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David Eby, MLA
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February 23, 2016

Independent Real Estate Advisory Group
c/o Chair, Superintendent of Real Estate Carolyn Rogers

VIA E-MAIL: Carolyn.Rogers@ficombc.ca

Dear Advisory Group Members:

Re: Mandate, powers and jurisdiction of the Advisory Group

Congratulations on accepting appointment to the Real Estate Advisory Group struck by the Real Estate Council of BC with the assistance of the Superintendent of Real Estate.

I write to you in my role as Housing Spokesperson for the Official Opposition BC New Democrats to encourage you to seize this unique opportunity presented to you to help restore public confidence in realtor accountability in British Columbia. British Columbia's families, and those realtors who work with integrity, building and strengthening their local communities, are depending on you, and opportunities like this to shape public policy for the public good don't come along every day.

British Columbia needs an investigation body, not an opinion panel

While your group has been assigned the label "advisory", we encourage you to take on the far more crucial mantle of "investigatory". An effective set of recommendations concerning practices in the real estate industry requires a strong foundation of fact.

Too often, whether the matter is tax evasion through misrepresentation, predatory marketing, enabling circumvention of anti-money laundering protections, or so-called "shadow flipping", the public has learned about corrosive practices of some real estate agents through the media, not through the industry's self-governing body detecting this conduct and removing the licenses of those engaged in such practices.

There are two likely causes behind this failure of the Council to prevent, detect and punish, failures that can easily be avoided in your own work on these issues by ensuring you have the resources and time you need to succeed.

Failure 1: Failing to investigate proactively

The Real Estate Council of BC too often waits for members of the public to come forward with complaints. For many reasons, you must not replicate this approach.

Maureen Coleman spoke on behalf the Real Estate Council of BC on CFAX radio on 10 February 2016, when the Council was faced with widespread media coverage declaring the Council's oversight had failed the public. Her comments are illuminating.

Something that has surprised us since this issue hit the media on I think it was Sunday we were expecting that we would have a flood of complaints with respect to assignments, or not a flood but you know, people would say, "Oh, that's me. I'm going to complain," and we haven't. It might be early days. I don't want to jinx anything and hopefully there have not been that many instances.

These comments seem to indicate that the Council may mistakenly believe that the number of people who come forward to them with complaints is directly proportional to the number of frauds engaged in by agents. We urge you not to adopt that mistaken equivalence.

The reason for a small number of complaints not being a marker for the actual number of frauds by corrupt agents are many and varied. For example, a seller may simply be unaware that they've been scammed due to the nature of an activity like shadow flipping or modifying a commission percentage on a contract after it has been signed. Even worse, all parties to a fraudulent transaction may be benefitting in some way from the fraud, as is the case in GST evasion or money laundering, leaving no victim to complain to the Council.

No complaints does not equal no problem. Few complaints does not equal few problems. That approach is how you end up on the front page of the Globe and Mail.

Even if a person knows he or she has been taken advantage of by a dishonest agent, that person may not know that the Real Estate Council exists, that it is effective, or that there is any point in bringing a complaint at all. In reviewing many of the decisions by the Council concerning realtor fraud, and the timelines for the resolution of those complaints, we are inclined to sympathize with those who might feel filing a complaint is pointless.

Neither you, nor the Real Estate Council, should depend on members of the public coming forward to you to give you information. Nor should you rest any conclusions on the fact that members of the public have not come forward to the Real Estate Council on a particular issue. You must go out and investigate, audit and interview. You must be active, not passive, in order to fulfil the role that has been assigned to you, and to be active, you will require resources.

Failure 2: Inadequate investigatory and audit resources

Part of this approach of the Real Estate Council to wait for complaints may be due in part to a failure of the Real Estate council to ensure the organization has enough investigators and auditors. For example, we note with concern that the two most recent decisions on the Real Estate Council's website, involving relatively minor failures to recommend clients obtain independent advice, took years to resolve. The most recent case of fraud and shadow flipping listed on the Council's website took two and a half years to resolve. These are not resolution timelines consistent with those one would expect from a well-resourced investigative watchdog.

Under-resourcing is also a possible culprit lurking behind the related problem of a very narrow reading of the Real Estate Council's jurisdiction used by the first point of contact for the public with the Council. For example, in the last year, a BC Real Estate Council investigator wrote the following to a member of the public who brought that investigator credible, sworn information about a realtor alleged to be involved in fraud and money laundering:

The Council cannot make a determination as to whether any of the actions ... were wrongful, but should the appropriate regulatory body make such a determination, the Council would be very interested in those findings. We would then be able to open an investigation. [Emphasis added]

For reasons likely related to limited resources, the Council preferred to dismiss the credible concerns of a member of the public without opening a file, let alone asking the realtor in question to account for the bizarre activities he engaged in as described under oath by securities investigators.

It matters not to the public whether the Council's narrow jurisdictional reading came first as a cultural norm and resources were limited because there were "fewer" complaints, or the resources were limited first as a practical matter leading to the narrow reading out of necessity. What matters to the public is that crucial public trust matters are not being investigated.

Like the Real Estate Council, you can read your mandate narrowly, and avoid digging too deeply into the pressing public issues set before you. While this approach would have the benefit of requiring few resources for the job you've been tasked with, and you could finish the job within weeks, such a restricted interpretation of your task would be disappointing to British Columbians who are demanding better from this industry.

We urge you to avoid the failures of the Real Estate Council that resulted in your appointment

Your body must not replicate the above-noted failures of the Real Estate Council in your efforts, efforts which are required because of those very failures. Adequate resources to support your review are required for the credibility of any conclusions you reach, including resources that permit you to conduct spot audits, compel document production and compel information from licensed realtors.

A single agency – New Coast Realty – figured prominently in two separate articles by Kathy Tomlinson of the Globe and Mail. As an example, your organization's ability to examine, in detail, New Coast's practices and paperwork, and the practices of agencies and agents alleged to have participated in similar conduct, coupled with a comprehensive documentary review of why the self-governing body failed to detect and prevent these practices, is essential. You've been asked to improve the oversight of realtors. You can't do that without knowing exactly how and why the existing oversight failed.

The resources of the Real Estate Council of BC and the Superintendent of Real Estate are not sufficient

You are all professionals with full-time jobs that already demand more time than you have. You have families and friends that enjoy seeing you from time to time. As a result, you will not be leafing through the sales documents of firms like New Coast Realty or the Real Estate Council over the weekend or overnight, nor should that be anyone's expectation of you. You will require a team of auditors and investigators to do this leg work on your behalf, and for many reasons those staff members cannot come from the Council or from the Superintendent's office.

The existing resources of the Real Estate Council of BC should not be relied on by your investigative body. If the issue here is rooted in personnel, asking those personnel to investigate themselves is ineffective. As just one example of the difficulty of relying on Real Estate Council employees as your investigators or auditors, subordinates will be extremely reluctant to provide information to you about the failures of superiors given that we have no whistleblower protection in British Columbia. In a small shop, like the Real Estate Council offices, any investigation or auditing staff member would likely have been personally involved in some of the files you're asking them to review on your behalf. They likely have personal relationships with their colleagues whose files or e-mail responses you may be asking them to review. Such an approach is not only unfair, it is unlikely to produce useful results from the perspective of an informed observer.

Unless rapidly expanded by the provincial government, the resources of the Superintendent of Real Estate similarly should not be relied on by your investigative body as sufficient. The Superintendent of Real Estate is one person, who currently has five separate statutory responsibilities, including her job as head of FICOM. Her staff at FICOM, like you, all have full time jobs, families and friends. British Columbia needs a timely and thorough response on this pressing public issue, not a response prepared off the side of a FICOM staff member's already crowded desk after hours, or on weekends.

Without an independent investigative team, you will be limited to relying on the representations of various parties who have an interest in the outcome of your review. A collection of opinion articles is better published in local newspapers than compiled and loaned the patina of an independent report by your Advisory Group.

British Columbia needs an independent investigation, you are a group of professionals who could easily deliver that with the right resources, and that outcome is without doubt the highest and best use of your precious time. We cannot imagine you signed up for this responsibility with the understanding you'd be arbitrating between diametrically opposed opinion papers authored by self-interested parties – surely there is more than that to this task force, and the reasons why you accepted this role.

Take the time required to do a comprehensive investigation

We strongly encourage you to resist the demands of the Finance Minister that this review be complete in a matter of weeks. These issues are entrenched, took years to develop, and participants in fraud or predatory practices are often expert in concealing their activities. Their victims are often vulnerable and reluctant to come forward or speak out, assuming they even know they've been victimized.

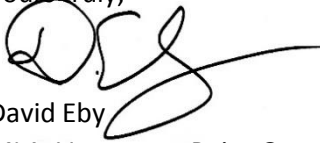
A comprehensive investigation will take time and resources – it is entirely reasonable for you to ask the Provincial Government for what you need to complete the task they have set out for you. It is not just because your names will be on the final report that this must be done properly, but also because hard working realtors who follow the rules and build our community deserve the restoration of public confidence that will only come through a job thoroughly and independently done.

You will have the full support of the Official Opposition for the time and resources you need to do this investigation. We believe that the government has measures they could take right now by regulation – closing loopholes in the Property Transfer Tax – that would render a great deal of shadow flipping unprofitable overnight. They choose not to take that step. An inadequate response on their part to a vacuum in our law does not constitute an emergency on your part.

Take the time you need to do this right. We need only point out that a federal inquiry into missing and murdered aboriginal women is taking place following very public calls from British Columbia's indigenous women. This inquiry has been called for despite a provincial inquiry into this exact same subject matter having been held by the provincial government at great public expense just a few years ago. Because they failed to do the job properly, it must be done again. If the public has no confidence in your investigation and report, realtors and the public will be forced to endure this process again until it is done properly.

Thank you in advance for taking on this responsibility in addition to your existing tasks and the demands of home and family. Please do not hesitate to contact us if you require any assistance at all in achieving the responsibility that has been set out for you, and we will do our best to support you in this critically important task.

Yours truly,

A handwritten signature in black ink, appearing to read 'D. Eby', with a long horizontal flourish extending to the right.

David Eby
MLA, Vancouver Point Grey
BC NDP Spokesperson for Housing

cc. Greg Dickson, FICOM BC, VIA E-MAIL: Greg.Dickson@ficombc.ca