving direction on best
15 practices.

16 Q And I see you nodding, Ms. Morin. I just wanted
17 to give you an opportunity to add there, if you
18 have anything to contribute.

19 A (MM) Yes, our practice inspection program is
20 under my domain and I am the one who reviews all
21 of the inspection reports as they're submitted.
22 We do have a team of inspectors. They are
23 trained in that they meet annually. And as
24 Mr. Mayr said, we do have a checklist or a form
25 that they go through that's quite extensive. So

1 all areas of practice are covered. Files are
2 reviewed randomly and sometimes specifically if
3 there's something that has come up that the
4 executive director is aware of, they might
5 direct that an inspection take place of a
6 certain member's practice.

7 All of our new notaries are inspected in
8 their first year of practice. That is largely
9 an education-driven procedure to make sure that
10 the new notary gets off to the right start and
11 can be given some points and help with respect
12 to best practices. But the rest are just random
13 on a rotating four-year basis, 25 percent of the
14 membership.

15 Q You've just, I think, answered my next question
16 which was going to be approximately how many
17 inspections and audits does the Society conduct
18 each year. You said it's 25 percent of the
19 members for practice inspections?

20 A (MM) Approximately a hundred. Yes.

21 Q Okay. And is that the same figure for audits?

22 A (MM) Yes.

23 Q And is it -- does a notary receive an audit at
24 the -- and inspection at the same time or are
25 they separate processes?

1 A (MM) They're separate processes. So the
2 practice inspection doesn't look at trust
3 account processes specifically. They do review
4 them to make sure that they have records and
5 that the reconciliations are done monthly as
6 required. They do look at that. But the
7 practice inspectors are not accountants, and so
8 they don't focus on the accounting aspect other
9 than to look at what programs they might be
10 using, software programs for accounting, and
11 that the records are available for review, if
12 requested.

13 Q Okay. And I'm not sure I fully understood the
14 answer to this question, so I'll just ask it
15 again. Is there any requirement for notaries to
16 file an annual declaration or other report to
17 the Society of Notaries with respect to their
18 trust accounts?

19 A (MM) John?

20 (JM) Yes. Do they file a comprehensive
21 report on their trust accounts.

22 Q Okay. And that's reviewed by the Society?

23 A (JM) Yes, it is.

24 Q Okay. And does the Society provide insurance to
25 its members or is that done by a third party?

1 A (JM) The Society requires members to carry
2 insurance and has operated an internal insurance
3 program up until a number of years ago when we
4 created the BC Notaries Captive Insurance
5 Company. And I'll let Ms. Morin speak more on
6 the insurance as she is the program director for
7 the corporation.

8 Q Thank you. Ms. Morin, if you could just give us
9 an overview there that would be great.

10 A (MM) Well, we do have a mandatory program of
11 insurance. Every member has to participate.
12 The insurance program is a combination of
13 in-house retention or an in-house fund plus
14 excess insurance that's carried by third
15 parties. The total insurance package that is
16 mandatory for all members for errors and
17 omissions is \$16 million. Captive also has a
18 fidelity insurance program that covers
19 malfeasance, theft and so on. And that program
20 is also partially funded by the *Notaries Act* and
21 their special fund partly by the captives
22 in-house retention amount. And then there's
23 excess insurance and the total package there is
24 \$23 million.

25 Q And are you able to inform us of what might be a

1 typical claim upon those funds, what sort of
2 activity is typical?

3 A (MM) Typical? Well, nothing about insurance is
4 typical, but we generally have about 25 to 35
5 claims year, and in my history we have never
6 gone into our excess coverage on the errors and
7 omissions side, so any claims that are paid out
8 have come from the in-house retention portion of
9 the package.

10 On the fidelity side as well there's only
11 been a couple of claims in my 30-odd years that
12 I'm aware of, and one of them was larger than
13 we'd like, but generally speaking we don't get
14 any of those or very many of those.

15 Q And what is the one that was larger than you'd
16 like?

17 A (MM) That was one of our members who was not
18 running her trust accounting the way that we
19 would anticipate. She had a set of books that
20 were not available to inspectors, and she was
21 found to have been taking money from her clients
22 and she left the country and the Society and its
23 members made the clients whole in that
24 unfortunate matter.

25 Q And is the name of that individual public record

1 now?

2 A (MM) No, she's not been charged. She left the
3 country.

4 Q Okay. So I'd like to turn now to discussing
5 moving away from what the Society does and
6 moving into what notaries do.

7 So, Mr. Mayr, how many notaries are there
8 in the province?

9 A (JM) There are currently 404 notaries in the
10 province.

11 Q Okay. And can you just describe some of the
12 activities that notaries engage in.

13 A (JM) Yeah. The scope of practice is really
14 defined through the *Notaries Act*, and it is the
15 areas of non-contentious law. So notaries are
16 legal services providers. Courts have
17 determined that they have to meet the same
18 standards as lawyers in terms of the service
19 they provide, and they would engage mostly in
20 real estate, personal planning, notarizations of
21 documents and contracts. There's a fairly long
22 list of things that notaries can do, but that
23 would be the majority of services that they
24 provide.

25 Q And when you say "personal planning," is that

1 things like wills and estates, powers of
2 attorney, that sort of thing, or ...

3 A (JM) Representation agreements, powers of
4 attorney and wills. Notaries are -- due to a
5 court decision, they do not provide estate
6 services as notaries public.

7 Q Okay. And could you describe generally what
8 notaries' obligations are to their clients?

9 A (JM) Yes, notaries' are fiduciary
10 responsibilities to all of their clients. The
11 motto of the Society of Notaries for many, many
12 years has been the tradition of trust, and they
13 hold that very high in what they do and how they
14 do it.

15 Q Is there any obligation that notaries have to
16 their clients that is akin to solicitor-client
17 privilege that lawyers have for their clients?

18 A (JM) No. Notaries are not afforded
19 solicitor-client privilege. They are -- their
20 practices are covered by the *Personal*
21 *Information Protection Act* in British Columbia
22 and they abide by all of the provisions of that
23 act. But if there was an inquiry by RCMP, local
24 police, government agencies, they do provide
25 information, file information to those

1 organizations.

2 Q And there's no solicitor-client privilege, but
3 there is likely some sort of duty of
4 confidentiality to their clients?

5 A (JM) Oh, yes, yes. There's certainly a duty of
6 confidentiality as would be in *PIPA*. Yes.

7 Q Okay. And notaries are reporting entities
8 pursuant to the *Proceeds of Crime (Money*
9 *Laundering) and Terrorist Financing Act*?

10 A (JM) Yes, they are.

11 Q Okay. And I see you nodding a little,
12 Ms. Morin. I just want to see if there's
13 anything that we've missed that you wanted to
14 add there.

15 A (MM) No. Just that when I comes to the proceeds
16 of crime legislation, we -- actually notaries
17 are the only 400 people in the country that are
18 legal service providers that are reporting
19 entities for that.

20 Q Okay. So I'd like to turn now to client
21 identification. And I'm not sure who is best
22 placed to answer this question, but could you
23 inform the Commissioner what know-your-client
24 obligations notaries have?

25 A (MM) I'll take that one. Well, the know your

1 client obligations, I think, have gone back to
2 the beginning. Notaries are required to
3 identify their clients. They always have been.
4 They're required to abide by our conflict rules,
5 which means they can only have one client or
6 clients that are -- have like mind when it comes
7 to the transaction at hand. So they have to
8 know who those people are or they have to be
9 able to answer the question, you know, who's
10 your client in this transaction.

11 So the identification procedures have always
12 been there. I believe that our best practices
13 and requirements of our members are that the
14 types of identification that they can take from
15 clients are a little more stringent than the
16 FINTRAC requirements. For example, FINTRAC
17 offers quite a range of types of identification
18 that you can rely on when identifying the
19 client, whereas we require government issued
20 photograph ID. And most members, you know, that
21 is not only requirement; it's policy, and they
22 seldom deviate from them.

23 Q Are notaries allowed under their rules with
24 respect to the Society of Notaries, the act and
25 the rules and the bylaws and the code, and are

1 they entitled to employ the use of a mandatory
2 or another third-party individual to verify
3 identity or must they identify the individual
4 firsthand?

5 A (MM) No, they can use a mandatory and often do.
6 They do generally require that a mandatory
7 agreement be entered into between the notary and
8 the party who is going to provide the
9 identification. Usually it's another notary or
10 a lawyer in another jurisdiction, so not only do
11 they have this mandatory agreement, but they
12 also have the force of the body that regulates
13 whoever that is, whether it's a realtor or a
14 lawyer or a notary in another jurisdiction.

15 Q And with respect to the identification documents
16 of their clients, what record-keeping
17 obligations do notaries have?

18 A (MM) Well, notaries, going back to the dark
19 ages, have always been record keepers, and so,
20 you know, that's one of our traditions of trust.
21 We do keep records. Our record retention
22 requirements are longer than the FINTRAC
23 requirements for things like identification and
24 trust records and files in general, so --
25 certainly with respect to real estate

1 transactions.

2 So they do keep records. They're required
3 to do that. They're required to keep a fulsome
4 file with respect to each transaction, and our
5 records are -- rules require they keep that for
6 10 years for real estate.

7 Q Okay. Sorry, you said with respect to real
8 estate. Does that requirement change depending
9 on the type of matter that the notary is engaged
10 in?

11 A (MM) Yes. Slightly. Notarizations, for
12 example, would be less than that. But wills and
13 will files would be longer than that. So it
14 does. Our file retention rules are based on
15 category of service.

16 Q Okay. So moving now to real estate transactions
17 more specifically. At a general level is there
18 any obligation on a notary to determine the
19 suitability of a real estate transaction? And
20 when I say "suitability," I mean whether the
21 client has a financial ability to pay for the
22 transaction?

23 A (MM) No. That's -- the ability to pay, I guess
24 you're referring to pay back a mortgage. Is
25 that what you mean?

1 Q Whether the client has the financial means to
2 support their purchase of a particular piece of
3 property.

4 A (MM) No, they don't have an obligation to do
5 that. No.

6 MS. ROSE: Okay. I wanted to first pull up the
7 communication web that's been provided by the
8 Society. Madam Registrar, if you could pull
9 that up for us, please.

10 Q And I think this is a question for you,
11 Ms. Morin. Could you just describe what this
12 document depicts.

13 A (MM) Well, the document is -- gives a snapshot
14 all of the different parties potentially that
15 are involved in a real estate transaction, and
16 as you can see there are many, and they're very
17 diverse. This document is used to demonstrate
18 that, you know, we don't -- notaries and lawyers
19 doing real estate transactions aren't operating
20 all by themselves. That they have all these
21 other parties they have to get information from,
22 give information to, report to and in some cases
23 that they have a duty to -- with respect to
24 services and money that might be paid out. So,
25 you know, it's -- depending on the transaction,

1 notaries, when you talk about conveyancing,
2 we're not just talking about land and a house;
3 we're talking about stratas, we're talking about
4 manufactured homes. There are leasehold
5 properties that are owned by, you know, one
6 person and then units for leased for a period of
7 years. And those involve even more parties that
8 have to be dealt with in respect to those
9 transactions.

10 So this document just gives a picture of
11 everybody that's involved and all the eyes that
12 are on a real estate transaction with respect to
13 their maybe specific interest.

14 Q And so when you're acting in a role of a notary
15 on a real estate transaction, are you
16 communicating with all of these entities for
17 every transaction?

18 A (MM) No. It would depend on the transaction and
19 the complexity of it, but, you know, some
20 properties, some pieces of land might have a
21 number of charges against it. There could be
22 judgments for various taxing authorities, the
23 CRA. There could be family law financial
24 obligations that are registered on title. There
25 could be liens from strata corporations for

1 unpaid assessments, that sort of thing. So it
2 just depends on the complexity of the
3 transaction.

4 But while you wouldn't be dealing with all
5 of these entities in every transaction,
6 throughout the course of your lifetime as a
7 notary, you would be dealing with all of these
8 at some point and maybe some more than others.

9 Q Do you have a sense of how many of these
10 entities you might be communicating with in a
11 typical real estate transaction?

12 A (MM) Oh, gosh. Well, there would be realtors
13 for sure. And usually a transaction --
14 third-party, like arm's length real estate
15 transaction, will have at least two realtor's
16 involved. Then there would be the lending
17 institution, whether it be a bank, a mortgage
18 broker. Notaries don't usually deal directly
19 with mortgage brokers, but they often are aware
20 that a mortgage broker might be involved in a
21 transaction and they might be contacted by the
22 mortgage broker on behalf of the client to get a
23 quote for services or something like that.

24 There would be some lending institutions.

25 Then those lending institutions have head

1 reality of it is that there could be a whole web
2 of parties involved and that's the reality of
3 the transaction. And every reality is different
4 depending on the transaction. Some are very
5 straightforward and simple and non-contentious
6 and just fine, and then you'll get some that are
7 very complex. And while not necessarily
8 contentious, they still have a lot of pieces and
9 a lot of steps that have to be taken in order to
10 build a picture of what it is that you're
11 protecting your client with respect to because
12 that's the ultimate goal, is the notary is there
13 to protect the interest of the client that is --
14 has retained them to provide the service.

15 Q And if a matter does become contentious, what
16 would happen?

17 A (MM) Bye-bye. They are referred out. Notaries
18 don't do contentious transactions, so if a
19 problem arises and it is in the best interests
20 of the client to have specified legal advice
21 with respect to that, the notary would refer
22 that person out. Notaries do have very solid
23 relationships with lawyers in their communities,
24 and they refer clients to the people that they
25 know and trust or they let the client choose

1 their own. But they do make sure that their
2 client obtains the kind of advice that they
3 need. Sometimes it's not from a lawyer;
4 sometimes it's from an accountant. They might
5 need tax advice, and so you would refer them for
6 that. Especially when it's a non-resident and
7 somebody selling and needs a non-resident
8 clearance certificate from CRA.

9 Q And is there any significance to the red font on
10 the chart, or ...

11 A (MM) Not that I'm aware of. I didn't create
12 this chart. I know it's been used in a lot of
13 education sessions with respect to FINTRAC
14 auditors, banks, even the land title office.
15 But the land title office is kind of the
16 ultimate goal. That's where the title is kept,
17 and part of the notary and lawyer's obligation
18 is to uphold the integrity of the land title
19 system, the Torrens system, and so really the
20 land title office is kind of the focus of all of
21 that.

22 MS. ROSE: Okay. Mr. Commissioner, I would ask that
23 we mark this the next exhibit as exhibit 684,
24 please.

25 THE COMMISSIONER: Very well.

1 THE REGISTRAR: Exhibit 684.

2 **EXHIBIT 684: The Conveyancing Web of**
3 **Communication, Coordination, and Context,**
4 **Version K - October 2020**

5 MS. ROSE: And then if we could please have the
6 conveyancing cash flow charts up, Madam
7 Registrar.

8 And I've asked Madam Registrar to do a
9 little bit of a funny thing with this document
10 in the sense that I'd like to be able to see
11 many of the pages at once, and so I think she'll
12 just be working on that now. So I'll just give
13 her a moment to pull that up. That's fine,
14 Madam Registrar. Even better.

15 Q Okay. Now, is this zoomed in enough for you to
16 be able to see that, Ms. Morin?

17 A (MM) Yes, it is.

18 Q And what is this document?

19 A (MM) Well, again, this has been used by staff at
20 the Society to educate and track auditors and
21 others about the flow of money in a typical real
22 estate transaction. The C at the top represents
23 conveyance or closing date. That's the date
24 that the title is going to change hands and the
25 money will be exchanged between buyer and

1 seller. So money starts to flow quite a bit
2 before that C date, that closing date, and it
3 can be, you know, 30 days before, it could even
4 be longer than that. But it starts off with the
5 purchaser entering into a contract with the
6 seller and giving a deposit, usually to the
7 purchaser's realtor. We refer to that
8 purchaser's realtor as the selling realtor, the
9 one who brought the buyer to the transaction and
10 in effect is the seller's side.

11 The vendor or the seller's realtor is
12 usually referred to as the listing realtor.
13 They listed the property for sale on behalf of
14 the seller.

15 So the C minus 30 is when the deposit is
16 usually put up by the buyer, and usually given
17 to the buyer's realtor.

18 Q And. So the -- first we have a page that's a
19 legend here that just says what each of the
20 letters refers to. But then the first
21 substantive page at the top there, it says
22 "C - 30," so that's 30 days before the closing
23 date?

24 A (MM) Yes, and that's an arbitrary number, but
25 it's before, generally weeks before the closing

1 date is when the deposit changes hands. And
2 that deposit is paid into the trust account of
3 the realtor -- the broker of the real estate --

4 Q And so -- oh, I'm sorry.

5 A (MM) That's fine.

6 Q And so does the notary have any insight into
7 that first deposit into the realtor's account?

8 A (MM) You mean how it's paid or in what currency?

9 Q With respect to page 2 of this document, I'm
10 just wondering does the notary typically have
11 oversight of that aspect of the transaction?

12 A (MM) No. This transaction between the buyer and
13 the buyer's realtor takes place before the
14 notary's been retained usually. Not always, but
15 usually. So no, they're not involved in that
16 transaction.

17 Q And are you able to say where and perhaps in
18 reference to this document at what point the
19 notary becomes retained usually?

20 A (MM) That's usually in slide 3 there, the C
21 minus 15. Again, arbitrary number, but at
22 least, we hope, a couple weeks before closing,
23 the buyer retains the notary that's going to act
24 for them, and the deposit then. So the deposit
25 that's paid to the realtor is usually more than

1 what the commission is that's owed to that
2 realtor. So when the notary has been retained
3 by the buyer, the real estate office will deduct
4 the commission that's owed to them from this
5 deposit and retain that in their trust account,
6 and they'll send whatever excess there is over
7 and above their commission to the purchaser's
8 notary to be held in their trust account for the
9 closing. It becomes part of the closing funds.
10 So the notary generally becomes involved at that
11 point, when the purchaser or the purchaser's
12 realtor retains the notary.

13 Q So the funds would initially flow from the buyer
14 into their realtor's trust account and later on
15 the realtor would send the funds onto the
16 notary. Do I have that right, or could you
17 maybe just explain that one more time?

18 A (MM) Well, just the excess amount. If the
19 deposit exceeds the amount of the commission
20 owed to the realtor, then that excess would be
21 paid to the notary. Sometimes there is no
22 excess. Sometimes all you get is a report from
23 the real estate office saying this is the
24 transaction, this is the amount we hold in
25 trust, this is the amount of the commission

1 that's going to be payable on closing to whoever
2 the realtors are. And there might be a balance
3 of commission owing at the closing date to the
4 realtors because the deposit didn't cover it.

5 So although money could flow into the
6 notary's account as much as two weeks or so
7 before closing from the realtor, the buyer
8 doesn't actually give money to the notary until
9 closer to closing.

10 Q And so those funds that are -- so the initial
11 deposit funds, the portion of those funds that
12 are applicable to the real estate agent's
13 commission remain held in that realtor's trust
14 account until the closing date?

15 A (MM) Yes.

16 Q And any surplus is forwarded on to the trust
17 account of the notary?

18 A (MM) That's correct, yes. And the realtors
19 have -- you know, they have trust accounts that
20 are regulated and so on, so those funds are held
21 in trust. We don't know necessarily what form
22 the deposit takes when it's paid to that
23 realtor, but when it comes from the realtor's
24 office to the notary's office, those are
25 considered to be guaranteed funds.

1 Q Okay. And then I think that covers slide -- or
2 page 3. So perhaps you could just explain what
3 is being described at page 4.

4 A (MM) Well, between pages 3 and 4 the notary is
5 putting together the transaction and getting
6 everything ready. And then for slide 4 the
7 notary is now meeting with the buyer in person
8 to sign the documents that are necessary to
9 conduct the transaction. And it would be at
10 that time that the notary would tell the buyer
11 how much money they need to bring in to finally
12 complete, and the amount that is calculated is
13 based on a series of adjustments that are made
14 with respect to the price.

15 So the contract gives you the purchase
16 price, but that price has pluses and minuses
17 depending on whether or not the seller has
18 prepaid certain expenses for that house that
19 have to be apportioned now between the seller
20 and the buyer. There could be mortgage funds
21 that are going to be coming from the mortgage
22 lender and not from the buyer directly, so those
23 funds would be noted as an adjustment. There
24 would certainly be tax adjustments and so on.

25 There are additional costs that the buyer

1 has to pay in order to purchase the property.
2 The biggest one being the property transfer tax
3 in British Columbia that all buyers, anybody
4 acquiring an interest in land has to pay. So
5 that would be added onto the price. There might
6 be GST added onto the price if it's a brand new
7 development. So all of these are set out in a
8 statement of adjustments. That is reviewed and
9 approved by the buyer and the seller. It's sent
10 out to the seller's lawyer or notary for
11 approval.

12 So that document sets out the balance of
13 cash that is required from the buyer to be paid
14 into the notary's account, and that money is
15 usually received up to two days before closing.

16 Q And so when we see the P arrow to PN and PL
17 arrow to PN, I take it that's describing the
18 purchaser providing the balance that's reflected
19 in that statement of adjustments to the notary
20 either by way of their own funds or directly
21 from a lender by way of mortgage funds; is that
22 right?

23 A (MM) Well, the top one, the P to the PN, is the
24 balance to close. That comes from the actual
25 buyer, the client. The PL is the purchaser's

1 lender, so their financial institution,
2 providing funds to the notary, the mortgage
3 funds. Those don't usually come two days from
4 closing -- out of closing. They usually come
5 right on the day of closing, but they could come
6 up to two days before. But it's those two
7 amounts, the amount from the buyers themselves
8 and the amount from the financial institution by
9 way of mortgage funds and possibly the excess
10 commission that has already come in from the
11 realtor, those are the amounts that would make
12 up the amount of money that's going to be
13 required to complete the transaction on the
14 closing date.

15 Q And those funds are held in the notary's trust
16 account pending --

17 A (MM) That's correct.

18 Q -- completion?

19 A (MM) That's correct.

20 Q Okay. And in terms of the method of deposit
21 into the notary's trust account, could you
22 describe what are typical forms of payment you
23 might receive as a notary?

24 A (MM) Well, more than typically it's a rule.

25 It's a requirement that the money that comes

1 into the notary's account has to be by bank
2 draft from a financial institution or it could
3 be a certified cheque, but the notary would have
4 to go and certify that cheque themselves or
5 their staff would. It couldn't be a certified
6 cheque that the party went to the bank, got
7 certified and then brought to the notary's
8 office. Most of the time the funds are received
9 by way of bank draft, not cash.

10 Q Understood. And sorry, I just -- I'm wondering
11 when you are receiving these funds, what sort of
12 documents accompany the funds? What is visible
13 to a notary?

14 A (MM) Just whatever is on the face of the bank
15 draft. Usually that's the name of the account
16 holder or the client, who it's coming from, and
17 which financial institution and the amount of
18 the money.

19 Q And in terms of the funds that are provided by
20 the lender, the mortgage funds -- sorry, can you
21 say that again. That usually arrives in the
22 notary's account on the actual day of closing?

23 A (MM) Yes. Usually by electronic wire transfer
24 from the head offices of these financial
25 institutions. A lot of them are back east, so

1 the funds might arrive overnight and be in the
2 account the morning of. Some of the credit
3 unions will not fund until after registration.
4 So the notary has to register the mortgage, get
5 a registration number from the Land Title Office
6 and provide that to the credit union and then
7 they will electronically deposit the funds into
8 the notary's trust account.

9 And that process takes obviously a little
10 bit longer, but it all happens on the closing
11 day. Banks are generally not going to fund
12 mortgage funds or give them out prior to closing
13 because of course the buyer is responsible for
14 the interest on those funds from the date it's
15 advanced. So you don't really want it going
16 into your account too far in advance of the
17 actual closing date.

18 Q And when those funds are -- could you just
19 describe how those funds are received. It's
20 electronic wire transfer into the notary's
21 account, so do they see only the name of the
22 institution or is there any other information
23 that they see?

24 A (MM) You mean if they went online and checked
25 their bank account?

1 Q Yeah. So I understand that the funds are
2 typically wired electronically. Is that right?

3 A (MM) Yes. Yes.

4 Q And so when -- if you were to look at the
5 receipt of that wire, for example, what
6 information would you see?

7 A (MM) Usually it would be accompanied by some
8 sort of advice from the bank that they have done
9 that. So there might be a fax on your fax
10 machine in the morning from the lender stating
11 that this is the amount we advance, these are
12 the clients. There's usually a mortgage
13 reference number, the name of the client. There
14 might be, you know, the address of the security,
15 that sort of thing.

16 But when you actually look at the deposit on
17 your statement or online, if you go into your
18 bank account, you're just going to see the name
19 of the financial institution and the amount that
20 was deposited. But there's always some sort
21 of -- you have to requisition the funds in
22 advance. You have to tell the bank, yeah, we're
23 ready to go; we've got everything signed;
24 everything is the way you want it, so these --
25 you know, we're now asking you to give us this

1 money on this date, and so the bank confirms
2 that on the closing date by way of advance
3 advice.

4 Q Right. And so most of the information with
5 respect to the mortgage comes by way of this
6 mortgage advice or mortgage instructions; is
7 that right?

8 A (MM) Yes, it's an advice. At that point the
9 instructions have already been received, the
10 mortgage has been done. The client has signed
11 off, and now you're just getting the money. And
12 so it would be advice, like a credit memo kind
13 of thing, only it's a little more structured
14 than that.

15 Q And so the first process that you just mentioned
16 there, the instructions and the obtaining of the
17 mortgage, what insight does a notary have into
18 that process?

19 A (MM) Well, a notary receives mortgage
20 instructions sometimes through a third party
21 portal that might be hosted by the Land Title
22 and Survey Authority, sometimes directly from
23 the lender themselves. It usually involves
24 dozens of pages of instructions, some of it that
25 is boilerplate or that is usual to all mortgages

1 of -- from that lender. But then there would be
2 a set of particulars with respect to the
3 transaction: how much the mortgage is for; what
4 the interest rate is; who the parties are; what
5 the security is; both civic address and legal
6 description. And then you check that against
7 your records to make sure it's the same
8 property. The names of the clients.

9 Like I said, the amount, the interest rate,
10 the terms, how long the amortization period is,
11 how long the term is. So the interest rate
12 might be valid for five years and after that
13 they've got to renegotiate what their monthly
14 payments are or their biweekly payments or
15 weekly payments or whatever it is. So those
16 instructions usually contain the agreement
17 between the borrower and the bank as to what the
18 term is going to be. The notary puts that into
19 the documents that are physically registered or
20 electronically registered in the Land Title
21 Office and the client signs those instructions.

22 And then there's a set of legal terms that
23 are usually set out in a separate document that
24 the notary obtains from the lender, usually from
25 the lender's website. The instructions will

1 say, go to our website, use the drop-down menu
2 for British Columbia, use the drop-down menu for
3 conventional, you know, fixed-rate mortgage and
4 these are your terms that you're going to be
5 using. And it's a requirement that a copy of
6 that -- those set of terms give to the borrower
7 at the time they sign the mortgage.

8 So sometimes the banks provide disclosure
9 statements. So they provide a set of
10 instructions or a set of terms that not only
11 sets out the mortgage amount and the interest
12 rate and so on, but it will set out the cost of
13 borrowing. So if you have this mortgage for
14 five years, at the end of those five years
15 you're going to have paid X amount of money in
16 interest and X amount of money in principal and
17 this is what you're going to owe. And that's
18 assuming that all payments are made as agreed
19 and the interest rate stays and same and so on.

20 So there can be a lot of documents, and
21 sometimes with some lenders there's very little.
22 But the lender is the one that provides the
23 instructions.

24 Q And when in this process are those instructions
25 provided? If you could apply them to one of

1 filed standard mortgage terms. Those terms are
2 registered in the Land Title Office and you can
3 get a copy of them from there, but you get them
4 from the lender, and they have what's called an
5 MT number. So it will say MT and then there's a
6 number. MT standing for mortgage terms. And so
7 it was originally done that way, I think it was
8 1980, '79 or '80 when this came, but the Land
9 Title Office in those days was getting paper.

10 So they were -- you were registering paper
11 mortgages and these legal terms took up a whole
12 lot of pages that the Land Title Office decided
13 were not necessary. They didn't want to get
14 those pages. So they said to the lenders, take
15 those terms, set them out in a separate
16 document, file it with us and then just give it
17 to each borrower as required. So the actual
18 mortgage terms are set out in what's called
19 form B, part 1 of the mortgage. And it's a
20 two-page or sometimes a three-page document that
21 just sets out the financial terms, the deal
22 between the bank and the borrower. And those
23 terms are the money amount, the interest rates,
24 the payments, the due date. And if there are
25 any terms that need to be modified from those

1 legal terms, they're modified within this
2 form B, part 1.

3 Q And really the reason for that is that most of
4 the time these mortgage terms are identical as
5 between different clients, and so it's just not
6 necessary to continually register the same terms
7 over and over.

8 A (MM) That's correct. So as a notary when you
9 are giving your client a copy of their mortgage,
10 you are giving them two documents and you would
11 tell them that these documents together
12 represent your mortgage and you need to look at
13 them together whenever you're dealing with your
14 mortgage.

15 Q And so the second document that is not
16 registered on title, what details does that
17 usually contain?

18 A (MM) The standard mortgage terms?

19 Q Sorry, I don't know if there's a -- I'm
20 probably -- there's probably a particular name
21 for each one. The document that's registered on
22 title with an MT number --

23 A (MM) Okay.

24 Q -- my understanding is that would be the
25 standard terms of the mortgage.

1 A (MM) That's right.

2 Q And then there would be a second document that
3 has the particulars for a particular client, so
4 the interest rate and monthly payment and that
5 sort of thing. Is there a name for each one of
6 those documents just so that I can not make an
7 error in the future?

8 A (MM) The form B is part 1. And that's all the
9 terms, those are the things that are particular
10 to the loan. Part 2, the MT, mortgage terms,
11 are a set of legal terms that each lender has
12 and is specific to the type of mortgage that the
13 borrower is agreeing to take out at that point.

14 So the information that's in those mortgage
15 terms are the legal terms. This is what the
16 mortgage does, this is how the interest is
17 applied and calculated, these are what your
18 responsibilities are to make your payments, to
19 keep your property taxes up to date, to keep the
20 property reasonably repaired and maintained, to
21 keep the property insured against fire and other
22 perils. This is what constitutes default if you
23 stop making your mortgage payments, if you fail
24 to pay your taxes, if you fail to keep your
25 property insured. All of these are defaults

1 under the mortgage, and if any of those defaults
2 happen, these are the consequences of default,
3 this is what could happen.

4 And that's where you go into the types of
5 remedies that the lender can go after, one of
6 which is an order for sale. The bank can take
7 over and sell the property. And another might
8 be absolute order of foreclosure where the bank
9 takes actually over the house and now it's
10 theirs and they have to -- they can go sell it
11 or do whatever they want with it.

12 So those are the legal terms. And all
13 mortgages basically have those basic terms. But
14 there are some types of properties that would
15 have different terms and those would be stratas,
16 for example. They would have additional terms
17 regarding their obligations as strata property
18 owners. There would be additional terms if the
19 interest acquired is a leasehold. Like one of
20 the University of British Columbia lands, a lot
21 of those are -- those condos are on leasehold
22 lands and so there's additional legal
23 requirements for those types of properties. So
24 these legal terms do change. They are specific
25 to specific types of transactions, but overall

1 the concept of all of these mortgages is
2 basically the same. You've got to pay it back.

3 Q And so with respect to the form B, which
4 contains the interest payments monthly, the
5 interest rates, the principal amount, where --
6 what supporting documentation do notaries
7 receive to allow them to fill out a form B?

8 A (MM) Just the mortgage instructions from the
9 lender. Some of those will come by way of fax
10 or email or they might come through one of these
11 third-party portals from the Land Title and
12 Survey Authority. But they -- they're
13 usually -- they usually just set out the terms
14 of the mortgage. This is what you're borrowing.

15 Sometimes they'll have what's called an all
16 indebtedness. It will be an all indebtedness
17 product that is, you know, a bit more
18 complicated than a conventional mortgage where
19 you borrow \$100,000 to assist you in buying your
20 house, you pay it back over 25 years and you
21 change the interest rate every five years. And
22 when it comes down to zero, you get a discharge
23 of that and off you go.

24 An all indebtedness mortgage is a product
25 that some lenders offer to borrowers that allows

1 them to register an amount that's greater than
2 the amount they're actually borrowing for that
3 particular acquisition. But by registering at
4 the full value of the property, it allows you
5 next year, if you want to buy a car, you can go
6 back and you can get a better interest rate
7 through the bank because they've got security
8 for that additional loan because the mortgage is
9 already registered against your property.

10 So if you have an all indebtedness
11 mortgage, then anything that you owe to that
12 particular bank is captured by this security.
13 So you could have a mortgage loan, a car loan.
14 You could have credit cards. You could have
15 anything at all, and all of it together becomes
16 the -- is secured by this mortgage on the
17 property.

18 So it just depends on what kind of loan it
19 is, but the documents that the bank sends to the
20 notary set out these specifics.

21 Q And so with respect to an all indebtedness
22 mortgage, if, for example, you had a property
23 that was worth \$1 million and you received in
24 all indebtedness mortgage for \$500,000, it could
25 be the case that the lending institution might

1 advance only \$200,000 of that but nonetheless
2 the 500,000 is going to be registered on title.
3 And this would allow the individual to go back
4 to the bank at a later date and withdraw further
5 funds on the security of that mortgage. Do I
6 have that right?

7 A (MM) Yes. They would still have to apply for
8 it, and there would be an internal contract
9 between the borrower and the lender for that
10 particular loan. So there would be a mortgage
11 contract and there might be a car loan contract,
12 and there could be, you know, credit card
13 treatments, there could be all of these things.
14 And each one has a separate interest rate, each
15 one has a separate term, each one has a separate
16 payment.

17 So the mortgage becomes collateral security
18 for all of these different products. And so
19 when the mortgage is registered -- in your
20 example you've got a house worth a million
21 dollars. The bank puts a mortgage against that
22 property at 500,000. At the moment only 200,000
23 is being advanced at a rate of, you know,
24 1.9 percent or whatever the current rate is.
25 Next year you might take out a car loan. That's

1 going to add a significantly higher interest
2 rate. It might have 3 or 4 percent or whatever
3 it is. So that collateral security is
4 registered for 500,000, but the interest rate
5 might say prime plus 7 or prime plus 8 percent
6 because all these contracts have different
7 rates, so the mortgage has to -- the interest
8 rate has to be high enough to capture all these
9 different rates. And so it's very difficult
10 sometimes to explain to a client that yeah, your
11 interest rate is 1.9 percent, and this is your
12 contract with the bank for that loan, this is
13 just collateral security and it sits there until
14 a default is made. So if no default is made, if
15 you make all your payments, nobody is ever going
16 to look at that. It's only going to come into
17 play if you default, and then all bets are off
18 and now you're looking at, you know -- but you
19 can only ever owe the bank what you owe them
20 based on these different contracts. They can't
21 take more than that.

22 Q And thank you for providing such a clear
23 description of that. I just want to put a finer
24 point on a couple of aspects. So the form B
25 that is registered in the Land Title Office may

1 list an interest rate of, let's say, 8 percent
2 and a principal of \$500,000 when in fact what's
3 actually being advanced is \$200,000 with an
4 interest rate of 1.9 percent. But the figures,
5 there's a discrepancy there to account for the
6 fact that the client may choose to seek
7 additional loans for different purposes, which
8 may have different interest rates. And by
9 placing this registration with these figures on
10 title, the bank has some security or some
11 assurance that all of the products are
12 contemplated within that structure. Do I have
13 that right?

14 A (MM) Yes. And it's -- so the average person --
15 I mean, land title documents are public
16 document, so anybody can go and look up
17 somebody's title if they know what the address
18 is. But just by looking at that mortgage, you
19 don't necessarily have any clue how much the
20 mortgage is really for because it is an
21 arbitrary amount, really. You'd have to go
22 directly to the source to find out how much is
23 owing.

24 Q Right. Because a person looking at the land
25 title document who is looking at a \$500,000

1 mortgage at a rate of 8 percent, when in fact
2 there would be no obligation on the individual
3 with the 200,000 advanced at a rate of 1.9 to
4 ever actually pay the 8 percent or the \$500,000.
5 Their obligation to pay is determined by the
6 contract documents and not by the land title
7 documents.

8 A (MM) And by the accounting that the lender is
9 required to provide if they are looking for
10 repayment.

11 Q Right. And so now I think we are -- we've
12 covered C minus 2. Is that right?

13 A (MM) Yeah.

14 Q And so I've asked you a number of questions about these
15 mortgage documents. Just to close that off,
16 what documents or aspects of the loans being
17 advanced by the institution is the notary privy
18 to? Is the notary privy to the 1.9 percent and
19 200,000 as well as the details that go on title?

20 A (MM) Usually, yes. There may be certain
21 financial institutions that don't provide that,
22 but certainly in my experience yes, you have to
23 be able to show your client what it is that
24 they're borrowing and what the terms are of that
25 borrowing.

1 Q And that -- those details, are they provided in
2 the mortgage instructions or where are they --

3 A (MM) Yes.

4 Q Okay. And we've been speaking, I think, in the
5 context of a large lending institution. Does
6 this change when dealing with a private lender?

7 A (MM) Yes. Private lending is a little
8 different. When it comes to our rules, notaries
9 can act for the buyer and the lender in a
10 residential mortgage with a recognized financial
11 institution. When it comes to private lending,
12 the lender would have their own legal
13 representation and the borrower would have their
14 own. So in this case the buyer. It's not
15 contemplated generally that the private lender
16 and the borrower would use the same lawyer or
17 notary. It's no longer a simple transaction.
18 And the reason for that is just because when it
19 comes to these legal terms, private lenders can
20 make up whatever terms they want. I mean, they
21 have the usual terms, but sometimes they'll have
22 a lot of more stringent terms as well.

23 And so when it comes to acting for private
24 lenders, that's -- I'll say it's a specialty,
25 but it's a niche area of service that not all

1 members provide, but we do have some members
2 that do it. And usually they'll do it for one
3 or two lenders that they have a relationship
4 with, and they provide these services on a
5 regular basis for that lender. So it wouldn't
6 be the same as, you know, a notary who regularly
7 gets mortgages from Bank of Montreal, CIBC, TD,
8 Royal Bank, you know, they get those every month
9 from all those different lenders. But it
10 wouldn't be the same with a private lending
11 practice where you would have, you know, one or
12 two private lenders that you'd be dealing with
13 on a regular basis.

14 Q Is that something that the Society would
15 discourage its members from dabbling in, private
16 lending?

17 A (MM) Well, we discourage members from dabbling
18 in any area of service. You know, they -- in
19 order to be good at what you do, you need to be
20 doing it, you know, quite often. But we don't
21 discourage members from acting for private
22 lenders, but we do expect them to, you know, be
23 aware of maybe the additional duties that might
24 be required with respect to that lender and
25 their expectations of what they expect the

1 notary to do for them.

2 Q Do you have any sense of what proportion of the
3 market is mortgages by way of private lenders
4 and perhaps the circumstances in which a client
5 might prefer private lending?

6 A (MM) I don't. Do you, John?

7 (JM) No, I do not have any idea around the
8 percentage, but, you know, I think it's general
9 knowledge that people who rely on private
10 lenders are -- don't qualify with the mainstream
11 financial institutions.

12 Q And when you say that's general information, is
13 that information that has become available to
14 you through your duties with the Society?

15 A (JM) No. It would just be the general knowledge
16 of the real estate market and the mortgage
17 market. As the federal government has increased
18 the requirements to qualify, I think we're
19 generally seeing more people relying on private
20 lenders to allow them to get into the market.

21 Q And, Ms. Morin, in your experience as a notary
22 and in providing services through the Society as
23 well as training, do you see -- are you able to
24 speak to what sort of discrepancy there might be
25 in the terms provided by a private lender

1 generally as compared to the larger financial
2 institutions?

3 A (MM) It really varies. Every lender is going to
4 have their own. Usually it's -- there are big
5 penalties for NSF cheques, for example. Now,
6 mainstream lenders have penalties for NSF
7 cheques as well, but some of these private
8 lending mortgages, the consequences for missing
9 a payment or NSF cheques is quite high.

10 The privileges to pay out early. So if you
11 have a term of five years, unless there's an
12 agreement that you can pay off some of that
13 early, you have to wait for the five years
14 before you can pay it off. So if you win the
15 lottery or inherit a bunch of money, you can't
16 necessarily just walk into a bank and say, here,
17 I'm paying off my mortgage without incurring a
18 penalty. And sometimes with private lender,
19 those early pay out penalties are quite a bit
20 higher than they would be with regular
21 institutions, although I don't know that for a
22 fact. It's certainly not a requirement of
23 private lenders. But you know, the terms are
24 just different. They can be anything the lender
25 wants. I mean, if a person is going to borrow a

1 private -- from a private lender, then, you
2 know, they're going to agree on whatever the
3 term is that the lender wants.

4 Q Subject of course to the restriction on criminal
5 interest rates.

6 A (MM) Of course. Yes.

7 Q And is private lending considered by the Society
8 to be a risk? For clients, I should say. A
9 risk for clients.

10 A (MM) Yes, I think so. Just in general because
11 the interest rates are substantially higher.
12 The expectations are higher. And these are the
13 reasons why notaries can't act for both borrower
14 and lender in a private situation because the
15 interests are a little different. Whereas with
16 a financial institution everybody, you know,
17 wants the same thing. The buyer wants a house
18 and the bank wants, you know, to lend the money,
19 that they can pay back, so -- and the risks, the
20 lending risks are lower with financial
21 institutions than they are with private lenders.
22 And that's just the nature of the beast when I
23 comes to private lending.

24 Q Has the Society taken a position or made any
25 evaluation of whether or not private lending

1 poses a risk of potential money laundering
2 activity?

3 I think this might be a question for John.

4 A (MM) Yeah, I really don't know.

5 (JM) No, we have certainly not taken a
6 position on it. Part of the rationale would be
7 the funds that come to the notary are coming
8 from a financial institution even if it's
9 through a private lender. A, a client couldn't
10 show up with a personal cheque or a bag full of
11 cash and say, you know, here, I borrowed this
12 money; I want you to put this onto my -- into
13 the transaction.

14 Q And with respect to -- Ms. Morin, you mentioned
15 it can be a specialized area. Have there been
16 any advisories to members or training modules or
17 other additional forms of education or
18 information provided to members in respect of
19 private lending?

20 A (MM) Well, not per se. I mean, we do mortgage
21 transaction education seminars regularly. We
22 did them before the association split off.
23 Certainly we do advisories. We don't have a lot
24 of, you know, insurance claims around private
25 lending. Not that we don't have any, but very

1 few. And I don't think a great number of
2 members do this kind of work although there are
3 some. And through or practice inspection
4 program, I can see that the ones that do it
5 really are paying attention to their risks and
6 obligations in that regard and have very
7 specific procedures in place depending on who
8 their lender is, who their client is at the
9 time.

10 Q Is it something that has been looked at from a
11 practice inspection standpoint, any particular
12 focus on inspecting those notaries that provide
13 private lending services?

14 A (MM) They would be inspected just like everybody
15 else. But that area of service would be part of
16 their practice and would definitely be looked at
17 through the practice inspection program.

18 Q Okay. I think now we've finished with
19 C minus 2. Perhaps, Ms. Morin, let's get us
20 back on track from the tangent we've just taken.
21 If we turn to page 5 here, perhaps you could
22 just explain what this is showing.

23 A (MM) Well, this is closing date now, on the
24 closing date, and the purchaser's notary has got
25 all the money that they need from all the

1 different sources and they've applied to
2 register the documents that need to be
3 registered. That would include the form A
4 transfer transferring title from the seller to
5 buyer, the form B mortgage that would be between
6 the lender and the borrower, two to three pages
7 in length. Property transfer tax would be paid
8 at this point through an automated system
9 through the Land Title and Survey Authority.
10 And you get all your registration numbers back
11 from the Land Title Office, and now you're ready
12 to pay out.

13 So the notary for the buyer, the
14 purchaser's notary pays the sale proceeds to the
15 seller's notary based on that statement of
16 adjustment and the amount that was approved by
17 the seller as being, yes, this is the adjusted
18 amount that is payable to my notary in trust on
19 various conditions. And those conditions would
20 be paying out their mortgages and whatnot, and
21 you come to that in a minute.

22 The notary at that point would then pay
23 their own account for fees and disbursements.
24 They would pay the realtor, whatever the balance
25 of commissions that are owing in accordance with

1 these two statements, and that would include
2 both the selling realtor and the listing
3 realtor. So there's usually two brokerages that
4 are involved in the sale. Sometimes it's one,
5 but usually there's two involved. So you're
6 going to pay those commissions.

7 If the realtor is holding all of their
8 commission in their trust account already, you
9 would just notify them that hey, it's closed;
10 these are the registration numbers; you can now
11 pay yourself. So those notifications would go
12 out on the closing day.

13 Q And could you explain -- you said you'll provide
14 the mortgage registration numbers. Could you
15 just explain how that process works. How does a
16 notary obtain the mortgage registration number
17 and what does that signify?

18 A (MM) Well, they upload these documents, the
19 form A transfer, the form B mortgage, the
20 property transfer tax document and so on. Now
21 there's a *LOTA* declaration. All of this is
22 loaded to the Land Title Office through the Land
23 Title and Survey Authority portal, and it gets
24 uploaded and it's instantly registered. As soon
25 as you press, you know, "register" it gets

1 registered.

2 And then you can go into a folder in your
3 account with the *LTSA* and that will give you
4 registration confirmations that the documents
5 have been received, they've been given a number
6 and they are in the queue for processing. And
7 that's called a pending registration number.
8 And in our system of registrations and payouts
9 in British Columbia, we pay out based on that
10 registration number.

11 And so once those numbers are received and
12 you've done another search of the property to
13 make sure that nobody else has since filed
14 anything ahead of you, then you would pay out.
15 And this is what you would pay out, the sale
16 proceeds, your account, the realtor commissions
17 and so on.

18 Q And so you mentioned that once it's registered,
19 it's sort of a pending registration in a queue.
20 What is it pending?

21 A (MM) It's pending final registration. It's
22 pending somebody putting eyes on it in the Land
23 Title Office and saying yes, this is correct and
24 everything's fine. And they finally register it
25 and endorse it on the title of whatever the

1 property is that you're dealing with.

2 Q And how long does that usually take in your
3 experience?

4 A (MM) Well, minutes. Sometimes now with
5 electronic filing sometimes, you know, a day or
6 two depending on the time of year and volume of
7 transactions. But it is a system of
8 registration and payout that the industry has
9 been using in British Columbia as long as I've
10 been around, and it works very well. There's
11 very few incidences of problems with it. So it
12 works.

13 Q And the pay out is made on pending registration
14 and then the confirmed final registration occurs
15 a day or two later. Is that -- do I have that
16 right?

17 A (MM) It can be up to a week later. It just
18 depends on the volume and the time of year.
19 Some times of the year are way more volume heavy
20 than others and it can take a little longer, but
21 it's usually within days.

22 Q Okay. Could we move on to page 6. And just
23 explain what's happening here.

24 A (MM) So now you're switching over to the
25 seller's side. So the seller's notary from

1 picture 5 has now received funds on behalf of
2 their client, the seller. And so the seller's
3 notary would be paying out the mortgages and any
4 other charges or debts that were agreed upon to
5 be paid in anticipation of this transaction. So
6 the seller's notary would have payout figures
7 from the banks, from the judgment creditors,
8 from whoever that they're supposed to be paying
9 out.

10 So they would pay all of those debts and
11 then they would give their client, the seller,
12 the net sale proceeds. So that's the amount of
13 money that's going into the pocket of the seller
14 to do with whatever they want.

15 They would also pay their own account, the
16 notary's account on that date. That usually
17 happens the next day because by the time the
18 money changes hands from the buyer's notary to
19 the seller's notary, it's usually the morning or
20 the next day before they're in a position to be
21 able to actually disburse the funds out.

22 Q And so the paying out of the mortgage. So the
23 mortgage that was held on title by the seller,
24 that is paid out after the form A is registered,
25 after the transfer form is registered.

1 A (MM) That's correct.

2 Q Is that right?

3 A (MM) Yes.

4 Q Okay. And so that's why you might see that on
5 title under the buyer's title document. You
6 might see -- the previous mortgage might show up
7 because it takes a day or two to be paid out.
8 Do I have that right?

9 A (MM) Well, yes and no. Yes, it takes a day or
10 two to be paid out, but the mortgage might sit
11 on that title with no value for up to six weeks
12 after closing because the bank won't issue the
13 discharge of mortgage until after they've
14 received their funds and, you know, applied it
15 to the account, everything's okay; it's a zero
16 balance now; we're going to -- somebody in head
17 office has to sign the discharge, and then it
18 gets sent out to the seller's notary. So that
19 can take under the *Business Practices and*
20 *Commercial Protection Act* or something -- I
21 think they've got 30 days to provide that
22 discharge, and then they provide it to the
23 seller's notary, who then has, you know, a
24 period of time in which to actually submit it
25 for registration.

1 So the purchaser, if the purchaser was, you
2 know, selling the property within the first
3 30 days, yeah, they're going to find that the
4 seller's mortgage is still going to be on there,
5 but it doesn't have any value at that point or
6 it shouldn't. It would have been paid out.

7 Q So it's registered on title still for this
8 process as you've described, which can take up
9 to six weeks, but it's not actually signifying
10 that there is a debt held by that institution?

11 A (MM) That's right. You'd have to go to the
12 source and find out how much is actually owing,
13 but there's -- there are undertakings between
14 the purchaser's notary and the seller's notary
15 that covers off these eventualities. So the
16 purchaser's notary is -- can rely on the
17 seller's notary or lawyer backed up by
18 regulatory bodies that, you know, this is
19 actually going to happen; they're going to get
20 this paid off.

21 And of course the seller's notary can't
22 force a bank to sign a discharge, but they can
23 certainly give them the money to pay out the
24 mortgage. And it's up to the bank to provide
25 the discharge, and the *Business Practices and*

1 *Consumer Protection Act* takes care of that.

2 So that's the flow of the money and the
3 discharge. So there is a period of time between
4 closing and the seller's mortgage actually being
5 removed from the title.

6 Q Okay. Unless there's anything you have to add
7 to page 6, perhaps we could move on to page 7.

8 A (MM) So we do have a rule, and the lawyers have
9 it as well, that within the first five days,
10 within five days of closing, the seller's notary
11 has to provide the buyer's notary with proof of
12 payment of that mortgage. So they have to
13 provide a copy of the payout statement, a copy
14 of the cheque that was sent to the lender to pay
15 out that mortgage, a copy of their letter
16 sending it off to that lender and evidence of
17 delivery of that document.

18 So within five days the purchaser's notary
19 will have evidence that at least it's been paid
20 out. It hasn't been discharged yet, but I'm
21 comfortable that it's been paid out. And so
22 that is a requirement within five days of
23 closing that assurance is supposed to be
24 provided.

25 Q Okay. And then page 8?

1 A (MM) This is the 30 days that the bank has to
2 provide the discharge. So the discharge of
3 mortgage would be received by the seller's
4 notary. The seller's notary would register it
5 in the Land Title Office and then they would
6 report to the buyer's notary the registration
7 details of that discharge. Everything's gone
8 now; here you go; we're out; our undertakings
9 are all fulfilled and this deal is complete.

10 Q And that's the point at which the mortgage would
11 no longer appear on title?

12 A (MM) Correct.

13 Q Okay. And then page 9?

14 A (MM) Well, this is where some banks are not very
15 good at providing these discharges within
16 30 days and sometimes you have to chase them for
17 it. So we have a requirement, as do the
18 lawyers, that if you don't get a discharge
19 within 60 days, then you need to report it to
20 the regulatory body by way of this mortgage
21 discharge centre where you just register that
22 Bank of Montreal has not provided the discharge,
23 it's been 60 days since we paid them and, you
24 know, we're continuing to follow up with the
25 bank to get this discharge. And the idea is

1 that there should be -- if I act for the
2 purchaser and you act for the seller and you're
3 dealing with a TD Bank mortgage, then -- if the
4 discharge is not received within 60 days, then
5 you should be reporting to your mortgage
6 discharge centre that I haven't given you the
7 details of that discharge yet. I should be
8 reporting to the discharge centre that I haven't
9 got the discharge yet so that these two records
10 can be reconciled and you can see the problem
11 lies within TD Bank, and so now you can escalate
12 the request to TD Bank to say hey, you forget to
13 send us this discharge and you need to do that.

14 Q And the regulatory body that you described as
15 having this mortgage -- I'm not sure if the
16 right word is the mortgage assistance centre,
17 or ...

18 A (MM) Discharge centre.

19 Q Mortgage discharge centre.

20 A (MM) Yeah.

21 Q Which regulatory body that?

22 A (MM) The Law Society has one and we have one as
23 well.

24 Q Okay. But it's not reported to, for example,
25 the Office of the Superintendent of Financial

1 Institutions?

2 A (MM) Well, at that point the seller has in
3 theory and in fact, I suppose, breached the
4 contract because they haven't released or
5 discharged that mortgage from their title. So
6 the buyer could sue the notary -- the seller.
7 That's the contractual -- the buyer could sue
8 the seller for not clearing their title, and I
9 suppose the seller could go to that body that
10 you mentioned and complain. But it doesn't
11 usually come to that. It's usually just these
12 lending institutions, the banks in particular,
13 they're human like everybody else, things get
14 lost or sometimes they send them out and they go
15 astray. You usually get it in the end.

16 MS. ROSE: Okay. I don't think we've marked this as
17 an exhibit yet, although I'm sure Madam
18 Registrar would correct me if I'm wrong in that.

19 THE REGISTRAR: No, we haven't.

20 MS. ROSE: And so I suggest that we would mark this
21 as exhibit 685, please.

22 THE COMMISSIONER: Very well. 685.

23 THE REGISTRAR: Exhibit 685.

24 **EXHIBIT 685: Conveyancing Cash Flow Charts v3,**
25 **October 2020**

1 MS. ROSE: And I don't expect to be very much longer
2 with these witnesses, but I do think I have at
3 least 30, potentially 45 more minutes of
4 questions, Mr. Commissioner. So I might suggest
5 this would be a good time to take our 15-minute
6 morning break.

7 THE COMMISSIONER: All right. I think that makes
8 sense, Ms. Rose. We'll do that. 15 minutes.
9 Thank you.

10 THE REGISTRAR: This hearing is adjourned for a
11 15-minute recess until 11:24 a.m.

12 **(WITNESSES STOOD DOWN)**

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

14 **(PROCEEDINGS RECONVENED AT 11:23 A.M.)**

15 **JOHN MAYR, a witness for**
16 **the commission,**
17 **recalled.**

18 **MARNY MORIN, a witness**
19 **for the commission,**
20 **recalled.**

21 THE REGISTRAR: Thank you for waiting. The hearing
22 is resumed. Mr. Commissioner.

23 THE COMMISSIONER: Thank you, Madam Registrar.

24 Yes, Ms. Rose.

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

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

2 Q So, Mr. Mayr and Ms. Morin, I would like to now
3 ask you some questions specifically about the
4 anti-money laundering obligations of notaries.
5 So previously you mentioned that the Society has
6 worked to ensure that a training course is
7 available to notaries with respect to their
8 anti-money laundering obligations. And if I use
9 the acronym AML, you'll understand that I'm
10 referring to anti-money laundering?

11 A (MM) Yes.

12 Q And so you have worked to ensure that this
13 training course is available to notaries?

14 A (MM) Yes, we have. It's -- we have a
15 relationship with ABC Solutions out of Ontario.
16 We've been dealing with them since 2010, so
17 really right from the start, and they've
18 conducted many seminars. They've been in front
19 of members numerous times throughout the years.
20 I attend their conferences every other year and
21 do reports on that after I've attended.

22 The course that we they developed for
23 notaries is a modular online training course
24 that is not only for notaries but it's for
25 notary staff as well, and that is provided to

1 our members through a subscription. And up
2 until a couple of years ago -- up until last
3 year, actually, the Society had the subscription
4 and we provided that training to members and
5 their staff through our website, our members
6 website. The subscription is now held by the
7 notary association and it's also available to
8 their members and their member staff.

9 My understanding is that in the last five
10 years, prior to it being taken over by the
11 association, there were 300 to 350 users from
12 our society taking that course every year, not
13 just notaries but their staff as well. And the
14 training complies with the training requirements
15 of FINTRAC obligations on notaries so that they
16 provide staff training, they can do it every two
17 years as required by the legislation. And at
18 the end of it if the person, the staff member or
19 the notary, completes the training and does the
20 testing, they receive a certificate that can
21 then be put in their compliance regime for the
22 member showing that the training has taken
23 place.

24 MS. ROSE: Madam Registrar, could we please have
25 brought up the training course, the brochure for

1 a training course.

2 Q So, Ms. Morin, do you recognize this document?

3 A (MM) Yes, I do.

4 Q And could you tell us what this document is.

5 A (MM) Well, this is a summary of the content of
6 the course, that it is for notaries. It has
7 been modified or it's specific to the
8 obligations of notaries under the AML
9 legislation. It is modular as I said, so
10 there's several course modules that cover the
11 obligations of notaries, the know your client,
12 the suspicious transactions reporting
13 requirements, keeping records, all of that.

14 MS. ROSE: Mr. Commissioner I just realized I've been
15 remiss here. This document was only circulated
16 to participants last night, and I just want to
17 determine if there's any objections from
18 participants with putting this document to the
19 witnesses. And I neglected to do that before I
20 put the document to this witness, but I'd like
21 to do so now.

22 THE COMMISSIONER: Yeah, it doesn't seem very
23 controversial, but certainly if anyone wants to
24 raise an objection now is the time to do it.

25 I don't hear any, Ms. Rose. I think we can

1 go ahead. Thank you.

2 MS. ROSE: Okay. Thank you very much. And so I
3 would like to have this, before we forget,
4 marked as the next exhibit, which -- I think
5 we're at 686, I believe.

6 THE REGISTRAR: Yes.

7 THE COMMISSIONER: 686.

8 THE REGISTRAR: Exhibit 686.

9 EXHIBIT 686: ABC Solutions Training Brochure -
10 redacted

11 MS. ROSE: Thank you, Mr. Commissioner. Apologies.
12 Thank you, Mr. Commissioner.

13 Q And have either of you taken this course?

14 A (MM) I haven't --

15 (JM) I have not.

16 (MM) I have not taken this particular
17 course. I'm certainly -- I developed my own
18 training for notary students, but it's along the
19 same lines as this other -- our practice
20 inspector has taken it and others in the --
21 staff here at the Society.

22 Q Okay. And sorry, you described a course that's
23 provided to notary students?

24 A (MM) Yes. It's just a training -- we talk about
25 the introduction, what money laundering is and

1 what it looks like, we go through suspicious
2 indicators and then the obligations of the
3 notary in practice to keep records and so on.
4 So that training is provided. And the risk
5 assessment as well, which is a whole other
6 thing, but all of that is provided to our
7 students and then this course is obviously
8 available to them as well. And we are in the
9 process of making it more streamlined going
10 forward with our students.

11 Q Okay. And that training program for students,
12 that's only available to students during the
13 masters course, but it's not available as a
14 continuing education course?

15 A (MM) This is the continuing education course
16 that's available to members.

17 Q Sorry, and by "this one," you mean the one on
18 the screen with the brochure here?

19 A (MM) That's correct. But there are seminars
20 that -- we do fraud seminars that generally talk
21 about fraud, instances of fraud and alerts and
22 that sort of thing. We've also had FINTRAC
23 auditors attend our seminars and conferences to
24 discuss the audit process, the common
25 deficiencies that might be found, that sort of

1 thing. So this isn't all they get, but this is
2 the one that has a testing component that they
3 can have their staff members take.

4 Q Would it be fair to say that this is the primary
5 form of anti-money laundering education that
6 they received?

7 A (MM) I guess yes. Although, like I said,
8 the -- it's ongoing. We provide members with
9 continuing education around fraud and money
10 laundering regularly.

11 Q Okay. And under the course module section of
12 this document, do you see that there?

13 A (MM) Yes.

14 MS. ROSE: And so there's one to four modules on this
15 first page. And, Madam Registrar, could we just
16 scroll down a little. Okay.

17 Q And then we have a description of what each
18 module is in more detail.

19 A (MM) Yes.

20 Q Are there any particular points that you wanted
21 to highlight with respect to this course?

22 A (MM) No. Other than, you know, we're very -- we
23 work very closely with ABC Solutions to ensure
24 that the content is appropriate and necessary
25 for members and they do a very good job of that.

1 We also encourage members to avail themselves of
2 the opportunity to take this course and have
3 their staff take it.

4 Q And is it your understanding that this course
5 accords with the obligations upon notaries as
6 set out in the *Proceeds of Crime (Money*
7 *Laundrying) and Terrorist Financing Act?*

8 A (MM) Yes, I do.

9 Q And do you know how many notaries have taken
10 this course?

11 A (MM) Well, as I said, the information that I
12 have been give is that between 300 and 350 have
13 taken it each year in the last five years. Last
14 summer the notary association took over the
15 subscription and I've been told by them that
16 about 200 have taken it since then. So that's
17 quite a significant number given the size of our
18 organization.

19 And they do it more than once. The testing
20 component, the exam questions change. They're
21 random, so, you know, two people might not get
22 the same exam questions twice in a row or two
23 people might not get the same questions. So I
24 think that that's another feature of this
25 course.

1 Q And, Mr. Mayr, I see you've unmuted yourself.

2 Did you have anything to add to that point?

3 A (JM) Yeah, it might be valuable to have a
4 picture of what the average notary office looks
5 like because we do still have many offices that
6 are sole practitioners or they may have one
7 staff member or two staff members. These notary
8 practices do not tend to be large operations
9 with lots of staff. There are some.

10 So I think the numbers, you know, when Marny
11 talks about, you know, 300 to 350 a year, that
12 would demonstrate that a high percentage of our
13 notaries every year go back to refresh their AML
14 training. I could not give you an exact number
15 of that, but indicators are that they're very
16 engaged in part because of the exposure to
17 administrative monetary penalties. I think we
18 all have to face that that's a significant
19 driver in people taking AML training and making
20 sure they comply.

21 Q And do you have a sense of how -- what the
22 average size of a notary office would be?

23 A (JM) Marny?

24 (MM) We have 404 notaries. Not all of them
25 practice in areas that require or include trust

1 funds being taken in, but most of them do. So
2 let's say that there's, you know, 380 that are
3 operating trust accounts. Very few are notary
4 firms that would have multiple notaries in the
5 firm. There are some, but a vast number of our
6 members are sole practitioner notaries who might
7 have, you know, zero to four staff members at --
8 in their offices. They tend to be quite small
9 operations, but we do have, you know, a few that
10 are bigger than that. But at the most I
11 can't -- I don't think we have very many firms
12 that have more than, you know, 20 people
13 involved in the whole practice.

14 Q And is it possible to conduct a real estate
15 transaction as a notary without a trust fund?

16 A (MM) No.

17 Q Is it possible for a notary to conduct a real
18 estate transaction in which they do not have
19 oversight of the flow of funds?

20 A (MM) No.

21 Q So, for example, if someone were to come to a
22 notary and say, you know, I don't require the
23 use of your trust fund; I've worked it out with
24 the other side and I'm just going to pay them
25 directly, would a notary -- is there any

1 prohibition on a notary acting in those
2 circumstances?

3 A (MM) No, but I can't imagine a scenario by which
4 that might happen. What could happen is in what
5 we call family transactions where transactions
6 take place and no funds actually are exchanged.
7 A parent might be transferring their property to
8 a child or, you know, like that. So those
9 transactions do happen.

10 Sometimes a client might come to a notary
11 and had they done their own -- they've done
12 their own form A transfer and all they want you
13 to do is sign that as the notary, as an officer
14 under the *Land Title Act*. And certainly from
15 the ones -- the notaries that I've heard, they
16 have pretty strict policies around not doing
17 that. They won't sign a document that they
18 didn't prepare.

19 And that's one of the areas in which we get
20 complaints from time to time, is members of the
21 public saying well, I prepared my own, and they
22 refuse to sign it, and all they want is, you
23 know, a fee. Well, that's not all they want.
24 They can't provide a service if they haven't
25 done the due diligence necessary to ensure that

1 the party before them that is giving up that
2 interest as a seller is getting what they're
3 supposed to get. So it's very difficult for a
4 person to do their own real estate transaction
5 documents and then just go out and try and get
6 somebody to sign them for them.

7 Q And, Mr. Mayr, again I see you've unmuted.
8 Would you like to add something there?

9 A (JM) Yeah. The scenario you suggest would
10 certainly clearly qualify as a suspicious
11 transaction report, whether the notary engaged
12 in it or not. And of course now we've got the
13 added layer of the *Land Owner Transparency Act*
14 and registry, which also comes into play if
15 somebody came in and said, you know, I've done
16 everything; all the money's been worked out;
17 just, you know, sign the documents. There has
18 to be now a much deeper discussion about
19 beneficial ownership.

20 Q Okay. Returning to this course that we have on
21 the screen now, I take it the course is not
22 currently mandatory.

23 A (MM) No, it isn't.

24 Q But it is accredited for continuing education?

25 A (JM) Yes.

1 Q And what are notaries' continuing education
2 requirements?

3 A (MM) Notaries are required to get 12 credits of
4 continuing education per year. That's not one
5 hour equals one credit. It goes by topic, by
6 coverage of topic, so we approve the content
7 that a notary wants to take with respect to a
8 particular course, and we would give it a credit
9 value and post that and keep that on the record
10 for the member annually.

11 Q Are there any other tools, if I can use that
12 word, that are provided to members for
13 assistance with their anti-money laundering
14 obligations?

15 A (MM) Yes. We have -- in conjunction with ABC
16 solutions in 2017 we collaborated on a risk
17 assessment workbook that is available to members
18 that -- where they can use the workbook to
19 assess the risk potential for their practice and
20 set and identify mitigation tools that they can
21 use to understand and identify transactions that
22 are suspicious. And clients that are higher
23 risk.

24 Q And you mentioned before with respect to this
25 risk assessment tool --

1 MS. ROSE: Sorry. Madam Registrar, I'm finished with
2 this document. We can take that off the screen
3 now, please. Thank you.

4 Q With respect to the suspicious indicators for
5 real estate transactions from FINTRAC, have you
6 heard any feedback from members with respect to
7 these indicators?

8 A (JM) No. Can you expand on the question at all?

9 Q Positive or negative, have you received any
10 feedback? Have you heard any members commenting
11 on the quality of these indicators?

12 A (JM) No, I have not.

13 (MM) No, I haven't either. They're quite --
14 there's a lot of them there, so you know, I
15 think they're pretty comprehensive.

16 Q And do you have a sense of which -- and I can
17 take you to this document, if you like. But do
18 you have a sense of which of the indicators of a
19 suspicious real estate transaction might be
20 visible or otherwise might pertain to the role
21 of notaries in a real estate transaction?

22 A (MM) Well, one of them that comes to mind to me
23 is the short closing, the urgency of a
24 transaction where somebody comes along and says,
25 I have to close this thing in two days and, you

1 notary's signing one of these real estate
2 documents like a form A transfer or form B, just
3 by signing as an officer it's implied that the
4 notary has ensured that the person that's in
5 front of them is the person that they say they
6 are, so they require identification for that.
7 And that they have the capacity to enter into
8 the contract and they understand the nature and
9 effect.

10 So those things have to be looked at in the
11 context of just signing. So, you know, anything
12 that's outside of that would raise the concern
13 of the notary and third parties, and powers of
14 attorney certainly are part of that. Now,
15 having a power of attorney is a completely legal
16 application and office to hold as an attorney
17 under a power of attorney, but it does require
18 some additional scrutiny.

19 Q And with respect to identification documents and
20 any discrepancies between those documents, is
21 that something that a notary would see?

22 A (MM) Yes, they would. The -- especially with
23 mortgages. Because lenders also take
24 identification from their customers when they're
25 opening accounts and taking mortgage

1 applications and whatnot. So the identification
2 needs to match what is on the documents in front
3 of them, and the identification needs to be
4 valid and show the full name of the person, and
5 if there's any discrepancies between the names
6 on the documents and the names on the
7 identification, then that would be investigated
8 and would be an indicator that more
9 investigation is required.

10 Q And then with respect to the source of funds of
11 the transaction, the notary -- as we've reviewed
12 already, the notary does have insight into
13 those?

14 A (MM) Insight. What do you mean by that?

15 Q The notary is able to see what the source of
16 funds for a real estate transaction would be?

17 A (MM) To the extent that they can tell which bank
18 the bank draft is drawn on, yes. They can't go
19 beyond that. They can't tell whether it came
20 from Bob's account or Susan's account or
21 whoever. They don't have -- they just don't
22 have that information.

23 Q And, sorry, Mr. Mayr, did you have something to
24 add there?

25 A (JM) Yeah. No, the source of funds for notaries

1 is not a requirement under FINTRAC, and
2 generally, as Marny said, they would not be able
3 to look behind the transaction to, you know,
4 determine what the source of funds was or
5 whether it was a valid source of funds. And,
6 again, for virtually a hundred percent of these
7 transactions, it will come from a financial
8 institution, so it would be the notary relying
9 on the financial institution to have done their
10 due diligence in source of funds declaration.

11 Q They would be able -- the notary would be able
12 to see which institution the funds are flowing
13 from?

14 A (JM) Yes.

15 (MM) Yes.

16 Q And they would be able to see whether -- what
17 type of mortgage is being provided, whether
18 that's a mortgage from a large financial
19 institution or a mortgage investment corporation
20 or a syndicated mortgage or other private
21 lending?

22 A (MM) Correct.

23 Q And does a notary have any obligation to make
24 inquiries as to the source of funds or
25 occupation of the client?

1 A (JM) No.

2 (MM) The application they do, yes, but not
3 the source of funds. Basically if you were to
4 ask a client, where did these funds come from,
5 they're going to say, the Royal Bank. Sometimes
6 a client might bring in a couple of bank drafts
7 drawn on different bank institutions, and that
8 might raise a question with the notary like, why
9 have these come from two accounts; are they all
10 from the same party or are they different
11 parties. And those would be -- there might be
12 simple explanations for that. But usually you
13 get one bank draft for the total amount that's
14 required.

15 Q And another indicator that might be visible to
16 notaries is whether the client demonstrated any
17 resistance to providing documentation or
18 resistance to responding to those inquiries as
19 you've just described.

20 A (MM) Exactly. And whether or not they have
21 knowledge of those things. You know, sometimes
22 when it comes to these money laundering
23 situations, there are third parties involved
24 that really don't know anything about the
25 transaction, and that's something that would

1 that it's not people that are suspicious; it's
2 their behaviour. And so you have to look at
3 behaviour of the person in front of you and see
4 if it adds up to the context of the transaction
5 that they're involved in.

6 Q Do you have a sense of approximately how many
7 reports have been submitted to FINTRAC by
8 notaries on, for example, an annual basis? And
9 I'm talking here both about Suspicious
10 Transaction Reports and Large Cash Transaction
11 Reports.

12 A (MM) John, I think, can answer that.

13 (JM) Yeah, that information is available
14 from FINTRAC. It's -- I don't have the numbers
15 right in front of me. Forgive me. But they
16 certainly follow the pattern of the real estate
17 market. The numbers were much higher in 2017.
18 The Large Cash Transaction Reports do raise some
19 concern because we have very strict cash
20 acceptance rules. And, you know, our sense is
21 that people that are trying to launder money,
22 they know that notaries are subject to FINTRAC
23 and FINTRAC reporting and therefore don't
24 necessarily go to a notary with a large cash
25 transaction. Of course lawyers have rules

1 against accepting large cash amounts as well.

2 So it would be interesting to try to find
3 out more about those circumstances and really
4 whether it's confusion by notaries as to, you
5 know, what is a large cash transaction report
6 and when it's appropriate to submit one.

7 (MM) And it may also be an attempted large
8 transaction, you know, where somebody tried to
9 give them money and that was reported. Good for
10 them. But I can't really wrap my head around
11 whether there would be any large cash
12 transaction reports from our members.

13 Q And then in respect of Suspicious Transaction
14 Reports do you have a sense, even if it's just a
15 ballpark or an estimate, of approximately how
16 many reports are typically -- or have been
17 submitted by notaries in the last few years?

18 A (JM) Well, in the last -- it would range
19 anywhere from -- you know, early days it was
20 certainly less than 10, and I think from my
21 recollection the highest number per year was
22 just under a hundred.

23 Q Okay. In reviewing complaints that the Society
24 has received, have you received any complaints
25 that might have a money laundering component to

1 tends to be a little bit more difficult to work
2 around. We have a very good relationship with
3 the Law Society, but their complaints and
4 investigation does tend to be fairly siloed and
5 segmented, and we generally find out when
6 there's a complaint that involves a lawyer where
7 there's a notary involved after they have
8 completed discipline.

9 And certainly we are actually just in the
10 process of developing a framework for lawyers
11 and notaries, not only to work together, but
12 hopefully get to a point where we can either
13 share information more freely about different
14 members and certainly -- you know, ideally I
15 think combined investigations where you've got
16 notary involvement with a lawyer would be an
17 ultimate goal for us.

18 Q I was going to ask this question with respect to
19 complaints that might have an anti-money
20 laundering component to them, but it strikes me
21 that I have not actually asked the question more
22 generally, so I'll do that now.

23 What are the options for discipline of a
24 notary?

25 A (JM) The act itself is fairly dated legislation.

1 It would have last been really looked at in the
2 90s. And it sets out options for the board that
3 include a reprimand, a maximum fine of \$5,000,
4 unless it's a notary corporation. Then that
5 amount is \$10,000, suspensions and terminations.

6 There are no provisions within the act
7 currently for alternative options. So the other
8 regulatory legislation does have a resolution
9 with content provisions, and ours as of yet does
10 not have any of those provisions. So we are
11 fairly limited in what we can do and how we can
12 do it, but we make the best of the situation.

13 Q And what are some of those alternative measures
14 that you consider might be useful in terms of
15 providing appropriate discipline to members?

16 A (JM) There's a difference between -- well, let's
17 back up a little bit. Discipline is often the
18 worst tool to use to obtain a positive change in
19 behaviour. Most of the complaints that we get
20 are not disciplinary. So if we look at the act,
21 you know, it sets out what we can discipline
22 for. So conversion, fraud and theft are the big
23 ones. And a notary with a complaint or an
24 allegation of conversion, fraud or theft, we
25 move very quickly on those to determine if there

1 is any validity to the allegations. We can
2 generally be in Supreme Court within a very
3 short period of time, a day or two, obtaining a
4 custodianship order to take over the practice.

5 We have -- the act sets out incompetence as
6 a provision for discipline. Incompetence of
7 course being a pattern of behaviour, not a
8 one-time event. There's a relatively strange
9 provision called "other professional
10 misconduct." And then the last item really
11 speaks to the historical wording in the
12 legislation which allows the regulator to appear
13 to protect the profession over -- above public
14 interest.

15 So those are the provisions that are set out
16 where, you know, discipline may be the best
17 tool. But for the vast majority of complaints,
18 you know, the complainant will say, I was
19 overcharged, or they made an error and I paid
20 too much and I want my money back. Well, the
21 legislation -- and to my knowledge no regulatory
22 legislation provides for a legislator to pay
23 damages or return funds to a complainant. Those
24 are either insurance claims or matters for the
25 court.

1 In our strategic plan we are looking to
2 adopt right-touch regulation, which is really
3 trying to choose the best tool to improve
4 conduct and behaviour of a member given the
5 situation as opposed to using discipline as, you
6 know, everything looks like a nail when you're
7 holding a hammer.

8 Q And are you aware of whether any BC notary has
9 been subject to a penalty imposed under the
10 *Proceeds of Crime (Money Laundering) and*
11 *Terrorist Financing Act?*

12 A (JM) We believe the answer to that is no, no
13 notary has been fined or levied the
14 administrative monetary penalty.

15 Q And I believe I asked this question a bit
16 before, but are there any complaints or examples
17 of misconduct by a notary that have -- that
18 might bear on money laundering?

19 A (JM) No, no complaints that would bear on money
20 laundering or terrorist financing.

21 Q Okay. Am I right that the Society is working on
22 a memorandum of understanding with FINTRAC?

23 A (JM) Yes. And just yesterday we concluded those
24 discussions, and we're just waiting for a final
25 version of the agreement, which -- you know, we

1 are really looking forward to. We believe that,
2 you know, being able to access timely relevant
3 information, appropriate information, will
4 certainly assist us in regulating notaries.
5 And, you know, equally if we do come across
6 something in terms of a member that either
7 hasn't been reported, doesn't appear to have
8 been reported or involves any of the anti-money
9 laundering legislation that we can work with
10 FINTRAC on those.

11 Q In your view, what other resources do notaries
12 need to be able to comply with their obligations
13 under the *PCMLTFA* or otherwise simply to
14 identify suspicious behaviour?

15 A (JM) Marny?

16 (MM) Well, I'd certainly like -- if you're
17 asking for a wish list, I'd certainly like to
18 see more communication sharing between sectors
19 because certainly in real estate transactions
20 there are a lot of bodies that are involved
21 before the notary ever gets involved, and if a
22 transaction is suspicious, the context that
23 professional might deal with that person is
24 different in those -- encounters. The realtor
25 is going to see a different view of the person

1 and the behaviour, and then the lender is going
2 to have a view of the behaviour of the person.
3 And then they come to the notary and quite
4 frankly the notary might only meet with them
5 once, and that is, you know, just before
6 closing, although their staff would have
7 interactions with them, but usually over the
8 phone and not necessarily in person. So
9 communication sharing, I think, is really
10 important.

11 And then technological supports that would
12 be able to assist in looking up and verifying
13 information and even people, you know, like
14 being able to verify identification documents
15 easily, that sort of thing. So I think that
16 there's a few things that could be of
17 assistance. I'm not sure that they could
18 necessarily come from FINTRAC, but I think in
19 general those things are -- would be helpful.

20 (JM) And the other one -- and I understand
21 this currently is not allowed under the AML
22 legislation, but from a regulatory perspective
23 if a suspicious transaction report is filed
24 against a notary, we would certainly be very
25 interested in that kind of information and, you

1 know, understand that that may require a
2 legislative change but suspect that the other
3 regulators would be equally interested in that.

4 It's similar to what happens now in court
5 proceedings where if a regulated professional
6 appears in court, generally Crown counsel,
7 advises the regulatory body of that situation.
8 And, you know, it doesn't necessarily mean that
9 there's going to be immediate action by a
10 regulator, but certainly being able to put into
11 place the investigatory tools and the processes
12 so that, you know, as soon as there was an
13 opportunity to conduct an investigation, find
14 out exactly what is happening in that office,
15 that would be most useful in terms of protecting
16 the public.

17 Q I just wanted to go back to my previous question
18 with respect to complaints that might have a
19 money laundering component to them.

20 One matter involving a notary that is a
21 matter of public record is the case of Rashida
22 Samji. In your view were there aspects of that
23 case that might have a money laundering
24 component to it or risk?

25 A (JM) Yeah, this is a difficult one. Clearly

1 what she was doing, while it's illegal and
2 harmed many people, was not what is captured in
3 the *Notaries Act* as within the legitimate scope
4 of practice of a notary. You know, any notary
5 who's running a Ponzi scheme would clearly be
6 outside of the legislation.

7 The Samji affair, which -- you know, a
8 Ponzi scheme that I think the total eventually
9 hit about \$112 million, so was there a requisite
10 crime? Yeah, there sure would appear to be.
11 She did serve time in prison for their crimes.

12 From the Society perspective, as soon as it
13 became evident that, you know, there was an
14 investigation, what was going on, there was a
15 custodian appointed and her office was put under
16 our control, again, within a very short period
17 of time. You know, could we have foreseen that?
18 Not without additional information. You know, I
19 think the court records show that the financial
20 institution where she did all of her banking had
21 filed multiple Suspicious Transaction Reports,
22 but at no point did the bank ever call the
23 regulator and say, we think you might have a
24 problem here.

25 You know, there were -- and this was before

1 my time, so anecdotally, people who -- would
2 call and question, but they would never say who
3 the notary was or exactly what was going on.
4 And without that information, it really ties the
5 hands of a regulator in terms of, you know, what
6 action do you take. At the end of the day the
7 Society did pay out from its special fund. It
8 paid \$3 million to compensate people that were
9 harmed by Ms. Samji even though, you know, we
10 took the position that her actions were not
11 those of a notary.

12 Q And just for the benefit of those who might not
13 be familiar with the case, can you just describe
14 what happened there, what was going on there.

15 A (JM) Marny, you might have a better -- you were
16 here during that time.

17 (MM) Unfortunately, yes. Well, she was
18 operating a Ponzi scheme. She told people that
19 she was -- that they could invest in a scheme
20 that would pay them a significant interest
21 return. She said the funds would be put into
22 her notary trust account, that those funds were
23 guaranteed -- I think she used the word to some
24 "guaranteed" by the regulatory body. That, you
25 know, they would get these funds back with all

1 this interest and then they could reinvest in
2 the scheme or the investment opportunity, which
3 involved a winery, if I recall.

4 The problem was that she didn't have a
5 trust account, and so there was nothing for us
6 to audit, there was nothing for us to review.
7 She was not a notary public in practice; she was
8 what we call a roving notary who just looked
9 after other practices when members were away on
10 vacation. And we had documentation from her
11 showing that she did not have a trust account.
12 And so yeah, it was a very unfortunate thing
13 that those who did know that it was going on
14 were unable or unwilling to tell us so that we
15 could intervene. And so it -- we ended up
16 hearing about it from the Securities Commission.

17 Q And just so that I'm clear, I think you said
18 that Ms. Samji was informing her prospective
19 clients, if I can use that word, that the funds
20 were guaranteed in her notary trust account, but
21 in your review or in the Society's review, they
22 had not actually created a trust account. Do I
23 have that right?

24 A (MM) She has closed the trust accounts that
25 she'd had when she was in practice on her own.

1 So we knew that she did not have any trust
2 accounts. We had evidence of that. So yeah,
3 people were writing cheques out to her in trust,
4 but they were not being put into a trust
5 account.

6 Q And are you aware whether she was opening
7 accounts at banks in which she told the banks
8 that those would be trust accounts?

9 A (MM) I'm not aware. I don't know.

10 Q And if a bank receives an application to open a
11 trust account pursuant to being a BC notary,
12 does the bank inform the Society?

13 A (MM) Yes. Yes, they do because the interest on
14 those trust accounts is paid to the Notary
15 Foundation. So we get a new account document
16 form from the member, then they have to give
17 that to the bank to show where the interest is
18 supposed to be paid. So yes, we have -- we're
19 supposed to know all the trust accounts that
20 members have and that's part of the audit
21 process is to match up what they actually have
22 with what we think they have.

23 Q And would the notary also be required to report
24 that to the Society?

25 A (MM) Yes.

1 (JM) Yes. We have a rule that requires
2 that.

3 Q And so would you be receiving reports from both
4 the bank and the notary?

5 A (MM) It's all the same report. The notary has
6 to provide the bank with a form that sets out
7 who they're supposed to pay the interest to and
8 then that form is then sent to us.

9 Q Sorry, just so I'm clear, the line of
10 communication there is from the notary to the
11 Society or is it from the notary to the bank
12 society or how does that get processed?

13 A (MM) Well, the rule is that the notary has to
14 inform us if they've opened a trust account.
15 Actually, John, maybe you can take that further.

16 (JM) Yeah, yeah. So it is the notary that
17 reports to the Society that they've opened a
18 trust account, and then the financial
19 institution would deal with the third party,
20 being the Notary Foundation, around the interest
21 on the trust funds.

22 Q Okay.

23 A (JM) But certainly it would be helpful if the
24 banks would share that information. You know,
25 that is certainly a gap where financial

1 institutions will say well, we can't give you
2 that; it's personal, private information. And,
3 you know, we would take quite a different
4 perspective on that in that, you know, if a
5 member has a trust account and it is a notary
6 trust account, notification of the existence of
7 that would be very helpful, you know, especially
8 in situations where they had advised us that
9 they had the trust account. That would
10 certainly be a big issue for us.

11 Q So it is possible for a notary to open a trust
12 account with a financial institution and in
13 breach of the rule not inform the Society and
14 the notary would then be unaware of the
15 existence of that account?

16 A (JM) That's correct, the regulator would be
17 unaware of the existence of the account.

18 Q Thank you for catching that. I misspoke. I
19 meant to say it was the Society would be unaware
20 of the existence of that account.

21 A (JM) Yes.

22 MS. ROSE: Okay. Those are my questions for these
23 witnesses, Mr. Commissioner.

24 THE COMMISSIONER: Thank you Ms. Rose.

25 I'll now call on Ms. Stratton on behalf of

1 the province, who has been allocated five
2 minutes

3 MS. STRATTON: Thank you, Mr. Commissioner. Having
4 heard the evidence today, I have no questions
5 for the panel.

6 THE COMMISSIONER: Thank you, Ms. Stratton.

7 I'll turn then the Ms. Shelley on behalf of
8 Canada, who similarly has been allocated five
9 minutes.

10 MS. SHELLEY: Thank you, Mr. Commissioner. We also
11 have no questions for these witnesses at this
12 time.

13 THE COMMISSIONER: Thank you. And, Mr. Rauch-Davis,
14 on behalf of Transparency International
15 Coalition, who has been allocated 15 minutes.

16 MR. RAUCH-DAVIS: Thank you, Mr. Commissioner. Just
17 a few questions arising from the evidence this
18 morning.

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

20 Q I believe I'll address Mr. Mayr. And,
21 Ms. Morin, if you feel like it's a question you
22 should handle, please interject.

23 So I just wanted to touch on the FINTRAC
24 know-your-client obligations. And I believe --
25 do I have this right that notaries are required

1 to include -- or to verify the beneficial
2 ownership of their clients that are legal
3 entities, meaning trust or corporations?

4 A (JM) Yes.

5 Q Yeah. And part of that obligation -- or
6 perhaps, Ms. Morin, maybe this question is
7 better from you because I have a note from your
8 evidence this morning that notaries would
9 appreciate further technological supports in
10 verifying the information of their clients. Do
11 I have that right?

12 A (MM) Yes. I was alluding to terrorist lists and
13 that sort of thing, which used to be available
14 to us but aren't anymore.

15 Q Right. Terrorist lists and PE P lists and
16 things of that nature?

17 A (MM) Yes.

18 Q Yeah. Now, the commission heard some evidence
19 about establishing a publicly accessible
20 corporate beneficial ownership registry. Are
21 you familiar with that type of entity?

22 A (JM) No.

23 (MM) No.

24 Q No. Okay. Do you anticipate *LOTA* -- utilizing
25 the landowner transparency as a tool for

1 verifying customer information?

2 A (JM) Do we as the regulator envision it? I
3 really haven't thought of it in that way. It's
4 possible, and it would be, you know, related to
5 some kind of complaint investigation. But in a
6 routine manner, no, but that's not to say that
7 we wouldn't, given you know, a better
8 understanding of what we -- and how we could
9 actually use the information.

10 Q I suppose the jury is still out, so to speak.
11 So you're not sure?

12 A (JM) Yes. Yeah.

13 MR. RAUCH-DAVIS: Okay. Thank you. Those are my
14 questions, Mr. Commissioner.

15 THE COMMISSIONER: Thank you, Mr. Rauch-Davis.

16 Now Mr. Usher on behalf of the Society, who
17 has been allocated 20 minutes

18 MR. USHER: Thank you, Mr. Commissioner.

19 **EXAMINATION BY MR. USHER:**

20 Q Just one comment perhaps for Mr. -- or a
21 question for Mr. Mayr. Under the *Land Ownership*
22 *Transparency Act* some agencies are designated as
23 ones that can inquire or make inquiries. I take
24 it it's the case that the Society of Notaries is
25 not listed there but, for example, the Law

1 Society is. Is that any concern to you? Would
2 you like to suggest some changes there?

3 A (JM) Yes, certainly. My understanding is when
4 they put together the list that is included in
5 that act, they left the Notary Society out by
6 virtue of us being covered by FINTRAC. And you
7 know, I do see that that is a shortcoming that,
8 you know, this organization, the Society, is a
9 statutory regulatory body and we should have the
10 same rights and ability to search and determine
11 the information as other regulators are.

12 MR. USHER: Thank you. That's all my questions,
13 Mr. Commissioner.

14 THE COMMISSIONER: Thank you, Mr. Usher.

15 Anything arising out of that,
16 Mr. Rauch-Davis?

17 MR. RAUCH-DAVIS: No, thank you.

18 THE COMMISSIONER: Ms. Rose?

19 MS. ROSE: No, nothing from me, Mr. Commissioner.
20 Thank you.

21 THE COMMISSIONER: Well, thank you to both Mr. Mayr
22 and Ms. Morin for your very helpful exposition
23 on the Society of Notaries Public of British
24 Columbia. It has added a considerable amount of
25 information for the benefit of the commission.

1 I'm grateful to the time you've taken this
2 morning and this afternoon. You are now excused
3 from any further testimony.

4 **(WITNESSES EXCUSED)**

5 THE COMMISSIONER: Ms. Rose I think we're now in a
6 position to adjourn until Monday morning at --
7 is it 9:30?

8 MS. ROSE: Yes, that's my understanding,
9 Mr. Commissioner. Thank you.

10 THE COMMISSIONER: All right. Thank you.

11 THE REGISTRAR: The hearing is now adjourned until
12 March 8th, 2021, at 9:30 a.m. Thank you.

13 **(PROCEEDINGS ADJOURNED AT 12:21 P.M. TO MARCH 8, 2021)**

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