

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

# STANDING COMMITTEE ON PUBLIC ACCOUNTS

## **VALUE-FOR-MONEY AUDIT: REAL ESTATE COUNCIL OF ONTARIO**

(2022 ANNUAL REPORT OF THE OFFICE OF THE AUDITOR GENERAL OF  
ONTARIO)

1<sup>st</sup> Session, 43<sup>rd</sup> Parliament  
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The Honourable Ted Arnott, MPP  
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Public Accounts has the honour to present its Report and commends it to the House.

A handwritten signature in black ink that reads "Tom Rakocevic".

Tom Rakocevic, MPP  
Chair of the Committee

Queen's Park  
October 2024



STANDING COMMITTEE ON PUBLIC ACCOUNTS  
MEMBERSHIP LIST

1<sup>st</sup> Session, 43<sup>rd</sup> Parliament

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JESSICA BELL regularly served as a substitute member of the Committee.

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Clerk of the Committee

DMITRY GRANOVSKY  
Research Officer



STANDING COMMITTEE ON PUBLIC ACCOUNTS  
SUPPLEMENTAL MEMBERSHIP LIST

1<sup>st</sup> Session, 43<sup>rd</sup> Parliament

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## INTRODUCTION

On November 20, 2023, the Standing Committee on Public Accounts held public hearings on the value-for-money audit of the Real Estate Council of Ontario (2022 Annual Report of the Office of the Auditor General of Ontario), overseen by the Ministry of Public and Business Service Delivery.

The Committee welcomes the Auditor's findings and recommendations and now presents its own findings, views, and recommendations. The Committee requests that the Ministry provide the Clerk of the Committee with written responses to the recommendations within 120 calendar days of the tabling of this report with the Speaker of the Legislative Assembly, unless otherwise specified.

## ACKNOWLEDGEMENTS

The Committee extends its appreciation to officials from the Real Estate Council of Ontario and the Ministry of Public and Business Service Delivery. The Committee also acknowledges the assistance provided by the Office of the Auditor General, the Clerk of the Committee, and Legislative Research.

## BACKGROUND

The Real Estate Council of Ontario (RECO) is a not-for-profit administrative authority designated under the *Safety and Consumer Statutes Administration Act, 1996*. RECO administers and enforces the *Trust in Real Estate Services Act, 2002* (previously known as the *Real Estate Business and Brokers Act, 2002*) and regulates real estate brokerages, brokers, and salespersons. RECO's mission is to promote a fair, safe, and informed real estate market for consumers through the regulation of those who trade in real estate.

The Ministry of Public and Business Service Delivery is responsible for overseeing RECO, and RECO's Board of Directors is accountable to the Minister through the Board Chair. RECO funds its own operations, primarily through fees it collects from registrants. In 2021, its operating revenue totaled \$33.6 million.

Under the Act, every real estate brokerage, broker, and salesperson that facilitates the purchase or sale of property in Ontario must be registered with RECO. Registrants are required to follow the rules set out in the Act, a Code of Ethics (set out in Ontario Regulation 365/22), and other regulations made under the Act. In 2022, some 3,910 brokerages, 20,762 brokers, and 82,619 salespersons were registered with RECO.

## 2022 AUDIT OBJECTIVE AND SCOPE

The audit objective was to assess whether RECO "has effective and efficient processes in place to

- administer the *Real Estate and Business Brokers Act, 2002* to protect the public when engaging with a registered salesperson, broker, or brokerage in real estate trades; and

- register and oversee brokerages, brokers, and salespersons in accordance with the Act.”

The audit also assessed whether the Ministry has oversight processes in place to ensure that RECO effectively administers the Act.

The audit was conducted between January and August 2022.

## **AUDIT CONCLUSIONS**

The audit concluded that RECO “has not been fully effective” in administering the Act to protect the interests of consumers engaging in a real estate transaction. For example, RECO could not demonstrate how it met its requirements under the Act when assessing applicants who had a past criminal charge or conviction. There were also areas where consumer protection for buyers and sellers of real estate could be improved in comparison to British Columbia.

The audit found further that “the Ministry’s oversight processes to ensure that RECO effectively administers the Act and fulfills its mandate were not fully effective.” The audit included 25 recommendations for improvement.

## **ISSUES RAISED IN THE AUDIT AND BEFORE THE COMMITTEE**

The Committee heard that the Ministry takes the Auditor’s recommendations seriously and is committed to examining areas where it can improve. It was noted that many of the recommendations to the Ministry involve legislative or regulatory changes that require balancing many factors, including how best to protect consumers without placing undue burden on businesses, buyers, sellers, lessees, or lessors. However, the Ministry said that it is committed to thoroughly analyzing the recommendations, as it considers legislative and regulatory proposals for government decision-making and public consultation in the future.

The Ministry also noted that it has worked over the last several years to update the *Real Estate and Business Brokers Act*, now known as the *Trust in Real Estate Services Act*, and its regulations. It said that it has made strides in addressing the Auditor General’s recommendations to ensure that brokerages best protect the interests of real estate buyers and sellers.

Effective December 1, 2023, new rules came into effect governing situations where a real estate brokerage represents more than one party to a real estate transaction. The regulatory changes also address the Auditor’s recommendation that the Ministry and RECO develop an information package for real estate buyers and sellers. Under the new regulations, registrants will be required to provide the information package and explain its contents to a person before providing services or assistance in relation to a trade in real estate.

In addition, Minister’s orders are expected to be issued to make changes to RECO’s Board. The changes include providing that no more than 30% of the Board members be from the real estate sector and establishing new competency criteria for Board members to strengthen the representation of consumer perspectives.

The Committee heard from RECO that the Auditor's recommendations largely align with their own strategic initiatives to modernize operations. When RECO received the report, it worked with the Ministry to develop an action plan that addresses each recommendation. RECO said it was on-track to implement 75% of the action items in the Auditor's report by December 31, 2023. It plans to complete implementation of all action items directed to it by January 2026.

## **Consumer Protection and Multiple Representation**

As outlined in the audit report, in Ontario, a buyer and seller in a single real estate transaction can be represented by the same salesperson or broker, as long as they make certain disclosures and obtain consent from the clients.

The audit report notes that this practice — known as multiple representation or “double-ending” — poses a risk to the buyer and the seller as the salesperson or broker cannot effectively represent the best interests of both parties. In British Columbia and Quebec, this practice has been banned, with exceptions for remote locations that are underserved by licensees.

The Committee heard from the Ministry that over the past year, it has made regulatory changes to the rules governing multiple representation. As of December 1, 2023, legislative and regulatory changes came into force to provide for two new types of representation agreements: brokerage representation agreements and designated representation agreements.

As explained by the Ministry, under a brokerage representation agreement, while clients could work with a specific broker or salesperson at a brokerage, their legal and contractual relationship is with the entire brokerage. If the brokerage has multiple clients in a single transaction, the brokerage, including all its brokers and salespersons, must treat the interests of those clients objectively and impartially. They cannot favour the interests of one client over another client.

Under a designated representation agreement, the brokerage would designate one or more brokers or salespersons as the designated representative for the client. Under such an agreement, the individual broker or salesperson could actively promote their own client's best interests even if more than one brokerage client is involved in the same transaction.

The Ministry also clarified that under the new regulations multiple representation will continue to be permitted. The purpose of the regulatory changes was to make a distinction between multiple representation (which will continue under new rules) and designated representation, in which the agent has responsibility for representing only one client.

The Ministry said that this approach is expected to increase choice and improve consumer protection by reducing the potential for conflicts of interest when a brokerage represents more than one client in a trade. It allows brokerages to decide how best to serve their clients and conduct their business while maintaining safeguards for consumers.

The Committee asked how consumers can be assured that a broker or salesperson who is representing more than one client in a sale is representing the clients' interests. The Ministry explained that a brokerage must obtain the consent of each client to enter into a multiple representation agreement. In addition, the recent regulatory changes strengthened disclosure requirements. The Ministry also noted that it heard during consultations that in some areas of the province there are not many options for realtors, so the new regulations provide for consumer choice. The Ministry will be watching how the recent changes impact the sector. They are also monitoring the changes that were recently made in British Columbia to see whether similar changes should be made in Ontario.

### **Unclaimed Consumer Deposits**

At the time of the audit, the Government of Ontario and RECO were holding a combined \$13.7 million in unclaimed trust money, the vast majority of which related to consumer deposits.

In Ontario, deposits are typically paid to, and held by, the selling agent's brokerage in trust until the transaction is complete. However, if the agreement falls through, the deposit does not automatically go to the seller or get returned to the buyer. Typically, the brokerage requires a court order or a written agreement from both parties to direct disbursement of the funds. If the brokerage cannot determine who is entitled to a deposit within two years, the brokerage must remit the funds to RECO. If the deposit is not dispersed within five years of RECO receiving it, it is remitted to the Ministry of Finance.

The Committee asked what needs to be changed to ensure that when someone puts a deposit down and there is a conflict, it is clear where that money should go. The Committee also asked whether real estate contracts could be changed to ensure that those monies are disbursed.

RECO said that every case is unique, and RECO does not prescribe contractual agreements between buyers and sellers. However, one of the Auditor's recommendations was that RECO and the Ministry look at how the situation regarding unclaimed deposits could be resolved and it is one of the things that RECO is currently considering.

### **Committee Recommendation**

The Standing Committee on Public Accounts recommends that:

1. The Ministry of Public and Business Service Delivery consider establishing a maximum time frame during which unclaimed deposits can be held and establish parameters to determine who unclaimed deposits should be provided or returned to after the time frame has elapsed.

### **Real Estate Commissions**

The Committee also asked about standard real estate commissions. RECO said that 4% to 5% commission is standard practice, but rates vary because consumers negotiate them with their real estate agents. Generally, 50% of the commission goes to the seller's agent, 50% to the buyer's agent, and a portion of

that goes to the broker. However, it depends on the agreement that each consumer has made with the real estate agent and their brokerage. RECO does not regulate real estate commissions.

The Committee asked whether there has been any discussion about the compensation paid to real estate agents given the fact that the price of a home has escalated substantially over the past three decades (and commission payments have grown correspondingly). It was also noted that the current cost of real estate agents could cause people to turn to alternatives that do not offer the same protections as registered agents.

The Ministry said changes to commission rates were not something it considered during the last round of changes to the legislation. It is a marketplace issue and would require consultations to regulate. RECO said that it urges consumers to have discussions with their real estate agents regarding commissions. RECO also said that it makes it clear to consumers through various releases that there are no fixed commission structures.

It was also noted that the rules around disclosure of commissions have changed recently, and agents must now be clearer about them. In addition, the information guide will encourage buyers and sellers to shop around and ask questions about commissions.

## **Compliance Inspections**

RECO conducts periodic inspections of brokerages to ensure that they are complying with the legislation. However, the audit found that RECO has not performed a full on-site inspection of 27% of registered brokerages and has not conducted a full on-site inspection of a further 35% of registered brokerages for at least five years. Among other things, the Auditor recommended that RECO develop a risk-based framework to determine the inspection frequency for each brokerage.

RECO said that this recommendation aligns well with its strategic direction, and it was working on a risk-based inspection framework prior to receiving the audit report. RECO has now implemented changes to its risk-based framework, which is largely in place today. Under the framework, RECO inspectors assign a risk rating to each brokerage, which determines how frequently it will be inspected. High-risk brokerages will be inspected more often than those assessed as low risk. This framework will allow RECO to allocate its resources to brokerages that require more oversight.

The Committee asked how RECO categorizes brokerages as lower or higher risk. RECO explained that there are various factors that it considers, such as how many transactions a brokerage does annually. A brokerage doing a high volume of transactions might attract a higher risk rating than one doing fewer. Inspections history is another factor. If a brokerage is inherently non-compliant, that would impact its risk assessment.

The Committee also asked about the Auditor's finding that RECO's inspection checklist has not been updated since RECO was created 25 years ago, despite the technological changes during that time. RECO said that real estate transactions themselves have not changed much, and the laws remain largely the same. However, RECO has revised the inspection checklist to look in more detail at specific items with different triggers. They are introducing different types of inspections depending on the conduct they see during an inspection, allowing them to escalate and do a deeper dive if more substantive issues are identified.

### **Committee Recommendation**

The Standing Committee on Public Accounts recommends that:

2. The Real Estate Council of Ontario report back to the Committee on the status of its efforts to put a risk-based inspection framework into use to ensure that that each brokerage is inspected with a frequency determined by the brokerage's risk of non-compliance.

### **Investigations and Enforcement**

In addition to inspections, at the hearing RECO noted that if someone feels that a registrant has not complied with the regulations, they can file a complaint. RECO receives about 4,000 complaints per year, which they triage to filter out frivolous or vexatious ones and determine whether they are within RECO's jurisdiction. After triage, about 2,000 complaints move forward for resolution with the registrar's department. If more serious issues are uncovered, then the matter goes to the discipline committee. Approximately 100 cases go to the discipline committee every year.

The Committee noted that although a fair number of complaints come into RECO, very few go to the discipline committee, and the discipline committee imposes a fine in fewer cases still. (According to the audit report, from 2017-2021 the number of cases that resulted in fines ranged from a high of 99 in 2017 to a low of 24 in 2021.) Further to the Auditor's report, the Committee also noted that the average fine is about \$8,000, which is small in comparison to the size of real estate transactions. The Committee asked what RECO is doing to increase enforcement activities.

RECO noted that only a small number of complaints go before the discipline committee because most matters are settled through an admission of guilt process, rather than going to a full hearing. With respect to the average size of the fines, RECO noted that they do not see many repeat offenders. Having to go through the discipline process itself acts as a deterrent. Among other things, a registrant who is found guilty of non-compliance would be named on RECO's website for a minimum of five years.

The Ministry also noted that some of the recent regulatory changes expand the scope and powers of RECO's discipline committee. In addition to fines, there are a number of enforcement tools it can use, such as suspending or revoking a licence, or applying conditions to a licence. The Ministry is also planning another phase of regulatory changes and is considering administrative monetary penalties, additional certification for registrants, and changes to RECO's processes and requirements.



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## **Committee Recommendations**

The Standing Committee on Public Accounts recommends that:

3. The Real Estate Council of Ontario consider increasing fines to ensure that they are comparable to the offence and act as a deterrent.
4. The Real Estate Council of Ontario put a policy in place to ensure that follow-up inspections are conducted of brokerages where violations of the Act and its regulations have been found.

## **Money Laundering in the Real Estate Sector**

Real estate brokers and salespersons are required by federal law to report cash transactions over \$10,000 to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), the federal anti-money laundering agency. However, the audit found that brokers and salespersons rarely do so. Between 2017/18 and 2020/21, FINTRAC received no reports of large cash transactions from Ontario. In 2021/22, FINTRAC received 18 such reports. The Committee asked what RECO is doing to ensure that real estate agents and brokers are reporting large cash transactions of \$10,000 or more.

RECO said that it has updated its inspection manuals to review the reporting obligations of registrants more specifically in this area, and it is working with FINTRAC to share information. In particular, they are formalizing a Memorandum of Understanding (MOU) to support one another in the administration of their respective legislation. RECO also worked closely with FINTRAC to develop a continuing education course for registrants so that they can understand FINTRAC requirements. However, RECO noted that it does not administer FINTRAC's legislation.

The Committee also asked what more RECO could do to address money laundering in the real estate sector. RECO said that it will continue to collaborate with FINTRAC to support enforcement, and that the MOU that they are finalizing with FINTRAC should assist in that regard. RECO also noted it does not prosecute registrants for money laundering per se, which would be beyond their jurisdiction. Money laundering would, however, constitute mischief under their Code of Ethics.

## **Committee Recommendation**

The Standing Committee on Public Accounts recommends that:

5. The Real Estate Council of Ontario report back to the Committee on the status of its efforts to enter into an agreement with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to share information to facilitate enforcement of money laundering and fraud prevention laws.

## **Fraud in the Real Estate Sector**

The Committee asked about recent media reports of homes being sold fraudulently without the knowledge of the owner and asked whether RECO or the

Ministry are looking at mandating multi-factor identification checks to help combat this problem.

The Ministry noted that the legislation requires all brokers and brokerages to use best efforts to prevent error, misrepresentation, and fraud. In addition, only authorized users are permitted to register documents in the land titles system. The Ministry is working with RECO and considering how to tighten access or narrow the circumstances in which fraud can occur, including around the land registry. The Ministry is not currently considering multi-factor identification, but it could be something to consider.

RECO said that it has brought the issue of fraud to the attention of agents through its continuing education program, newsletters, and bulletins. RECO agreed that multi-factor identification is the “leading practice” and is encouraged. RECO also noted that most of the cases reported in the media did not involve a real estate agent, but when they did, RECO investigated vigorously to ensure that the agent’s conduct was not improper.

### **Committee Recommendations**

The Standing Committee on Public Accounts recommends that:

6. The Ministry of Public and Business Service Delivery continue to move ahead with a beneficial ownership registry to stop numbered corporations, Real Estate Investment Trusts (REITs), and trusts from buying properties without transparency.
7. The Real Estate Council of Ontario and the Ministry of Public and Business Service Delivery investigate ways to combat fraud, including having realtors and brokerages engage in multi-factor authentication.

### **RECO’s Information Gathering Authority**

The audit noted that RECO does not currently have the general authority to collect real estate transaction data from all brokerages. In the absence of such information, it is challenging for RECO to provide evidence-based advice to the Ministry. The Committee asked what the Ministry is doing with respect to this finding.

The Ministry said that it supports the ability of RECO to collect information that is relevant to their work, and it is working with RECO on an implementation plan related to the Auditor’s recommendations. It was also noted that the recent regulatory changes gave the registrar some additional information gathering powers. The registrar now has the power to request specific transactional data from brokerages. The Ministry said it would monitor the impact of the changes and assess whether additional forms of information are required for the registrar to fulfill its obligations.

RECO also noted that over the next year or so, it will be identifying the types of data it wants brokerages to report and introducing annual reporting for brokerages.

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### **Committee Recommendation**

The Standing Committee on Public Accounts recommends that:

8. The Ministry of Public and Business Service Delivery make changes to ensure that the Real Estate Council of Ontario (RECO) has the authority to collect transactional data and that RECO periodically collect such data.

### **Public Awareness of RECO**

The Committee asked about the Auditor's finding that 89% of Ontarians were not aware of RECO and asked how RECO can protect the public if the public does not know that it exists. RECO explained that they have been looking at self-promotion for some time. They have tried a number of things, such as setting up booths at baby shows and retirement shows, to try to make people aware of their existence at the right time (i.e., when they may be buying or selling a home).

RECO also said that the new regulations requiring realtors to provide RECO's information guide to a prospective buyer or seller when they first contact the realtor, which align with one of the Auditor's recommendations, will be a game-changer. The guide is designed to inform consumers about the relationship, what to expect, and what their obligations are. Requiring realtors to provide it at first contact is also important because it puts RECO in the right place at the right time.

### **RECO's Board of Directors**

The Committee also asked about the structure of RECO's Board and whether it provides for regional representation. RECO said that the Board is not structured to represent different regions of the province; rather, the Board's role is to provide overall governance to RECO. Board members have fiduciary duties to the organization itself. They are there to fulfill responsibilities to RECO and set organizational direction and strategy.

### **Committee Recommendation**

The Standing Committee on Public Accounts recommends that:

9. The Real Estate Council of Ontario (RECO) and the Ministry of Public and Business Service Delivery look into having permanent consumer representation on RECO's Board of Directors.

### **Public Disclosure of Employee Compensation**

The Committee also asked whether RECO would be open to having its employees covered by the "sunshine list" (i.e., the legislation that requires public disclosure of salaries over \$100,000 for specified public sector workers). RECO responded that administrative authorities such as itself are designed to be separate from government, with all the benefits of that structure. RECO also offered assurances that their salary structure is closely monitored by the Board. They set salaries based on surveys and resources in the market and have a robust system that the Board oversees, so there are solid processes in place to manage compensation.

## **CONSOLIDATED LIST OF RECOMMENDATIONS**

The Standing Committee on Public Accounts recommends that:

1. The Ministry of Public and Business Service Delivery consider establishing a maximum time frame during which unclaimed deposits can be held and establish parameters to determine who unclaimed deposits should be provided or returned to after the time frame has elapsed.
2. The Real Estate Council of Ontario report back to the Committee on the status of its efforts to put a risk-based inspection framework into use to ensure that that each brokerage is inspected with a frequency determined by the brokerage's risk of non-compliance.
3. The Real Estate Council of Ontario consider increasing fines to ensure that they are comparable to the offence and act as a deterrent.
4. The Real Estate Council of Ontario put a policy in place to ensure that follow-up inspections are conducted of brokerages where violations of the Act and its regulations have been found.
5. The Real Estate Council of Ontario report back to the Committee on the status of its efforts to enter into an agreement with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to share information to facilitate enforcement of money laundering and fraud prevention laws.
6. The Ministry of Public and Business Service Delivery continue to move ahead with a beneficial ownership registry to stop numbered corporations, Real Estate Investment Trusts (REITs), and trusts from buying properties without transparency.
7. The Real Estate Council of Ontario and the Ministry of Public and Business Service Delivery investigate ways to combat fraud, including having realtors and brokerages engage in multi-factor authentication.
8. The Ministry of Public and Business Service Delivery make changes to ensure that the Real Estate Council of Ontario (RECO) has the authority to collect transactional data and that RECO periodically collect such data.
9. The Real Estate Council of Ontario (RECO) and the Ministry of Public and Business Service Delivery look into having permanent consumer representation on RECO's Board of Directors.

